

SECTION C. — EXPOSÉS ÉCRITS
SECTION C.—WRITTEN STATEMENTS.

6.

STATEMENT OF THE GOVERNMENT
OF THE FREE CITY OF DANZIG.

[OCTOBER 20th, 1931.]

I.

INTRODUCTORY.

1.—In this case the Permanent Court of International Justice is asked by the Council of the League of Nations by Resolution dated the 19th September 1931 to give an advisory opinion on the following question:

[See p. 9.]

2.—This question arises, as is indeed apparent from its terms, out of a claim made by the Government of Poland for special facilities for its war vessels in the port and waterways of Danzig in excess of those which, by the usual comity and practice of nations, are accorded in the harbours of one State to vessels belonging to the navy of another. The Free City therefore finds itself in a position analogous to that of a Defendant in a civil action in a municipal court; the Free City is not itself making against the Polish Government any claim which is relevant to the question put to the Court; the Free City must await the definite formulation of the claim of the Polish Government before it is in a position to lay its own case complete before the Court with the fullness and precision which the importance of the issues at stake requires.

3.—With the reservation therefore, for the further statement to be made on behalf of the Free City, of such developments as may later be rendered necessary, the Government of the Free City proposes at this stage to submit a brief statement, first of the main facts in the history of the controversy, and

secondly of some general reasons of a legal character, which, according to the submission of the Free City, render it impossible to return an affirmative answer to the question put by the Council of the League.

II.

OUTLINES OF THE HISTORY OF THE CASE.

4.—The Free City of Danzig was established by the Treaty of Versailles in execution of the policy previously declared by President Wilson "because", in the words of the Allied and Associated Powers, "in no other way was it possible to provide for that 'free and secure access to the sea' which Germany had promised to concede" to Poland. The City was placed by the Treaty under the protection of the League of Nations and its constitution was similarly placed under the guarantee of the League. The Principal Allied and Associated Powers undertook by the Treaty of Versailles to negotiate a separate treaty between the Polish Government and the Free City which should ensure to Poland, amongst other things, the unrestricted use of all waterways, docks, basins, wharves and other works within the territory of the Free City necessary for Polish imports and exports.

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5.—Shortly after the entry into force, on the 10th January 1920, of the Treaty of Versailles, and in execution of that Treaty, the Conference of the Ambassadors of the Principal Allied and Associated Powers negotiated the treaty or convention thus contemplated between Danzig and Poland. This Treaty or Convention (hereinafter referred to as the Convention of Paris) was concluded at Paris on the 9th November 1920; the full text is annexed to this Statement.

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6.—Contemporaneously with the negotiations for the Convention of Paris, the Constitution of the Free City was in process of formation and in November 1920 was submitted in draft to the League of Nations with a view to receiving the guarantee of the League pursuant to Article 103 of the Treaty of Versailles. The draft constitution was studied by the Council of the League and formed the subject of a report presented to the Council by Viscount Ishii on the 17th November 1920.

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7.—This report sets out fully the history of the newly established Free City down to the date of the report. For the purpose of the present case two points in this report are of primary importance: (1) the report, in its discussion of the constitution of Danzig, deals with the question of its

becoming a military or naval base, and (2) the report discusses the duty of the League to "protect the Free City in the case of an armed international conflict".

On the first point the report proposed that the draft Constitution should be amended by the insertion of a provision that Danzig should not serve as a military or naval base.

On the second point the report expressed agreement with the opinion of the Conference of Ambassadors to the effect that the Polish Government appeared peculiarly fitted to receive, if the circumstances required it, from the League of Nations the mandate to ensure the defence of the Free City. The report at the same time added that it was important to make it clear that this mandate could never be made exclusive, and that it could only be given after due consideration by the Council of the League of the particular circumstances in each case.

8.—The Council approved the conclusions of the report and on the 17th November 1920 passed the resolution therein proposed. It will be seen that this resolution, among other things, (a) instructed the Permanent Advisory Commission on Military, Naval and Air questions to consider the measures which would ensure the most effective defence of Danzig in the cases mentioned in the report and (b) required the Constitution of Danzig to be amended so as to exclude the possibility of the use of the Free City as a military or naval base without the consent in each case of the League of Nations. This latter requirement was duly complied with and the requisite amendment has been embodied in the Constitution of the Free City.

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9.—The Permanent Advisory Military, Naval and Air Commission, acting under this resolution of the Council, after consulting its sub-Committees, reported on the 1st December 1920. The report concluded with certain recommendations, the last (9) of which was that "without waiting for the result of the defensive organization of the Free City, the Polish Government should be given sufficient harbourage in the port of Danzig to assure the sheltering and repairing of those small naval units which were given it by the Allies for the policing of its naval waters".

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10.—This report was considered by the Council of the League on the 12th December 1920 and provoked a certain discussion. It was criticized on the ground that it was inconsistent with the spirit of the Treaty of Versailles and with all subsequent decisions of the competent authorities; if it was adopted, Danzig would be put under the military control of a neighbouring Power, instead of under the control of those

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who had been made responsible for its safety under the Treaty. In the result and with a view to avoiding a "hurried decision", the Council decided to send the report, together with Viscount Ishii's report on the same subject, to the High Commissioner of Danzig with a request that he should consider the question and report to the Council, which would then be in possession of all information necessary for a final decision. The High Commissioner made his report on the 25th January 1921.

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No. (to be
supplied).

11.—The matter next came before the Council on the 22nd June 1921, when, after discussion, a resolution was adopted, as a result of a further report by Viscount Ishii; this resolution regulated the steps which might in certain eventualities be taken by the High Commissioner to invite Polish co-operation on land, but declared that the Council did not consider it necessary to decide at the present moment under what conditions the defence of Danzig by sea should be secured; the High Commissioner should however be asked to examine the means of providing in the port of Danzig, without establishing there a naval base, for a "*port d'attache*" for Polish warships.

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and 12.

This resolution thus reached no conclusion on the question of the rights of Polish warships to what was then called a "*port d'attache*" in the harbour of the Free City.

12.—The report thus requested from the High Commissioner was made on the 10th September 1921; in it he concluded that in his opinion the matter was one rather for the naval experts on the League, his own point of view being that Poland must be given every facility for mooring her warships in the port of Danzig under such conditions that a naval base is not established there. To his report was annexed a statement from the Polish Government. This report was in no sense a *decision* by the High Commissioner under Article 103 of the Treaty of Versailles or Article 39 of the Convention of Paris.

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13.—The report of the High Commissioner was brought before the Council of the League on the 16th September 1921 and on a further report by Viscount Ishii was referred to the Permanent Advisory Military, Naval and Air Committee for observations.

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and 16.

14.—On the 24th September 1921 the naval sub-committee acting on behalf of the Advisory Committee submitted an opinion, the gist of which was that Poland should be authorized under certain conditions to make use of the port of Danzig for her warships but only until the construction of the port of Gdynia.

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15.—With a view now to arriving at some practical arrangement, at any rate for the time, the Secretary-General of the League, on the instructions of the President of the Council, asked the High Commissioner to “examine with the Government of Danzig the possibility of providing safety and the necessary harbour facilities for Polish war vessels in the port of Danzig until the question has been examined by the Council and without prejudice to a definitive solution”. As a result of this intervention, on the 8th October 1921, the representatives of the Parties agreed on the following arrangement:

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(1) Poland wishes to continue to use the port of Danzig for her warships until the question of a *port d'attache* is decided by the Council of the League of Nations.

(2) Poland will inform the President of the Danzig Senate regarding the number of ships she wishes to keep in the port, and the President of the Senate will raise no objection to these ships remaining in the port.

(3) The Harbour Board will provide the necessary berths for these ships.

(4) This arrangement does not commit either side as regards any future agreement on the subject between the two States, or as regards any decision of the Council.

16.—This strictly temporary and provisional agreement has in fact held the field until shortly before the present proceedings. The High Commissioner reported again to the Council on the whole question on the 7th December 1921, and, as no settlement was reached by the Parties, the Council on the 12th January 1922, on a further report by Viscount Ishii, decided to postpone consideration of the question of the *port d'attache* to a later session; until the question had been considered by the Council, the preliminary agreement already concluded between the Free City and Poland with the object of providing safety and necessary harbour facilities for Polish war vessels in the port of Danzig was to remain in force.

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and 21.

17.—In the interval there have been various negotiations or attempts at negotiation and the question has been discussed before the Council of the League. In May 1927 the provisional arrangement was denounced by Danzig, but subsequently in August 1928 the Senate of Danzig informed the Polish diplomatic representative that it was disposed to withdraw the denunciation and agree that the arrangement remained in force until the 30th July 1931, but might be denounced on three months' notice on or after that date. The Polish representative took note of this communication, and the Council at its meeting of the 8th September 1928

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and 25.

did the same. The arrangement was again denounced by the Senate on the 1st April 1931 for the 1st July following but was subsequently prolonged down to the 19th September 1931, the date on which the Council resolved to ask an advisory opinion from the Permanent Court of International Justice. The negotiations which have taken place have not affected the position of either Danzig or Poland as to the legal question now submitted to the Court, but the Government of the Free City reserves the right to refer to the minutes of the relevant meetings of the Council of the League for evidence of the views taken by the Council, and by the Parties concerned, as to the effect of the decisions of the Council and of the High Commissioner.

III.

LEGAL CONSIDERATIONS.

18.—The point submitted to the Court is, it is perhaps unnecessary to state, purely legal in character. The Court is not asked to consider what in 1920 or at any subsequent date was, or might at the present time be, a reasonable arrangement for the Parties to come to or how the practical aspect of the matter may have been affected by the existence, construction and development of Gdynia or any other Polish port; the Government of the Free City has not therefore thought it necessary to give the Court any detailed account of the many negotiations and attempts at settlement which have from time to time been made. The Court is asked solely what are the legal rights as expressed by acts and documents, mentioned in the question put to the Court, which are binding upon Danzig and upon Poland.

19.—The Free City of Danzig is a State, a *persona* of international law. In certain respects the Free City is in a peculiar position; it is under the protection of the League of Nations and as a result of the Convention of Paris, read with the relevant provisions of the Treaty of Versailles, it is in a close and peculiar relation towards Poland. But this relation is not a relation of general dependency; Poland has no right to impose its will upon Danzig; the relations of the two States are on a contractual basis, and upon the footing of that equality which in principle is the rule of international law. Protection by the League of Nations does not involve for the Free City any inferiority of status in regard to Poland; in fact Poland equally with Danzig, in "any matter affecting the relations" of the two States, is subject to the decision of the Council of the League. (*Convention of Paris, Article 39, and cf. Article 103 of the Treaty of Versailles.*)

20.—If therefore Poland claims against the Free City special rights in the harbour and waterways of Danzig, she must make good her claim by pointing to some clear and unequivocal provision in an international act or instrument binding upon the Free City, and either directly establishing those rights or creating a situation from which those rights inevitably result. Such international acts or instruments are, as the question put to the Court in this case indicates, to be found only, if at all, in (a) the Treaty of Versailles, (b) the Convention of Paris, (c) the relevant decisions of the Council of the League of Nations and (d) the relevant decisions of the High Commissioner of the League at Danzig. In the view of the Government of the Free City none of these instruments contains any provision of the character necessary to establish special rights in this matter for Poland. Such special rights must be established unequivocally; they cannot be presumed.

21.—In Section XI, Part III (Articles 100 to 108), of the Treaty of Versailles there is nothing to confer upon Poland any right as to warships in the port or waterways of Danzig. The Articles, so far as relevant, and in particular Article 104, are the fulfilment of the intention to give Poland that "free and secure access to the sea" which was No. 13 of the Fourteen Points of President Wilson; they do so, not by the use or repetition of any general language which might be construed as covering without expressing a number of rights of a derivative or consequential nature, but by a precise catalogue of the objects, and of the means of achieving the objects, which the treaty between the Polish Government and the Free City of Danzig, to be negotiated by the Principal Allied and Associated Powers, was to embody. These objects were all without exception non-military and commercial, or at any rate civil, in character and no provision of military or naval force was necessary, nor was any such provision made, for their achievement.

22.—Thus the Free City was to be included in the Polish customs frontiers (Article 104 [1]). Poland was to have free use without restriction of all waterways, docks, etc., within the territory of the Free City "*necessary for Polish imports and exports*" (Article 104 [2]). Poland was to have control and administration of the Vistula and, with certain exceptions, of the whole railway system within the Free City and of postal, telegraphic and telephonic communication between Poland and the Port (Article 104 [3]). Poland was to have the right to improve and develop waterways, docks and railways, etc., and to lease or purchase land and other property (Article 104 [4]). No discrimination was to be made

to the detriment of citizens of Poland and other persons of Polish origin or speech (Article 104 [5]) and, lastly, Poland was to undertake the conduct of the foreign relations of the Free City and the diplomatic protection of its citizens when abroad. But this carefully drafted text contains nothing to authorize the introduction of Polish naval forces into the Free City, the harbour, docks, or waterways. Had it been intended to confer a right of such international importance and affecting so profoundly the internal government of the city, even as something incidental or ancillary to the freedom and security of Polish access to the sea, it is clear that such a right must have been mentioned specifically on this occasion.

23.—This section and this article of the Treaty of Versailles were the subject of authoritative comment by the Principal Allied and Associated Powers in their correspondence with the German delegation on the subject of the terms of peace in June 1919. The declarations of the Principal Allied and Associated Powers on this point, contained in their detailed reply to the German observations and also in the covering letter signed by M. Clemenceau as President of the Peace Conference, will be found in the Appendix to this Case. These declarations show not merely with what detail the relevant section of the Treaty had been elaborated but also that the paramount purpose of these provisions—namely, to give Poland “free and secure access to the sea”—was to be accomplished not by granting her special military and naval privileges but by giving her “certain *economic* rights in Danzig” and constituting for Danzig a “position similar to that which it held for so many centuries” without however making it “come under Polish rule” or “form part of the Polish State”. To station Polish war vessels permanently or even to give them special and exceptional privileges in the harbour of Danzig would mean a considerable step in the direction of bringing the Free City “under Polish rule”. In any event, a right thus to station war vessels is not to be inferred tacitly as an implied consequence of the provisions of an instrument the main objects of which were to give Poland for commercial purposes a free and secure access to the sea and to constitute Danzig a Free City.

24.—It would serve no useful purpose at this stage to go through the Convention of Paris in detail. So far as points material to the present controversy are concerned, the Convention elaborated faithfully the governing conditions imposed by the Treaty of Versailles. Articles 8, 9 and 10 of the Convention are, however, not without significance with reference to the question before the Court. These Articles deal in detail with questions relating to merchant ships, both of

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Danzig and of Poland, and in particular Article 10 provides for national treatment in the port of Danzig for "ships flying the Polish flag"—by which expression merchant ships alone are intended. The Convention is nevertheless wholly silent as to the admission of Polish warships to the port of Danzig. If it is contended that the text of the Convention is on this point not clear or that its silence is to be construed as a tacit admission of rights or attributions of Poland which are not expressed, the Government of the Free City will crave leave to refer to the fact that the Polish Government had without success requested the Ambassadors' Conference to insert in the Convention a provision giving the most extensive naval rights.

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25.—As to decisions of the Council of the League of Nations: reference has already been made in the earlier part of this Statement to the three decisions—viz. those of the 17th November 1920, 12th December 1920 and 22nd June 1921—on which, so far as the Government of the Free City is at present aware, reliance has been placed as determining the question at issue in favour of Poland. It is, however, submitted that it is obvious from a perusal of these decisions that the Council has never thereby made any pronouncement authorizing Polish war vessels to have special privileges for access to or anchorage in the port. Indeed, had the Council knowingly so decided, it could hardly have submitted the present question to the Court for an advisory opinion. To assist the full comprehension of these decisions, the Government of the Free City will crave leave to refer to the minutes of the meetings of the Council at which the relative decisions were reached.

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and 12.

26.—The decision of the 17th November 1920 was a decision covering two main points: (1) the defence of the Free City; (2) the approval by the League of the draft constitution of the Free City. On the first point, the Council contended itself with declaring that the Polish Government appeared particularly fitted to be, if the circumstances require it, entrusted by the League of Nations with the duty of ensuring the defence of the Free City and the Council instructed the Permanent Advisory Commission to consider the measures which would ensure the most effective defence of Danzig in certain cases. But it reached no positive conclusion and conferred no right of any kind upon Poland. On the second point the Council decided—so far as its decision is material to the present case—that a clause should be inserted in the Constitution to the effect that the Free City should not, without the previous consent of the League of Nations in each case, be used as a military or naval base. It is there-

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fore submitted that this decision of the 17th November 1920 evidently does not confer upon Poland any rights relating to the use of the harbour of Danzig by Polish war vessels. The second part of the decision makes it, on the contrary, plain that the Council was determined that no permanent utilization of Danzig as a naval port was to be permitted.

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No. 10.

27.—The decision of the 12th December 1920 was nothing but a decision to send the report made by the Permanent Advisory Committee of the League on Military, Naval and Air questions together with the earlier report of Viscount Ishii (dated 17th November 1920) to the High Commissioner with a request for a report. The decision followed on a discussion in which the opinions of the Members of the Council had been sharply divided.

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28.—The decision of 22nd June 1921 (see paragraphs 6 and 7 of the text of the decision) put aside for the time being the question of the defence of Danzig by sea; the Council however invited the High Commissioner to consider how it would be possible "to create in the port of Danzig, without establishing a naval base, a *port d'attache* for Polish warships". Incidentally this decision proves, if indeed any further proof is needed, that the Council cannot have considered that it had already authorized Polish warships to use the port of Danzig as a "*port d'attache*"; the Council looked upon the grant of such an authority as possibly forming part of naval defensive measures which for the time being it definitely refused to empower Poland or any other Power to take. The Council has never amended or altered this refusal. It should also be noted that this decision of June 22nd 1921 draws a sharp distinction between measures to be taken on land on the one hand and naval defence on the other. For measures on land a certain limited authority was given to the High Commissioner to invoke the aid of Poland on certain conditions, but the question of naval defence was laid aside.

29.—As to decisions of the High Commissioner: equally the Government of the Free City has no knowledge of any case in which the point now at issue was submitted to the High Commissioner either under Article 39 of the Convention of Paris or otherwise. The High Commissioner, as appears from the history of the matter, has been consulted by the Council of the League, he has made more than one report to the Council, and he has given assistance in negotiations for an amicable settlement of the matter. But he has never been asked to give, and has never given, a *decision* on this point either under Article 39 of the Convention of Paris or other-

wise, frequent as have been the appeals to him on other matters.

30.—It is true that in the correspondence exchanged between the Parties during the present year the Polish Government has referred to point VIII of a decision of the High Commissioner given on the 15th August 1921 as having confirmed the rights claimed in this matter. The Government of the Free City submits that this decision (the complete text of which is appended), as its preamble and whole text abundantly make plain, is concerned purely with economic and commercial (and therein principally with railway) matters; the decision has nothing whatever to do with military or naval affairs. It may also be relevant to remark that, as will appear by a reference to paragraphs 11 to 15 above, the High Commissioner was already at the date of this decision charged by the Council of the League to report on the problem of the possibility of providing a "*port d'attache*" and must therefore have had vividly present in his mind that the whole question of Danzig's naval defence had been adjourned by the Council. It is not easy to suppose that in such circumstances the High Commissioner would have given a decision, not asked for by the Parties and not authorized by the League, bearing on the question of naval defence or trespassing on the ground of the report which he was making on a technical point to the Council.

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31.—Before leaving the subject of the decisions of the High Commissioner, it may be remarked that a decision given by him on the 6th December 1921 could hardly have taken the form which it did had not the High Commissioner been of opinion that Polish warships had not at that time any special rights in the port of Danzig. The High Commissioner in that decision rejects a Polish claim that the legal position of the harbour of Danzig should be similar to that which it would hold if it was situated within the territory of the Polish Government (see para. 4 of the decision). In the course of his decision the High Commissioner carefully enumerates (see para. 8 of the decision) the guarantees possessed by Poland for the free passage of her exports and imports through the port of Danzig and generally the advantages which she enjoys in the harbour. But he makes no reference to the existence of any special rights for Polish warships.

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32.—From the discussions which have taken place hitherto it would appear that the claim by Poland to the right to introduce warships upon privileged terms into the port of Danzig at any time and to keep them permanently there is

based either upon the right of Poland to a free access to the sea or upon an alleged duty of Poland to provide for the defence of Danzig.

If reliance be placed on the right of access to the sea, the answer is that the exercise of this right has been minutely defined and provided for in the Treaty of Versailles and the Convention of Paris, and that neither of these instruments confers any authority to use or introduce naval forces. Such an authority cannot be presumed as appendant or appurtenant to the exercise of rights of a peaceful commercial character; if it were otherwise, no State could safely allow to a neighbour the exercise of any peaceful privilege upon its own territory. And if it be said that there is any obscurity on the point in the Convention of Paris, it is decisive that the right now asserted was definitely claimed by Poland in the earlier drafts of the Convention and was not included in the final text.

33.—If on the other hand reliance is placed on the necessity for the defence of Danzig, the answer is that this defence is primarily the business of the League and not of Poland; it becomes the concern of Poland only if and in so far as it is delegated to Poland by the League; the League has in fact deliberately refrained from ever committing to Poland the naval defence of Danzig or conferring upon Poland any special right to introduce her warships into the harbour. Any authority which Poland may claim in this connection must be derived from the League and the League has never given any such authority.

34.—The Government of the Free City has not failed to observe that the question put to the Court speaks not only of "rights" but also of "attributions" of Poland. The Government of the Free City is inclined, as at present advised, to interpret this expression, "attributions", as indicating something ancillary to or derived from a status or position of authority or of trust, and thus carrying with it a legal right affecting other persons. If indeed an "attribution" results in something less than a right, it is difficult to know what is the relevance of the inclusion of the word in the question put to the Court. But, however this may be, the word would seem to imply that the person possessed of the "attribution" occupies some peculiar situation or status necessarily carrying with it derivative rights in relation to the person affected by the "attribution". The Government of the Free City cannot accept the proposition that a situation or status necessarily carrying with it rights, not expressly conferred, in limitation of the independence of Danzig, is occupied in relation to Danzig by Poland.

35.—In the view of the Government of the Free City the legal position in this matter, as between Danzig and Poland, is then that Danzig possesses, in relation to Polish warships which seek to enter the port, the ordinary rights of an independent State. The Government of the Free City, it is unnecessary to add, has no wish or intention to exercise these rights otherwise than as they are usually and courteously exercised between independent and friendly States. What exactly such ordinary rights of an independent State may be, and indeed whether they permit of any exact definition, is not a matter which is raised by the question put to the Court.

IV.

CONCLUSION.

36.—For the foregoing reasons the Government of the Free City prays that the Permanent Court of International Justice may be pleased to give an advisory opinion to the Council of the League of Nations to the effect that neither the Treaty of Versailles nor the Convention of Paris nor any decision of the Council of the League of Nations or of the High Commissioner of the League of Nations at Danzig, confers upon Poland any right or attribution as regards the access to, or anchorage in, the port and waterways of Danzig of Polish war vessels.

(Signed) JOHN FISCHER WILLIAMS,
Agent for the Government of
the Free City of Danzig.

20th October 1931.

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Extract from
the Reply of
the Principal
Allied and
Associated
Powers to the
German
Observations
on the terms
of peace,
dated 16th
June 1919.

EXTRACT FROM THE REPLY OF THE PRINCIPAL ALLIED
AND ASSOCIATED POWERS TO THE GERMAN OBSERVATIONS
ON THE TERMS OF PEACE, DATED 16th JUNE 1919¹.

SECTION XI.—DANZIG.

The German note declares that the German Government "must reject the proposed rape of Danzig and must insist that Danzig and its environs be left to the German Empire". The use of this language seems to show some want of appreciation of the true situation. The proposed settlement for Danzig has been drawn up with the most scrupulous care, and will preserve the character which Danzig held during many centuries, and indeed until, forcibly and contrary to the will of the inhabitants, it was annexed to the Prussian State. The population of Danzig is and has for long been predominantly German; just for this reason, it is not proposed to incorporate it in Poland. But Danzig, when a Hansa city, like many other Hansa cities, lay outside the political frontiers of Germany, and, in union with Poland, enjoyed a large measure of local independence and great commercial prosperity. It will now be replaced in a position similar to that which it held for so many centuries. The economic interests of Danzig and Poland are identical. For Danzig, as the great port of the valley of the Vistula, the most intimate connection with Poland is essential. The annexation of West Prussia, including Danzig, to Germany, deprived Poland of that direct access to the sea which was hers by right. The Allied and Associated Powers propose that this direct access shall be restored. It is not enough that Poland should be allowed the use of German ports; the coast, short as it is, which is Polish must be restored to her. Poland claims, and justly claims, that the control and development of the port which is her sole opening to the sea shall be in her hands and that the communications between it and Poland shall not be subjected to any foreign control, so that in this, one of the most important aspects of national life, Poland should be put on an equality with the other States of Europe.

Extract from
the covering
letter to the
above Reply,
signed by M.
Clemenceau
as President
of the Peace

EXTRACT FROM THE COVERING LETTER TO THE ABOVE
REPLY, SIGNED BY M. CLEMENCEAU AS PRESIDENT OF
THE PEACE CONFERENCE, DATED 16th JUNE 1919¹.

Accordingly the Allied and Associated Powers have provided for the reconstitution of Poland as an independent State with "free and secure access to the sea". All "territories inhabited by

¹ Pour le texte français, voir *La Paix de Versailles — Notes échangées entre la Conférence de la Paix et la délégation allemande* (Paris, Les Éditions internationales, 1930, pp. 264-265 et 244). [*Note du Greffier.*]

indubitably Polish populations" have been accorded to Poland. All territory inhabited by German majorities, save for a few isolated towns and for colonies established on land recently forcibly expropriated and situated in the midst of indubitably Polish territory, have been left to Germany. Wherever the will of the people is in doubt a plebiscite has been provided for. The town of Danzig is to be constituted a free city, so that the inhabitants will be autonomous and not come under Polish rule and will form no part of the Polish State. Poland will be given certain economic rights in Danzig and the city itself has been severed from Germany because in no other way was it possible to provide for that "free and secure access to the sea" which Germany has promised to concede. Conference, dated 16th June 1919.

The German counter-proposals entirely conflict with the agreed basis of peace. They provide that great majorities of indisputably Polish population shall be kept under German rule. They deny secure access to the sea to a nation of over twenty million people, whose nationals are in the majority all the way to the coast, in order to maintain territorial connection between East and West Prussia, whose trade has always been mainly seaborne. They cannot, therefore, be accepted by the Allied and Associated Powers.

No. 3.

PROVISIONS OF THE TREATY OF VERSAILLES
AS TO THE FREE CITY OF DANZIG¹.

Provisions of
the Treaty of
Versailles as
to the Free
City of
Danzig.

SECTION XI.

FREE CITY OF DANZIG.

Article 100.—Germany renounces in favour of the Principal Allied and Associated Powers all rights and title over the territory comprised within the following limits:

[Here follows the description of the limits of the territory of the Free City.]

Article 101.—A commission composed of three members appointed by the Principal Allied and Associated Powers, including a High Commissioner as President, one member appointed by Germany and one member appointed by Poland, shall be constituted within fifteen days of the coming into force of the present Treaty for the purpose of delimiting on the spot the frontier of the territory as described above, taking into account as far as possible the existing communal boundaries.

Article 102.—The Principal Allied and Associated Powers undertake to establish the town of Danzig, together with the rest of the territory described in Article 100, as a Free City. It will be placed under the protection of the League of Nations.

Article 103.—A constitution for the Free City of Danzig shall be drawn up by the duly appointed representatives of the Free

¹ Pour le texte français, voir l'édition officielle (Paris, Imprimerie nationale, 1919). [*Note du Greffier.*]

City in agreement with a High Commissioner to be appointed by the League of Nations. This constitution shall be placed under the guarantee of the League of Nations.

The High Commissioner will also be entrusted with the duty of dealing in the first instance with all differences arising between Poland and the Free City of Danzig in regard to this Treaty or any arrangements or agreements made thereunder.

The High Commissioner shall reside at Danzig.

Article 104.—The Principal Allied and Associated Powers undertake to negotiate a treaty between the Polish Government and the Free City of Danzig, which shall come into force at the same time as the establishment of the said Free City, with the following objects:

(1) to effect the inclusion of the Free City of Danzig within the Polish Customs frontiers, and to establish a free area in the port;

(2) 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;

(3) to ensure to Poland the control and administration of the Vistula and of the whole railway system within the Free City, except such street and other railways as serve primarily the needs of the Free City, and of postal, telegraphic and telephonic communication between Poland and the port of Danzig;

(4) to ensure to Poland the right to develop and improve the waterways, docks, basins, wharves, railways and other works and means of communication mentioned in this Article, as well as to lease or purchase through appropriate processes such land and other property as may be necessary for these purposes;

(5) to provide against any discrimination within the Free City of Danzig to the detriment of citizens of Poland and other persons of Polish origin or speech;

(6) to provide that the Polish Government shall undertake the conduct of the foreign relations of the Free City of Danzig as well as the diplomatic protection of citizens of that city when abroad.

Article 105.—On the coming into force of the present Treaty German nationals ordinarily resident in the territory described in Article 100 will *ipso facto* lose their German nationality, in order to become nationals of the Free City of Danzig.

Article 106.—Within a period of two years from the coming into force of the present Treaty, German nationals over 18 years of age ordinarily resident in the territory described in Article 100 will have the right to opt for German nationality.

Option by a husband will cover his wife and option by parents will cover their children less than 18 years of age.

All persons who exercise the right of option referred to above must during the ensuing twelve months transfer their place of residence to Germany.

These persons will be entitled to preserve the immovable property possessed by them in the territory of the Free City of

Danzig. They may carry with them their movable property of every description. No export or import duties shall be imposed upon them in this connection.

Article 107.—All property situated within the territory of the Free City of Danzig belonging to the German Empire or to any German State shall pass to the Principal Allied and Associated Powers for transfer to the Free City of Danzig or to the Polish State as they may consider equitable.

Article 108.—The proportion and nature of the financial liabilities of Germany and of Prussia to be borne by the Free City of Danzig shall be fixed in accordance with Article 254 of Part IX (Financial Clauses) of the present Treaty.

All other questions which may arise from the cession of the territory referred to in Article 100 shall be settled by further agreements.

No. 4.

EXTRACTS FROM THE DRAFTS OF THE CONVENTION OF PARIS, SUBMITTED BY THE POLISH GOVERNMENT TO THE AMBASSADORS' CONFERENCE¹.

[Translated from the French.]

FIRST DRAFT.

Article 30.—Poland shall have the right to take on the territory of the Free City of Danzig all measures of a military and naval character necessary for the defence of her territory and her access to the sea as well as for the defence of the territory of the Free City.

For this purpose Poland shall have the right to maintain military and naval forces on the said territory, to occupy fortifications and exercise military authority (*le contrôle militaire*).

[In the second Polish draft of 20th September 1920, this Article was slightly modified as follows:

Article 33.—Seeing that the defence of the free access of Poland to the sea is inseparable from the defence of the territory of the Free City, Poland shall have the right and the duty to exercise military authority (*le contrôle militaire*) on the territory of the Free City of Danzig and to take thereon all measures of a military, naval or air force character necessary for this purpose.]

Article 33.—Poland shall have the right to use the port of Danzig and its equipment for the anchorage, repair and re-equipping of her ships and vessels of war.

[This Article appears again unchanged in the second Polish draft of 20th September 1920.]

¹ Pour le texte français, voir *Ämtliche Urkunden zum Vertrage zwischen der Freien Stadt Danzig und der Republik Polen*, pp. 28 et 68. [Note du Greffier.]

Extracts from the drafts of the Convention of Paris, submitted by the Polish Government to the Ambassadors' Conference.

No. 5.

The Convention of Paris, dated 9th November 1920.

THE CONVENTION OF PARIS, DATED 9th NOVEMBER 1920¹.

POLAND AND THE FREE CITY OF DANZIG.

Taking into consideration the Treaty negotiated by the Principal Allied and Associated Powers in accordance with Article 104 of the Treaty of Peace signed at Versailles on June 28th, 1919, by the Principal Allied and Associated Powers and Germany,

And desiring to see this Treaty concluded between them in accordance with the said Article of the said Treaty,

Have for this purpose appointed their Plenipotentiaries as follows:

THE POLISH REPUBLIC

M. Ignace J. PADEREWSKI, formerly President of the Council of Ministers;

THE FREE CITY OF DANZIG

Oberbürgermeister SAHM,
Deputy SCHÜMMER;

Who, having communicated their full powers, found in good and due form, have respectively agreed to the following stipulations:

CHAPTER I.

Article 1.—A diplomatic representative of the Polish Government stationed at Danzig shall act as intermediary between the Polish Government and the Government of the Free City.

Article 2.—Poland shall undertake the conduct of the foreign relations of the Free City of Danzig as well as the protection of its nationals abroad. This protection shall be assured in the same conditions as the protection of Polish nationals.

Passports issued to nationals of Danzig will not assure to them Polish protection unless they have been visaed by the representative of the Polish Government at Danzig.

Article 3.—In foreign towns where the Free City of Danzig has important economic interests, one or more nationals of the Free City of Danzig, placed at the disposal of the Polish Government by the Free City, shall be included in the staff of the Polish Consulates.

These officials shall be responsible to the Polish Government and shall, under the direction and superintendence of the Polish Consul, be charged with matters specially affecting the interest of nationals of the Free City of Danzig.

Article 4.—Exequaturs for foreign consular officers residing at Danzig shall be issued by the Polish Government in agreement with the authorities of the Free City.

¹ Pour le texte français, voir *Société des Nations, Recueil des Traités*, vol. VI, pp. 189-207. [Note du Greffier.]

Article 5.—The costs of the diplomatic and consular representation of the Free City of Danzig and of the protection of its nationals abroad shall be borne by Poland.

All dues and fees levied by the diplomatic and consular services shall belong to the Polish Government.

Article 6.—Poland shall conclude no treaty or international agreement affecting the Free City without previous consultation with the Free City; the High Commissioner of the League of Nations shall be informed of the result of this consultation.

The High Commissioner shall in all cases have the right to veto any treaty or international agreement, in so far as it applies to the Free City of Danzig, which, in the opinion of the Council of the League of Nations, is inconsistent with the provisions of the present Treaty or with the status of the Free City.

Article 7.—The Free City may not contract foreign loans except after previous consultation with the Polish Government, which shall communicate its reply within fifteen days. In case of any objection being made on the part of the Polish Government, the question may be submitted by the Free City for consideration to the High Commissioner, who shall decide under the conditions laid down in Article 39 of the present Treaty.

It shall be the duty of the High Commissioner to assure himself that the conditions of the loan are not inconsistent with the provisions of the present Treaty or with the status of the Free City.

Article 8.—The right to fly the Danzig merchant flag shall be restricted to ships which are owned exclusively by nationals of the Free City, including companies or associations which are registered in the Free City and in which nationals of the Free City have a predominant interest.

The Free City shall notify to the Polish Government all registrations of ships under the Danzig flag, stating the rights of ownership and other rights *in rem* to which the said ships may be subject.

The Polish Government shall be free to establish at Danzig the necessary Polish administrative organization which shall be attached to the establishment of the Polish representative referred to in Article 1, for the registration and for the inspection of the seaworthiness of Polish ships, and for the engagement of crews.

Questions on which there may be disagreement between the Free City and Poland relative to this Article may be the subject of appeal to the High Commissioner of the League of Nations in the conditions laid down in Article 39.

Article 9.—The Free City of Danzig and Poland undertake to bring into accord so far as may be possible in consideration of their special economic interests their legislation regarding the right to fly their respective flags.

Article 10.—The Free City agrees to accord to ships flying the Polish flag the same treatment in the port of Danzig as to ships flying the flag of the Free City.

Article 11.—Direct relations between the local administrative and judicial authorities of the Free City of Danzig and the neighbouring districts of East Prussia shall be permitted under the same conditions as direct relations between the Polish and German authorities and as may be laid down in a convention to be concluded between Poland and Germany.

Article 12.—Subject to the rights belonging to Poland and referred to in Article 2, the control of foreigners in the territory of the Free City of Danzig shall be exercised by the authorities of the Free City.

CHAPTER II.

Article 13.—The Free City of Danzig is included within the Polish customs frontier; Poland and the Free City form one customs area under the Polish customs legislation and tariff.

Article 14.—The territory of the Free City of Danzig shall for customs purposes form one administrative unit under the charge of officials of the Free City and under the general direction of the Polish central customs administration; the Polish Government shall, through Polish inspectors attached to the Danzig personnel, participate in the inspection of the customs service. These inspectors, who shall be paid directly by the Polish Government, shall communicate their observations to the Polish central customs administration.

Customs forms, the printed part of which shall be drawn up in German and in Polish, may be filled in alternatively in German or in Polish.

In order to assure the service, the Free City shall provide a sufficient number of persons acquainted with the Polish language.

Article 15.—The Danzig customs administration shall be answerable to the Polish customs administration for customs receipts and shall be responsible for levying them, as also for the execution of the customs laws.

The expenses of administration borne by the Free City shall be met out of the total customs receipts levied in the territory of the Free City.

Customs dues shall, at the choice of the person discharging them, be paid alternatively in Danzig or Polish currency.

The accounts shall be audited at the end of every quarter, and Poland shall allow the Free City a fixed percentage of the net receipts; this percentage shall be determined in accordance with the provisions of Article 17.

Article 16.—The provisions of this Chapter shall come into force within a period of three months from the coming into force of the present Treaty; until that time the provisional agreement of April 22nd, 1920, shall remain in force.

Article 17.—Within a period of one month from the coming into force of the present Treaty, negotiations shall take place between Poland and the Free City with the object:

(a) of examining measures to be taken with a view to the application to the Free City of the Polish customs legislation and tariff and to the adaptation as far as possible of the Danzig legislation to the Polish legislation in so far as concerns monopolies and, in general, all dues and indirect taxation. The Free City undertakes to carry out, and to ensure the execution of, the said measures ;

(b) of making regulations, for so long as the two States possess separate monetary systems, concerning the rate of exchange for the levying of customs duties in the port of Danzig in Danzig currency according to a tariff equal to the Polish tariff ;

(c) of fixing the percentage of net receipts to be allocated to Danzig in accordance with Article 15. In fixing this percentage, the proportion of the customs duties levied on goods destined for consumption in Poland and in the territory of the Free City respectively shall be taken into account.

Article 18.—The free zone at present existing in the port of Danzig shall be maintained.

This zone shall be placed under the control and administration of the Board referred to in Article 19, which shall have power to determine the modification or extension of the limits of the said free zone or the modification of its internal régime, subject to the right of the Government of the Free City and of the Polish Government to state their objections, if any, within fifteen days. In case of disagreement, such objection shall have suspensive force, and the said Governments shall have the right to exercise the appeal to the High Commissioner of the League of Nations in the conditions laid down in Article 39.

CHAPTER III.

Article 19.—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 reappointment.

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.

Article 20.—The Board shall exercise within the limits of the Free City the control, administration and exploitation of the port and waterways, of the whole railway system specially serving the port, and of all property and establishments employed in such exploitation, excluding property and establishments employed in the general exploitation of the railways.

It shall rest with the Board to determine which railways shall be considered as specially serving the port, subject to the right of the Government of the Free City and of the Polish Government to state their objections, if any, within fifteen days. In case of disagreement, such objection shall have suspensive force, and the said Governments shall have the right to exercise the appeal to the High Commissioner of the League of Nations in the conditions laid down in Article 39.

The Board shall come to an understanding with the Polish Government in order to bring into accord as far as possible the régime of the part of the Vistula placed under its administration and the régime of the Vistula in Poland.

The Board will retain as far as possible the officials, employees and workmen at present engaged in the services of the port, waterways and railways under its administration. In the introduction of new officials or workmen into the said administration, no discrimination shall be exercised against Polish nationals.

Article 21.—The railways not referred to in Article 20 shall, with the exception of the tramways and other railways serving primarily the needs of the Free City, be controlled and administered by Poland, which shall receive the profits and defray the expenditure.

Article 22.—Subsequent agreements to be concluded between Poland and the Free City within four months after the coming into force of the present Treaty shall settle any questions which may arise from the execution of Article 21, especially questions relating to the retention of officials, employees and workmen at present employed on the railways and to the maintenance of rights acquired by them, and questions relating to the guarantees to be accorded reciprocally for the use of the Danzig and Polish languages and currencies, and for the interests of the local population, in all matters concerning the administration, exploitation and services referred to in Article 21.

Failing such agreement, the decision shall be taken by the High Commissioner of the League of Nations in accordance with Article 39.

Article 23.—The Board shall collect all dues, taxes and receipts arising from the administration of the port, waterways and railways, referred to in Article 20, and shall defray all costs of upkeep, control, exploitation, improvement and development. All profits and losses shall be divided between Poland and the Free City of Danzig in a proportion to be fixed in a financial convention to be hereafter concluded between them.

Account shall be taken of expenses incurred by the Free City from January 10th, 1920, until the coming into force of Articles 20 and 21 and 23 to 26 in the maintenance of the services referred to in Articles 20 and 21.

Article 24.—The Board shall take all necessary measures to assure, in agreement with the Polish Government, the free passage of emigrants and immigrants from or to Poland.

No shipping company or other organization, company or private person, may engage in any service of emigration or immigration from or to Poland without the authorization of the Polish Government.

Article 25.—The Free City of Danzig and the Polish Government undertake to transfer to the Board the ownership of all property which belonged to the former German Empire or to any German State and which forms part of the port or is connected with the administration and exploitation of the port, waterways and railways referred to in Article 20; this property shall be designated by the Principal Allied and Associated Powers.

The ownership of all property formerly belonging to the German Empire or to any German State and connected with the administration or exploitation of the railways referred to in Article 21 shall be transferred to Poland.

The Board shall have the right to lease or to acquire such other property, movable or immovable, situated in the territory of the Free City as it may deem necessary for the control, administration or exploitation of the port, waterways and railways under its charge or for their development and improvement. The Free City of Danzig undertakes to carry out the necessary measures to give effect to the decisions of the Board, and in particular to proceed to any expropriations necessary for this purpose.

The Free City undertakes not to refuse the expropriation in favour of Poland, under equitable conditions, of such land and other property as may be necessary for the exploitation of the services referred to in Article 21.

In the event of this Article giving rise to any dispute between the Government of the Free City and the Polish Government, the disagreement shall be submitted for decision to the High Commissioner in the conditions laid down in Article 39.

Article 26.—It shall be the duty of the 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 27.—The provisions of Articles 20 and 21 and 23 to 26 shall come into force three months after the appointment of the President of the Board.

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.

CHAPTER IV.

Article 29.—Poland shall have the right to establish in the port of Danzig a post, telegraph and telephone service communicating directly with Poland. Postal and telegraphic communications *via* the port of Danzig between Poland and foreign countries, as also communications between Poland and the port of Danzig, shall be dealt with by this service.

Article 30.—The Free City of Danzig undertakes to lease or to sell to Poland on equitable terms the necessary land or buildings for the establishment and working of the services provided for in Article 29 as well as in Article 21. The Free City undertakes to accord to Poland all the facilities necessary for the installation of the telegraph and telephone lines required for the application of the said Article.

Article 31.—All other postal, telegraphic and telephonic communications within the territory of the Free City, as also communications between the Free City and foreign countries, shall be the concern of the Free City.

Article 32.—Poland and the Free City of Danzig undertake to conclude, within a period of six months from the coming into force of the present Treaty, a special convention for the purpose of establishing uniform postal, telegraphic and telephonic tariffs for communication between the two States; this convention shall at the same time lay down the necessary details for the application of this Chapter.

CHAPTER V.

Article 33.—The Free City of Danzig undertakes to apply to racial, religious and linguistic minorities provisions similar to those which are applied by Poland on Polish territory in execution of Chapter I of the Treaty concluded at Versailles on June 28th, 1919, between Poland and the Principal Allied and Associated Powers, to provide, in particular, against any discrimination, in legislation or in the conduct of the administration, to the detriment of nationals of Poland and other persons of Polish origin or speech, in accordance with Article 104, paragraph 5, of the Treaty of Versailles.

The provisions of Articles 14 to 19 of the Treaty concluded at Versailles between the Principal Allied and Associated Powers and Poland on June 28th, 1919, as also the provisions of Article 89 of the Treaty of Versailles with Germany, shall equally apply to the Free City of Danzig.

Article 34.—The conditions of naturalization in the Free City of Danzig and the conditions under which foreign companies may be

converted into Danzig companies shall be determined in agreement between the Free City and Poland.

Article 35.—A special arrangement shall be concluded with the least possible delay between Poland and the Free City of Danzig to provide for the execution in Poland and in the territory of the Free City of the judgments of Polish and Danzig tribunals respectively and for the arrest of criminals taking refuge on the territory of Poland or of the Free City of Danzig and for their extradition and for all other judicial questions.

Article 36.—Poland and the Free City of Danzig undertake to enter into negotiations, when circumstances permit, on the request of either of the two Parties, with a view to unifying their monetary systems. An interval of one year shall be allowed before such unification, when decided on, comes into effect.

Article 37.—The Polish Government undertakes to enter into negotiations with the Free City in order to facilitate in every way the supply to the Free City of foodstuffs, fuel and raw materials.

Article 38.—Further agreements shall be concluded between Poland and the Free City on all questions not dealt with in the present Treaty.

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.

The present Treaty, of which the French and English texts are both authentic, comes into force at the same time as the establishment of the Free City of Danzig.

IN FAITH WHEREOF the above-named Plenipotentiaries have signed the present Treaty.

DONE at Paris, the ninth day of November, one thousand nine hundred and twenty, in a single copy which will remain deposited in the archives of the French Republic, and of which authenticated copies will be transmitted to Poland and the Free City of Danzig.

(L. S.) I. J. PADEREWSKI.

(L. S.) HEINRICH SAHM.

(L. S.) W. SCHÜMMER.

Report of
Viscount Ishii
to the Council
of the League,
dated 17th
November
1920.

REPORT OF VISCOUNT ISHII TO THE COUNCIL OF THE LEAGUE, DATED 17th NOVEMBER 1920¹.

The question of the Constitution of the future Free City of Danzig was included in the Agenda of the Council meeting at Brussels. I submitted to the Council on that occasion a report in which I expressed the opinion that the question of giving the guarantee of the League of Nations to the Constitution of the Free City of Danzig, as also the kindred question of the placing of the Free City of Danzig under the protection of the League of Nations, are problems of such importance and raise so many points deserving lengthy consideration that it would be desirable not to discuss this matter at the Brussels meeting, but to postpone the discussion till the meeting of the Council shortly to take place at Geneva. The Council accepted this view, and I was asked to prepare as soon as possible a detailed report on which a full discussion of the question might be based.

I have therefore the honour to submit the following report to the Council:

By the terms of Article 100 of the Treaty of Peace of Versailles, Germany renounces all rights and titles to the territory included within the boundaries defined in this Article (City and Territory of Danzig) in favour of the chief Allied and Associated Powers. Thus, since the coming into force of the Treaty of Versailles, the sovereign rights over Danzig belong to the great Allied Powers. By the terms of Article 102 of this Treaty the Principal Allied and Associated Powers undertake to constitute the City of Danzig with the territory named in Article 100 as a Free City.

According to information which I have just received, the Great Powers intend to establish the Free City on November 15th. This act constituting the Free City involves important questions to be supplied by the League of Nations, such as the protection of the Free City, and the guarantee of its Constitution:

According to Article 102 of the Peace Treaty of Versailles, the Free City "shall be placed under the protection of the League of Nations", and, according to Article 103 of this Treaty, the Constitution of the Free City "shall be placed under the guarantee of the League of Nations".

It may be well to define first the exact meaning of the terms "Protection" of the League, and "Guarantee" of the Constitution by the League.

The "Protection" of the Free City by the League of Nations would appear to mean that the League of Nations shall undertake to respect and maintain against all foreign aggression the territorial integrity and the political independence of the Free City of Danzig in the same way as it does for all Members of the League of Nations under Article 10 of the Covenant.

This collective protection by the League of Nations implies the exclusion, save for restrictions provided at the time of the estab-

¹ Pour le texte français, voir l'annexe 130 au P.-V. de la XI^{me} session du Conseil de la S. d. N., tenue à Genève du 14 novembre au 18 décembre 1920; p. 69. [*Note du Greffier.*]

lishment of the Free City, of all individual interference by other Powers in the affairs of Danzig.

With regard to these restrictions, the provisions of Article 104 of the Treaty of Versailles should be noted. This Article states that the Principal Allied and Associated Powers undertake to arrange the terms of a convention between the Polish Government and the Free City, to come into force at the same time as the Constitution of the City of Danzig, for the following purposes:

1. To place the Free City of Danzig within the limits of the Customs frontier of Poland, and to provide for the establishment of a free zone in the port.

2. To guarantee to Poland, without any restriction, the free use and the services of waterways, docks, basins, wharves and other works on the territory of the Free City, which are necessary for Poland's imports and exports.

3. To guarantee to Poland the control and administration of the Vistula, and of the whole railway system within the boundaries of the Free City, with the exception of the tramways and other lines chiefly serving the needs of the Free City, and likewise the control and administration of postal, telegraphic and telephonic communication between Poland and the Port of Danzig.

4. To guarantee to Poland the right of developing and improving the waterways, docks, basins, wharves, railways and other works and means of communication above stated, and of hiring or purchasing on suitable terms the land and other property necessary for that purpose.

5. To ensure that no discrimination be made in the Free City of Danzig against Polish nationals and other persons of Polish origin or language.

6. To arrange for the Polish Government to undertake the conduct of foreign affairs of the Free City of Danzig and the protection of its nationals in foreign countries.

The provisions that I have just quoted are designed to guarantee Poland free access to the sea. It was not the intention of the Treaty of Versailles to incorporate the Free City in Poland. In the letter from the Peace Conference to the President of the German delegation at Paris, dated June 16th, 1919, these words occur:

"The City of Danzig shall receive the Constitution of a Free City; its inhabitants shall be autonomous; they shall not pass under Polish rule, and shall not form part of the Polish State. Poland shall obtain certain economic rights in Danzig; the City itself has been taken away from Germany because there was no other possible way of providing that 'free and safe access to the sea' which Germany had promised to grant."

I shall return later to the Convention between Danzig and Poland.

The provision of the Treaty of Versailles, according to which the Constitution of the Free City shall be placed under the guarantee of the League of Nations, implies: (1) that this Constitution will have to obtain the approval of the League of Nations; (2) that the Constitution can only be changed with the permission of the League of Nations; and (3) that the constitutional life of the Free

City of Danzig must always be in accordance with the terms of this Constitution.

It is obvious that the guarantee of the Constitution and the protection given by the League are intimately connected. The fundamental idea is that the Free City should form in the international organization of Europe a community which must be protected against all undue interference on the part of any country, and which must have its own regular existence. It is, of course, understood that it would accept in their entirety the terms of the Treaty of Versailles and the rights which this Treaty confers on Poland.

It would seem to follow from these considerations that the League of Nations should examine whether this Constitution provides the necessary guarantees for a stable and peaceable political situation, and will ensure a Government which will carry out its duties in accordance with the principles on which the Free City has been constituted, and likewise the obligations which have been imposed upon it by the Peace Treaty of Versailles. It is particularly necessary to see whether the Constitution of the Free City contains germs of disorder, inadequate government, anarchy or disregard for international obligations.

By Article 103 of the Peace Treaty of Versailles, the Constitution of the Free City must be prepared in detail, in agreement with the High Commissioner of the League of Nations, by representatives of the Free City regularly nominated.

In order to prepare the Constitution of the Free City as soon as possible, the Council of the League of Nations appointed, on February 13th last, a High Commissioner for Danzig, who was ordered to proceed to that town and to submit in due course for the approval of the Council a scheme for the Constitution of the Free City.

The High Commissioner has submitted to the Council proposals for the election of representatives of the Free City, and the Council, after having examined them, in accordance with these proposals, authorized, by a resolution dated April 11th last, the holding of elections. The elections took place, and the Danzig Constituent Assembly assumed its duties on June 14th, 1920. By a note dated August 15th, the High Commissioner transmitted to the Secretary-General of the League of Nations the scheme for the Constitution of the future Free City of Danzig, as adopted by the Constituent Assembly by 68 votes to 44. The minority included: Majority Socialists, the Independent Socialists, and the Polish Party.

The text of the draft Constitution was distributed to members of the Council before the Brussels meeting, together with a detailed memorandum from the International Secretariat. This memorandum contains a summary of the chief provisions of the Constitution, and likewise remarks on the conditions and the reservations necessary to enable the League of Nations to give its guarantee to the Constitution.

I do not wish to enter into all the details, but will confine myself to the points that I have found necessary to mention in the resolution that I shall submit to the Council:

1. The first Article of the draft Constitution provides that the official title should be the "Free and Hanseatic City of Danzig". The words "and Hanseatic" should be suppressed, if it is intended to conform exactly to the nomenclature adopted by the Treaty of Versailles, which expressly provides for the words "The Free City of Danzig". The expression "and Hanseatic" should also be suppressed in the other articles of the Constitution in which it occurs.

2. Article 4 of the scheme provides that the official language should be German, and Article 5 that the legislature and administration shall guarantee to the Polish speaking part of the population free national development, particularly as regards the use of its mother-tongue in schools, in interior administration, and in legal proceedings. It would appear desirable to merge these two articles in one, so that it shall be clearly established that the provisions of the two articles are of equal importance.

3. Article 39, paragraph *b*, concerns the powers of the Senate as regards administration. Although it does not seem necessary expressly to mention the fact in the text, this provision must naturally be understood to be subject to the reservations made in the provisions of Article 104 of the Treaty of Versailles.

4. Article 41 states that "the Senate represents the Free City of Danzig in its relations with foreign States". This might easily give rise to misunderstanding, in view of the provisions of Article 104, No. 6, of the Treaty of Versailles, according to which the Danzig-Poland Convention must arrange for the conduct by the Polish Government of the foreign affairs of the Free City of Danzig, and the protection of its nationals in foreign countries. The exact meaning of the provision of Article 41 mentioned above must be that it is the duty of the Senate to deal with foreign affairs concerning Danzig, it being clearly understood that this decision should in no way affect the rights expressly reserved for Poland, and recapitulated above.

The second paragraph of Article 41 and Article 44, paragraph *f*, should, for the same reason, be understood to affect in no way the provision of Article 104, No. 6, of the Treaty of Versailles.

5. Article 48 of the draft Constitution deals with amendments to the Constitution. It is obvious that amendments to the Constitution cannot come into force until they have been communicated to the League of Nations, and before the League has declared that it has no objection to make.

6. Article 57 should be read with a reservation analogous to that of Article 56, having regard to the rights of Poland under Article 104 of the Treaty of Versailles.

7. Article 71 of the draft Constitution declares that citizenship of the City of Danzig can be acquired or lost according to the provisions of a law. It is to the interest of the League of Nations that citizen rights of Danzig should not be extended or restricted in an improper way, and it would appear desirable to ask the Danzig Constituent Assembly to submit the essential points of the draft of this law for examination by the League within a short period, for instance, within six months following the announcement of the decision of the Council of the League of Nations.

8. The Constitution does not lay down that the League of Nations

should have the right to obtain information as to the working of the Government of Danzig. Nevertheless, it would seem that the protection to be given by the League of Nations to the Free City of Danzig, and the guarantee of the Constitution of this town by the League, make it indispensable that the League should be enabled to obtain, if necessary, from the Danzig Government accurate information on the public affairs of this town.

The League of Nations by Article 103 of the Treaty of Versailles, paragraph 2, shall have at Danzig a High Commissioner, whose duties shall include that of giving a summary decision in all disputes which might arise between Poland and the Free City on the subject of the said Treaty or supplementary arrangements and agreements. This High Commissioner will certainly receive information with regard to the matters which will be submitted to him in accordance with this provision. But this does not appear to be sufficient. It is necessary that the League of Nations should be able to obtain information, not only in the case of disputes between Danzig and Poland, but also when the duties and rights arising from the protection and the guarantee of the League may come into question.

9. It is strange to note that no provision has been inserted in the Constitution with regard to the military forces of the Free City. It would be desirable from the point of view of the League of Nations to lay down in no uncertain terms that the City of Danzig shall not be used as a military or naval base, and that it shall not construct fortifications or authorize the manufacture of munitions or war material in its territory, without having previously and in each case obtained the consent of the League of Nations.

I shall return later to the question whether the League of Nations should immediately come to some decision with regard to the military defence of the Free City of Danzig.

I have already mentioned the restrictions limiting the political independence of the Free City of Danzig, which are the outcome of Article 104 of the Treaty of Peace of Versailles, and I have read the stipulations laid down in the said Article. It goes without saying that the protection of the Free City and the guarantee of its Constitution is intimately connected with the question as to what is to be the future international status of this Free City. The Convention with Poland is certainly of such importance as affecting this status that it would be difficult for the League of Nations to make a final decision without knowing in exactly what way the stipulations laid down in Article 104 of the Treaty of Peace will be carried out by the Great Powers. In other words, the League of Nations, before making its final decision, must know the text of the Convention arranged by the Principal Allied Powers between the Free City of Danzig and Poland.

The President of the Conference of Ambassadors at Paris, in reply to a request of the Council of the League of Nations, has kindly communicated to the League the text of a draft Convention approved by the Conference. It seems to me to be useless to enter into all details; but it suffices to say in a general way, that

this draft Treaty contains no stipulation which could endanger the position of Danzig as a Free City placed under the protection of the League of Nations, and with a Constitution guaranteed by the League.

I have the honour to draw the special attention of the Council to the stipulations of Article 6 of the draft Convention according to which no treaty or international agreement concerning the Free City of Danzig shall be concluded by the Polish Government without previous consultation with the Free City. The result of this consultation shall be made known to the High Commissioner of the League of Nations. In every case, the High Commissioner shall have the right of placing his veto on every treaty or international agreement, in so far as it applies to the Free City of Danzig, if the Council of the League of Nations considers that it is contrary to the stipulations of the present Treaty, or to the status of the Free City.

In accordance with Article 19 of the draft Convention, a Port and Waterways Council, for the City of Danzig shall be established, composed in equal numbers of Polish and Danzig commissioners. The President will be chosen by agreement between the Polish Government and the Government of the Free City. Failing an agreement within a month after the coming into force of this Convention, the Council of the League of Nations shall be appealed to by the High Commissioner of the League at Danzig to appoint a President who shall be of Swiss nationality.

According to Article 26 of the draft Convention, the Council of the Port must ensure that Poland shall have free use of the port and means of communication specified in the Convention without any restrictions, and as far as may be necessary to safeguard the import and export trade destined to and from Poland; the Council of the Port will further be obliged to take all necessary measures to ensure the development and improvement of the port and of the means of communication, in order to meet the needs of this traffic. Should these conditions not be observed, the Free City of Danzig and Poland shall have the right to appeal to the League of Nations in conformity with Article 39 of the draft.

Article 28 of the draft lays down that at all times and under all circumstances Poland shall have the right of import and export through Danzig, of merchandise of any sort whatever not prohibited by the laws of Poland.

According to Article 33, the Free City undertakes to give protection to minorities of race, religion and language, in accordance with the stipulations contained in the Treaty of June 28th, 1919, concluded between Poland and the Principal Allied and Associated Powers; these stipulations have already been placed under the guarantee of the League by a Resolution of the Council, dated February 13th, 1920.

The draft arranges for negotiations between the Free City of Danzig and Poland with a view to the conclusion of various supplementary agreements. Article 39 lays down that:

"Any differences arising between Poland and the Free City of Danzig in connection with the present Treaty or any other

subsequent agreements, arrangements or conventions, or any matters 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 deems it necessary, refer the matter to the Council of the League of Nations. Both Parties retain the right to appeal to the Council of the League of Nations."

This arrangement is the more acceptable to the League inasmuch as it has already been provided for by the Treaty of Versailles, Article 103, paragraph 2, which provides that :

"It shall also be the duty of the High Commissioner to adjudicate in the first instance upon all disputes which may arise between Poland and the Free City, with regard to the present Treaty, or any supplementary arrangements or agreements."

Article 40 of the draft Convention lays down that no modification shall be made in the Convention except by agreement between Poland and the Free City of Danzig.

As the Convention between Poland and the Free City is already provided for by the Treaty of Peace of Versailles, and as it is of unique importance as regards the international position of this City, it would seem desirable that the League of Nations, while giving protection to Danzig and placing its Constitution under its own guarantee, should make a reservation that no fundamental modification should be introduced into the Convention with Poland without previous agreement with the League of Nations.

The text of the Convention between Danzig and Poland, which was submitted to the Council at the Brussels Session, was somewhat modified during the negotiations referred to above, which took place recently at Paris between the representatives of Danzig and those of the Government of Poland. Nevertheless, the final text does not differ in any vital point, or in any point of interest to the League, from the draft Report submitted to the Council in Brussels. A copy of the final text has just been distributed to the Members of the Council.

Before formulating a draft resolution, I have still to deal with the question raised by the letter addressed to the League and dated the 20th October, from the President of the Conference of Ambassadors. This letter mentioned the intention of the Powers in constituting the Free City of Danzig and the territory included in Article 100 of the Treaty of Versailles, to establish the most intimate relations between the Free City and Poland. The Powers were desirous of giving Poland free access to the sea. "With this aim", says the letter from the President, "the Free City had been placed within the limits of the Polish Customs frontier, Poland obtaining the control and the administration of the postal, telegraphic and telephonic communications between herself and the port, in which she also enjoys extensive rights. Finally, the conduct of the foreign affairs of the Free City is placed in her hands. Moreover, by reason of the close connection thus established between the Free City and Poland, and considering the desire,

clearly expressed by the signatory Powers of the Treaty of Versailles, to give Poland free access to the sea, it seems probable that the Polish Government will, if circumstances require it, receive from the League of Nations the mandate to ensure the defence of the Free City."

The letter from the President of the Conference of Ambassadors deals with a problem which your Rapporteur would have been obliged to consider, even if this letter had not been addressed to the League; the serious problem of discovering by what means the League can protect the Free City in the case of an armed international conflict. There would appear to be three possibilities:

1. Aggression, threat or danger of aggression against the Free City of Danzig, this aggression, threat or danger of aggression not extending to Polish territory. In this case the Council of the League of Nations will consider methods to ensure respect for the territorial integrity and the political independence of the Free City. As far as it is possible at present to foresee, the Council of the League, having regard to the special interest Poland has in safeguarding the Free City of Danzig against any foreign occupation, will certainly apply to Poland for armed assistance in the defence of the territory of the Free City. It will depend upon the circumstances, whether the Council will demand at the same time the collaboration of other Members of the League of Nations for the same purpose.

2. If Poland is attacked by any State whatsoever, contrary to the Covenant of the League of Nations, it is evident that the Free City of Danzig may not be able to fulfil its function of giving Poland free access to the sea.

Article 28 of the above-mentioned draft Convention stipulates "that at all times and in all circumstances Poland shall have the right to import and export via Danzig goods of any kind not prohibited by Polish law". This stipulation certainly also includes munitions and other war material. It is clear from what I have said above that I do not consider that this provision is in contradiction to the terms of the Treaty of Versailles, and that, therefore, the protection of the League of Nations ought to be extended also to the importation into Poland of war material during hostilities.

Under these circumstances the Council of the League will be obliged to consider the means of insuring the protection of the Free City against any aggression which might hinder the working of the port of the City, and it seems very probable that the Council would ask Poland to undertake this duty of protection either with or without the collaboration of other States Members of the League of Nations.

3. In the event of a dispute between Poland and another State, if the Council should not succeed in obtaining acceptance of its proposals, in accordance with Article 15 of the Covenant, by all its Members other than the representatives of the disputing Parties, each of the Parties would be free to act as it thought fit. In this case and after the expiration of the time laid down by the Covenant, a war might break out between Poland and another

Power, which would not be contrary to the engagements arising from the Covenant; but which, on the other hand, would not involve a duty or a right on the part of the League of Nations, to assist one of the two Parties. What, then, would be the position of the Free City of Danzig? It is evident that the protection of the Free City of Danzig by the League of Nations cannot oblige the League to take the part of Poland in the struggle. On the other hand, the protection granted by the League of Nations to the Free City would not seem to lapse as a result of such a war. The logical and practical solution should, I think, be the following: the League of Nations will guarantee to Poland the working of the port of Danzig within the territory of the Free City, without permitting either Poland or the other belligerent Party to set up a military base within the territory of the Free City.

In conclusion, I agree with the opinion expressed by the Conference of Ambassadors, viz., that the Polish Government appears particularly fitted to receive, if the circumstances require it, from the League of Nations the mandate to ensure the defence of the Free City, but it is important to make it clear that this mandate can never be made exclusive, and that it can only be given after due consideration by the Council of the League of the particular circumstances in each case, in order to avoid involving the League of Nations, as the protector of the Free City of Danzig, in an international struggle, unless it be in conformity with the provisions of the Covenant.

Before submitting to the Council my draft resolution on the protection of the Free City and the guarantee of its Constitution, I have still to consider the question of the nomination of the permanent High Commissioner who is to reside there.

In accordance with the resolution of the Council dated the 13th February, 1920, Sir Reginald Tower was temporarily appointed High Commissioner of the League of Nations until the Constitution of the Free City should be placed under the guarantee of the League of Nations. Sir Reginald Tower has informed the Secretary-General of the League that he still intends, as he said at the time of his appointment, to consider his tenure of office terminated immediately the Free City has been constituted. Sir Reginald Tower asked that the expression of his regrets on leaving the service of the League of Nations should be communicated to the Council of the League, and also expressed his thanks for the courtesy which has always been shown him by the League. The Council will certainly agree with me in asking the Secretary-General to convey to Sir Reginald Tower the thanks of the League of Nations for the services which he has rendered as High Commissioner.

I have given much thought to the important question of finding a successor to Sir Reginald Tower. I do not venture at this juncture to submit a name for the approval of my colleagues.

The President of the Council, in agreement with the Secretary-General and myself, might be asked to make proposals to the Council as to the choice of the High Commissioner of the League.

The High Commissioner should be nominated for a certain period which might be fixed at three years. He might be reappointed. It is unnecessary to add that the Council should reserve the right of dismissal.

The salary of the permanent High Commissioner should be in accordance with his very important and representative duties: 100,000 gold francs a year does not seem to be excessive. He should also receive an allowance for travelling expenses on official business, for correspondence, for the maintenance of his office staff, and the salary of the personnel.

The President of the Council, the Secretary-General and your Rapporteur might be entrusted with the duty of bringing about an agreement between the Polish Government and the Free City of Danzig, with regard to their respective contributions towards the upkeep of the post of High Commissioner at Danzig.

The contributions of the Polish Government and of the Free City should be paid into the funds of the League of Nations, which would place the necessary sums at the disposal of the High Commissioner.

Finally, I must refer to the expenditure incurred by the temporary High Commissioner up to the appointment of his permanent successor. The funds to meet this were, for the greater part, advanced by the Principal Allied Powers, who reserve the right to recover them from the Free City of Danzig. The Council of the League of Nations, in its resolution of February 13th, also reserved the right of debiting the Free City with the minor outlay incurred by the International Secretariat to meet the administrative expenses of the temporary High Commissioner.

No. 7.

MINUTES OF THE MEETING OF THE COUNCIL OF THE LEAGUE OF NATIONS AND RESOLUTION OF THE COUNCIL OF THE 17th NOVEMBER 1920¹.

Minutes of
the League
Council
meeting and
Resolution of
the Council
of the 17th
November
1920.

238.—CONSTITUTION OF THE FREE CITY OF DANZIG.

The PRESIDENT invited M. Paderewski, the Polish representative, and M. Sahn, the Burgomaster of Danzig, representative of the Free City of Danzig, to attend the meeting in order to give the Council all necessary information and to submit any observations which they might have to make on the question before the Council.

VISCOUNT ISHII read his report on the draft Constitution drawn up by the Constituent Assembly of the Free City, and also a draft resolution.

M. PADEREWSKI observed that when the Peace Conference conferred upon Poland special rights in the territory of Danzig, it had not been influenced solely by the special position of Poland with regard to Danzig and the necessity of providing her with a

¹ Pour le texte français, voir le P.-V. de la XI^{me} session du Conseil de la S. d. N., tenue à Genève du 14 novembre au 18 décembre 1920; 2^{me} séance (17 nov. 1920), pp. 7-8 et 69. [*Note du Greffier.*]

free access to the sea. Poland, he said, represented an important factor in world politics, and her prosperity was a matter of concern to the whole family of nations.

Continuing, M. Paderewski criticized certain points in the draft Constitution which, in his opinion, did not accord with the terms of the Treaty of Versailles. It was upon the League of Nations and upon the protection which that body afforded to the Free City that all the political liberties of Danzig were based; but, owing no doubt to an oversight, the draft Constitution made no reference whatever to the League of Nations. He thought that Viscount Ishii was right in asking that the word "Hanseatic" should not appear in the official title of the Free City.

The definition in legal terms of the political status of Danzig ought to make it clear that the Free City had a right, not to "sovereignty", as Article 3 of the draft Constitution appears to suggest, but simply to "autonomy". This point was clearly emphasized in the wording of the letter which was sent on June 16th, 1919, by the Principal Allied and Associated Powers to the German delegation to the Peace Conference, and which was quoted in Viscount Ishii's report: "Danzig will be constituted as a *Free City*; its inhabitants will be autonomous." This point of view was confirmed by Article 104 of the Treaty of Versailles.

The Polish Government, therefore, ventured to hope that the word "sovereignty" would be deleted in the text of the Constitution of Danzig; and that, in Article 1, the words "Free State" should be made to read "Autonomous State"; and also that Article 3 should be amended in such a way as to conform to the Treaty of Versailles.

In providing that German shall be the official language of Danzig, Article 4 of the draft Constitution appeared to lose sight of the fact that the Free City may undergo a change of character if, in the future, large numbers of Poles should settle in the territory of Danzig.

Article 5, which conceded to the Poles certain educational, administrative and judicial privileges, appeared to legislate only for the original population of the territory; whereas the Treaty of Versailles expressly laid down that no discrimination of any kind should be made in the Free City of Danzig against Polish *nationals*. The Polish Government demanded that Articles 4 and 5 should be made to conform exactly with the provisions of the Treaty of Versailles.

In proposing thus to revise certain articles of the draft Constitution, and in urging that the principles which were to govern the mutual relations of Danzig and Poland should be clearly and equitably defined, the object in view was to bring about a situation which would enable the inhabitants of Danzig and the Poles to co-operate in the interests of peace and of their common prosperity.

The draft Convention drawn up under the auspices of the Conference of Ambassadors failed to take count of the dangers which might be involved in carrying out that part of its provisions which concerned Polish interests.

The geographical and political situation of Danzig, the special sympathies of a section of the population, the feelings which existed in the countries bordering, and finally the events which had taken place last summer at Danzig, when Poland had been fighting for her independence and when her very existence had been at stake—all these considerations tended to cause Poland justifiable anxiety with regard to her own safety.

At the time when the strike was preventing the landing of munitions destined for Poland, and when Danzig had declared her "neutrality", the High Commissioner of the League had informed the Polish representatives who had come to request his assistance that, as he had no military force at his disposal, he was unable to do anything. The Allied Powers had found it necessary to intervene.

The peace which Poland had just concluded was merely a respite. She would probably have to meet a fresh attack next spring by enemies who defied, not only the League of Nations, but the whole civilized world. It was essential that the provisioning of Poland, via Danzig, should be secured against any danger of interruption, and that Danzig itself should be safeguarded against any internal disorders.

M. Paderewski reminded the Council of a verbal declaration which had been made to him by the British Prime Minister, at the close of a session of the Supreme Council, to the effect that Poland would be entitled to move strong bodies of troops into Danzig, if, in her opinion, such a step should seem necessary.

Before authorizing the Polish delegation to sign the Convention, the Polish Government, in obedience to the unanimous wishes of the Diet and of the entire nation, requested the Council of the League of Nations to avert this danger by entrusting Poland with a permanent mandate for the defence of the Free City. Such a step would be in the general interests of peace, as it would enable Poland not only to defend Danzig against any external aggression, but also to avoid all causes of disputes which, under present conditions, might disturb the relations between Poland and the Free City.

Without this guarantee, the rights and privileges granted to Poland in the Treaty of Versailles and confirmed in the draft Convention, would prove to be mere illusions.

Burgomaster SAHM pointed out that Danzig had made no "declaration of neutrality" last summer, but had approached the High Commissioner with a view to keeping the war at a distance from the frontiers of the Free City.

With regard to the salary of the High Commissioner who was to succeed Sir Reginald Tower, he declared that the 100,000 gold francs suggested by the Rapporteur would be a heavy burden on the finance of the Free City.

He added that if the League of Nations was not mentioned in the draft Constitution, the omission was unintentional.

As regards the rights of the Free City, these were, or would be, determined by the Treaty of Versailles, by the Convention with Poland, and by the Constitution of the Free City.

Under the terms of the Treaty of Versailles and of the draft Convention, the Free City certainly constituted a free and sovereign State.

The Constitution dealt only with the internal affairs of Danzig, and the terms of the very letter which had been cited by the Polish representative, and which laid down that Danzig was to be autonomous, did not appear to justify M. Paderewski in offering any suggestions regarding the provisions of the Constitution.

The use of the word "Hanseatic" in the official name of the Free City was justified by the fact that this title had been granted to the Free City by the Congress of Vienna in 1815, in order to emphasize the international importance of Danzig.

The separation of Articles 4 and 5 in the draft Constitution was justifiable. These Articles had different and distinct objects, Article 4 dealing only with the official language, and Article 5 with the free national development of the Polish element.

The drafting of Article 41 was not satisfactory. Its meaning was not that the Senate of Danzig should represent the Free City abroad, but that the Senate alone should have the right to sign treaties on behalf of the Free City. This reading was confirmed by paragraph / of Article 44.

With regard to the mandate asked for by Poland, from what direction could Danzig expect any danger? The Free City regarded the protection granted to her by the League of Nations as the guarantee of her liberty.

Before the conclusion of the Treaty of Versailles, Poland had expressly asked for the incorporation of Danzig in the Polish State, and since that time the same desire had repeatedly found expression in Polish circles. Poland would not, therefore, appear to be qualified to guarantee the security of Danzig, from the point of view of Article 10 of the Treaty of Versailles.

Further, the granting of military rights to Poland would be in direct contradiction to the terms of the letter which had been quoted by the Polish representative, and which only conferred upon Poland rights of an economic character in Danzig.

Finally, by the terms of Article 103 of the Treaty of Versailles, the High Commissioner of the League of Nations was to decide in disputes between the Free City and Poland. His position might be rendered very difficult if Poland were accorded the mandate which she solicited.

If the Council were to contemplate granting a mandate of this nature, the Free City would request that this mandate should be entrusted to the Power of which the High Commissioner was a national. If, however, the claim of Poland should be conceded, the Free City would beg the Council to rule that in no circumstances might Poland maintain any military force whatever in Danzig.

It was decided by the Council that the Polish representative and the representative of the Free City should submit to it, in writing, their observations and suggestions, which would then be considered.

The representatives of Poland and the Free City then withdrew.

Mr. FISHER said that he agreed with the last part of the report made by Viscount Ishii dealing with the possible confer of a mandate on Poland for the defence of Danzig.

M. LÉON BOURGEOIS emphasized the necessity of examining and determining certain legal questions raised by the draft Constitution of Danzig, with regard to which, as appeared from the text of the draft and from the statements made by the representatives of Poland and of the Free City, there seemed to be some doubt and discrepancies.

When the legal points had been determined the Council could proceed to a decision, within the limits of its power and obligations, upon the political issues involved.

The Council decided to ask its legal advisers to examine, in agreement with Viscount Ishii, the documents to be submitted by the representatives of Poland and of the Free City with a view to drawing up the final report.

241.—PROTECTION OF THE FREE CITY OF DANZIG BY THE LEAGUE OF NATIONS AND GUARANTEE OF THE CONSTITUTION OF THE FREE CITY BY THE LEAGUE.

The PRESIDENT read the report presented by the Committee of Jurists, which was instructed by the Council to examine the proposals submitted in the memoranda presented by the Polish delegate and by the delegate of the Free City of Danzig.

A report (Annex 130) and draft Resolution were presented by Viscount Ishii.

The Council adopted, with a certain number of amendments and additions, the draft Resolution dealing with (1) the protection of, and the guarantee of the Constitution of the Free City by the League; (2) the modifications to be made in the draft Constitution; (3) the draft Agreement to be drawn up between Poland and the Free City of Danzig; (4) the termination of the duties of the temporary High Commissioner of the League at Danzig; (5) the appointment of the Permanent High Commissioner of the League of Nations at Danzig, and the financial arrangements with regard to the High Commission of the League at Danzig (Annex 130 a).

The Council considered the means by which the League of Nations might ensure the protection of the Free City, in the case of an international armed conflict, and under what circumstances the task of defending Danzig might be eventually entrusted to Poland.

M. GOUT asked that the Council, after having adopted the principle of appealing to Poland to undertake the defence of Danzig, since Poland was a bordering State and the most interested in Danzig, should entrust the Permanent Armaments Commission with the duty of studying the circumstances in which, under the control of the League of Nations, this defence might be assured. He pointed out that if, in the case of an international armed conflict, it was desired to prevent the immediate invasion of

Danzig, it was essential that the defence of the town and of the port should have been prepared in advance.

Mr. FISHER pointed out that, if the defence of the Free City were entrusted to Poland, it would be well to consider carefully under what conditions and with what reservations this defence should be undertaken.

In this case, there should be no question of an exclusive mandate—the League of Nations should be free to ask any one of its Members to co-operate in the defence of Danzig—nor of a permanent mandate, nor of the military occupation of Danzig in time of peace.

The British Government was most anxious to assure the independence and the safety of Danzig, but, at the same time, in considering the solution of this problem it had to bear in mind English public opinion, and, in particular, the attitude of the working classes, who have been deeply moved by Poland's conduct in undertaking the invasion of the territory of Soviet Russia, in spite of all the warnings which she had been given, and, more recently, by the occupation of Vilna by General Zeligowski.

M. GOUT expressed his agreement with the reservations made by Mr. Fisher, whilst insisting on the necessity under present conditions of giving Poland definite assurances for the defence of Danzig. He stated that French public opinion was rightly concerned with the necessity of giving these assurances to Poland.

M. Gout urged that the Council should adopt the formula proposed by the Conference of Ambassadors in its communication addressed to the League of Nations on October 20th, 1920.

As regards the observations of the French and British representatives, M. TITTONI remarked that it was necessary to take a more general point of view, and to consider, before everything else, what would be the impression made by the decisions of the Council on the public opinion of the world. It was essential that, in the case in question, both the letter and the spirit of the treaties should be observed.

The task of the defence of Danzig should be entrusted to Poland only in the case of a threat to Danzig.

The Council decided that the Polish Government appeared to be specially indicated as the Government to which the task of defending the Free City should be given by the League of Nations, should circumstances require it, and that the Permanent Armaments Commission should be instructed to consider the measures which would in the most effective manner ensure this defence in the cases mentioned in the report of the representative of Japan.

The Council decided that the Secretary-General should communicate the decision of the Council to the Polish representative and to the representative of the Free City of Danzig, and it authorized the Secretary-General to explain to these representatives the resolution of the Council.

RESOLUTION.

I.—The Council of the League of Nations approves of the conclusions of the report by the Japanese representative, and declares:

That the Free City of Danzig, from the time of its establishment by the Principal Allied Powers in accordance with Article 102 of the Treaty of Peace of Versailles, will be placed under the protection of the League of Nations; and

That the Constitution of the Free City of Danzig, drawn up by the duly appointed representatives of the Free City, will at the same time be placed under the guarantee of the League of Nations.

The Council decides that:

The Polish Government appears particularly fitted to be, if the circumstances require it, entrusted by the League of Nations with the duty of ensuring the defence of the Free City.

The Permanent Advisory Commission on Military, Naval and Air Questions is instructed to consider the measures which will ensure the most effective defence of Danzig in the cases mentioned in the Japanese representative's report.

II.—The acting High Commissioner of the League of Nations is authorized to communicate the foregoing, together with the text of the annexed report, to the Constituent Assembly of the Free City of Danzig. He will add that the Constituent Assembly is asked to submit to him within three weeks the final text of the Constitution, revised as follows:

(a) That the word "Hanseatic" should be omitted in all the articles of the Constitution where it occurs.

(b) That Articles 4 and 5 of the Constitution should form one article.

(c) That a clause should be inserted in the Constitution to the effect that the provisions of Articles 41 and 44 (paragraph f) should be understood to affect in no way the provisions of Article 104, No. 6, of the Treaty of Peace of Versailles.

(d) That a clause should be inserted in the Constitution to the effect that the amendments to the Constitution cannot come into force before they have been communicated to the League of Nations and before the League has declared that it has no objection to make.

(e) That a clause should be inserted in the Constitution to the effect that the Government of Danzig shall submit for the examination of the League of Nations, within six months following the High Commissioner's communication, the principles of the draft of the law provided for by Article 71 of the Constitution which deals with the citizenship of the State of Danzig.

(f) That a clause should be inserted in the Constitution to the effect that the League of Nations has the right to require at any time from the Government of Danzig authentic information on the public affairs of the Free City, and that effect should always be given to such a request.

(g) That a clause should be inserted in the Constitution to the effect that the Free City of Danzig shall not be used as a military or naval base, that it must not put up fortifications, nor authorize the manufacture of munitions or war materials within its territory without having obtained in each case the consent of the League of Nations.

III.—The High Commissioner shall notify at the same time the Constituent Assembly at Danzig that the Council of the League of Nations has taken cognizance of the draft Convention between the Free City of Danzig and the Polish Government, which, in accordance with Article 104 of the Treaty of Peace of Versailles, has been negotiated by the Principal Allied Powers. He will further notify the Constituent Assembly that no modification contrary to the Statute of the Free City shall be introduced into this Convention without the previous assent of the League.

IV.—The functions of the provisional High Commissioner, Sir Reginald Tower, having come to an end by the Constitution of the Free City, and in view of the fact that he has expressed his intention of not accepting a definitive appointment, the Council of the League of Nations requests the Secretary-General to convey to Sir Reginald Tower the thanks of the League of Nations for the services he has rendered in his position as High Commissioner.

V.—The acting President of the Council, together with the Japanese representative and the Secretary-General, are asked to make proposals to the Council as to the choice of a High Commissioner of the League of Nations. The Council will appoint a High Commissioner for a period of three years. The appointment of the High Commissioner may be renewed.

The High Commissioner can always be dismissed by the Council of the League of Nations. The salary of the permanent High Commissioner shall be fixed at 100,000 gold francs *per annum*. The High Commissioner shall in addition receive an allowance sufficient to cover expenses of official journeys, correspondence, the maintenance of his office and the salaries of his staff.

The President of the Council, the representative of Japan and the Secretary-General are requested to bring about an agreement between the Polish Government and the Free City of Danzig with regard to their respective contributions towards the upkeep of the post of High Commissioner of Danzig. The contributions of the Polish Government and the Free City of Danzig shall be paid into the funds of the League of Nations, which will place the necessary sums at the disposal of the High

Commissioner. The accounts of the High Commissioner shall be audited by the Financial Administration of the Secretariat of the League of Nations.

VI.—The expenses incurred until the Permanent High Commissioner takes up his duties, which have been advanced by the Secretariat of the League of Nations, shall be borne by the Free City.

VII.—The Secretary-General is entrusted with the duty of communicating this Resolution to all concerned.

No. 8.

ARTICLE 5 OF THE CONSTITUTION OF THE FREE CITY OF DANZIG¹.

Article 5 of the Constitution of the Free City of Danzig.

[Translated from the German.]

"Without the previous consent of the League of Nations in each individual case the Free City shall not:

1. Be used as a military and naval base.
2. Erect fortifications.
3. Authorize the manufacture of munitions or war material in its territory."

No. 9.

REPORT OF PERMANENT MILITARY, NAVAL AND AIR ADVISORY COMMISSION, DATED 1st DECEMBER 1920².

REPORT OF THE PERMANENT ADVISORY COMMISSION ON MILITARY, NAVAL AND AIR QUESTIONS ON THE SUBJECT OF THE STEPS TO BE TAKEN TO ENSURE THE DEFENCE OF DANZIG.

Report of Permanent Military, Naval and Air Advisory Commission, dated 1st December 1920.

The Council of the League passed the following Resolution on November 17th, 1920.

"The Polish Government appears particularly fitted to be, if the circumstances require it, entrusted by the League of Nations with the duty of ensuring the defence of the Free City.

The Permanent Advisory Commission on Military, Naval and Air Questions is instructed to consider the measures which will ensure the most effective defence of Danzig in the circumstances mentioned in the Japanese representative's report."

The above-mentioned report draws a distinction between contingencies, which it defines as follows:

(1) Aggression, threat, or danger of aggression against the Free City of Danzig, this aggression, threat, or danger of aggression not extending to Polish territory.

(2) An attack directed against Poland by any State whatsoever contrary to the Covenant of the League of Nations; such attack

¹ Pour le texte français, voir *Société des Nations, Journal officiel*, Supplément spécial n° 7 (juillet 1922), p. 5. [Note du Greffier.]

² Pour le texte français, voir l'annexe 130 b au P.-V. mentionné à la page 105 (note). [Note du Greffier.]

would obviously give rise to the danger that the Free City of Danzig might not be able to fulfil its function of giving Poland free access to the sea.

(3) A dispute arising between Poland and another State resulting, as provided for by paragraph 6 of Article 15, in a war which would not be contrary to the terms of the Covenant but which would not involve an obligation or right on the part of the League to help either Party.

In the first two cases the report anticipates that the League of Nations will certainly, or at least probably, ask Poland to undertake the defence of Danzig, with or without the collaboration of other States Members of the League.

In the third case the report considers the possibility that the League will protect the Free City, without taking the side of Poland, that it will guarantee to the latter State the working of the port of Danzig within the boundaries of the territory of the Free City without giving either Poland or the other belligerent State the right to establish a military or air base there.

These hypotheses render the following comments necessary before the measures of defence asked for by the Council from the Commission can be examined.

From the military point of view there is no difference between the first two cases, which point to Poland as the country to be entrusted with the mandate for the eventual defence of Danzig. In every case, whether it be a question of aggression or of a threat or danger of aggression against the Free City, there is in each case danger for Poland, whose communications through Danzig are of vital importance.

On the other hand, an attack against Poland constitutes *ipso facto* a menace to Danzig, as a threat against the enemy's lines of communication is an accepted principle in warfare, especially when such communications are as important as in the present case.

As regards the first two cases it is necessary to emphasize one fact, viz., that if the League wishes to ensure the free access of Poland to the sea it cannot consider the question of the defence of Danzig and that of the adjacent Polish territory separately.

A system of territorial defence should be prepared and organized in advance in order to be ready for use at the psychological moment—otherwise it cannot be said to exist. Any improvised system of defence entails heavy sacrifices in men and territory, yet constitutes no guarantee of safety. That is a principle which no Power, great or small, would agree to violate if its national security were at stake. In other words the land defences of the territory of the Free City must be organized by Poland without delay.

In these circumstances, the third case mentioned in the report only raises the consideration as to how a force, mobilized by the League of Nations with the delay entailed in Article 15 of the Covenant, could relieve the Polish troops in the defences of Danzig and undertake the defences of Danzig territory. Thus this third contingency in no way invalidates the military system to be adopted for the first two contingencies.

This solution is set forth in the following terms:

Poland, having been given the mission to assure the defence of the territory of Danzig in an efficient manner by the League of Nations, must be in a position to resist every hostile undertaking aimed at the cutting or at the interruption of its communications with the sea through Danzig in case of war.

It is evident that a German attack would constitute the greatest ultimate threat against such an undertaking. Against such an attack the defence of the Polish corridor would be futile if it were not supplemented by the defence of the territory of Danzig. These two systems of defence cannot be considered separately. They form a whole. Their preparation, organization and putting into force at the psychological moment requires unity of command and certain measures which should be taken immediately in the territory of Danzig itself.

With the double object of :

(1) ensuring in every case the defence of the territory of Danzig considered as the complement of that of the Polish Corridor; and

(2) respecting the rights of the Free City by imposing a minimum of unavoidable burdens upon it,

the Commission has determined on the following measures.

The territory of Danzig is contiguous to, or in the vicinity (40 to 50 kilometres) of the frontiers of West Prussia and of Pomerania which enclose it, and on which Germany, having at its disposal a very dense network of railways, can concentrate important forces without notice. Again, there is the possible threat of an attack from the sea. It should therefore be protected from a sudden attack which, from the very outset of hostilities, might develop from the East, from the West, or from the sea.

The scheme for the defence of the territory of Danzig, as in all such plans, includes with respect to the above-mentioned fronts :

(1) the establishment of the appropriate defensive organizations;

(2) the protection, armament and upkeep of these defensive organizations in normal times ;

(3) plans for putting into operation these defensive measures and for reinforcing them in case of aggression.

The preparation and organization of this system of defence no doubt involves certain unavoidable burdens upon the Free City : but these may be reduced to a minimum which is compatible with the welfare of the Free City, in consideration of the following points :

(2) The possible reinforcement at short notice of the protective forces permanently established on the territory of Danzig by Poland. It may be observed in this connection that troops concentrated in the district of Dirschau (in Poland) could be moved, within 24 or 48 hours at the most, to any points in the territory of the Free City.

(2) The possible establishment of the western defensive system of Danzig entirely upon Polish territory.

(3) The possibility of not stationing any Polish troops in the town of Danzig.

Eastern Front.—The defensive system should form an extension of the eastern defensive system of Polish territory at the sea. In

order to reduce to a minimum the depth of the defensive organization, and to avoid interfering with the rich agricultural land of the Vistula delta, it would be advisable to organize the frontier line of the Nogat very strongly. The more the works to be erected comply with modern scientific requirements, the greater will be the reduction in the burden of defence.

Sea Front (North).—This section should be organized in such a way as to assure the defence of the principal points of disembarkation, to protect the town of Danzig from a bombardment from the sea, and to resist every undertaking aimed at turning the sea front, by making use of the canals which connect Elbing and Danzig.

West Front.—The defence of this front shall be entirely organized on Polish territory and shall be ensured by the Western defensive system of the Polish Corridor—which method would entail no burden on this side to be imposed on the territory of Danzig in peace time.

Aerial point of view.—From the point of view of aerial defence, Poland should be given full liberty to choose its aerial bases either upon its own territory or upon the territory of the Free City of Danzig. But in accordance with the third contingency of Viscount Ishii's report it is necessary that at least one of these bases should be established on the territory of the Free City of Danzig, in order, eventually, to be used by international forces. There exists at present a landing-ground north of Danzig, near Oliva, especially suited to this purpose.

The forces to be permanently maintained for the upkeep and guarding of the defensive systems of the eastern and northern fronts, on a total length of 130 kilometres, will be relative to the number and nature of these defensive works, the details of which (fortifications, batteries, fixed or mobile defences, etc.) can only be determined on the spot.

CONCLUSIONS.

(1) The defence of the territory of the Free City of Danzig cannot be considered separately from that of the Polish Corridor of which it forms the complement.

(2) The defence should be organized and eventually carried into effect by Poland except in the case of the third contingency mentioned in the report of Viscount Ishii, when the League would relieve the Polish forces occupying the defences of Danzig by an international force.

(3) There can be no question of establishing in Danzig the whole military force necessary to assure its inviolability under all circumstances. Moral force and the means of economic action at the disposal of the League of Nations must play an important preliminary part in this question. Consequently, the organization to be considered should be limited to the protection of the territory against a sudden attack.

(4) The Government of Poland shall be authorized in peace time :

(A) To establish on the territory of Danzig defensive works suited to the requirements of the modern defence of the eastern and northern (sea) fronts of the above-mentioned territory.

(B) To utilize the existing aerial base situated at Oliwa on the territory of Danzig independently of the bases which in the first two cases only might be erected on Polish territory.

(c) To maintain in these defensive systems (but not in the town of Danzig itself) the forces necessary for their protection and upkeep.

(5) In case of aggression, the above-mentioned Government shall be instructed to undertake the responsibility for defence and the carrying out of these measures destined to provide reinforcements necessary.

(6) The High Commissioner for Danzig shall be authorized, in the case of disturbances arising, to appeal to the nearest Polish troops to ensure the protection vested in the League of Nations.

(7) The attention of the Council should be drawn to the question of the financial expenses resulting from such an organization, and of their division between Poland, the Free City of Danzig, and the League of Nations.

(8) A special convention, based upon the preceding considerations, should be concluded with the least possible delay between the Free City and the Government of Poland, under the auspices of the League, in order :

to arrange the details of the defensive organization as indicated in broad lines above ;

clearly to define the rights of Poland in times of peace as well as in times of war, and the *minimum* of responsibilities to be imposed in time of peace on the Free City and on Poland.

(9) Without waiting for the result of the examination of the defensive organization of the Free City, the Polish Government should be given sufficient harbourage in the port of Danzig to assure the sheltering and repairing of those small naval units which were given it by the Allies for the policing of its waters.

No. 10.

MINUTES OF THE MEETING OF THE COUNCIL OF THE LEAGUE OF NATIONS AND RESOLUTION OF THE 12th DECEMBER 1920¹.

Minutes of
the meeting
of the Council
of the League
of Nations
and Resolu-
tion of the
12th Decem-
ber 1920.

269.—THE DEFENCE OF DANZIG.

Captain PENIDO read the report on the defence of Danzig submitted by the Permanent Advisory Commission on Military, Naval and Air Questions (Annex 130b).

Mr. BALFOUR said that the report was inconsistent with the spirit of the Treaty of Versailles and with all the decisions which had been come to by the competent authorities since that Treaty was signed. The Treaty of Versailles made Danzig a Free City and the body responsible for its safety was the League of Nations.

¹ Pour le texte français, voir le P.-V. de la XI^{me} session du Conseil de la S. d. N., tenue à Genève du 14 novembre au 18 décembre 1920 ; 11^{me} séance (12 déc. 1920), pp. 29-30. [Note du Greffier.]

If the report of the Commission was adopted, Danzig would be put under the military control of a neighbouring Power, instead of under the control of those who had been made responsible for its safety by the Treaty.

The report was, moreover, directly contrary to the decision of the Ambassadors' Conference of May 7th, 1920, and to Viscount Ishii's report, which had been adopted by the Council.

The strength of small States such as Danzig would be the strength of the League itself and would not depend on their inherent strength or their military alliance with a neighbouring Power. He was convinced that the whole future of Danzig and the prosperity and commercial convenience of Poland absolutely depended on friendly relations between these two communities. It was vital to both Poles and Danzigers to be on good terms with each other.

M. LÉON BOURGEOIS called the attention of the Council to the fact that the report of the Commission was unanimous and that the League was in a very difficult position in the matter. It had no forces at its disposal for the defence of the Free City.

He hoped that the Council would not come to any hurried decision in the matter.

He also drew the attention of the Council to the reply of the Peace Conference to the German Observations on the terms of peace, in which the future position of Danzig was outlined.

THE COUNCIL DECIDED to send the report of the Permanent Advisory Commission for Military, Naval and Air Questions, together with the report of Viscount Ishii on the same subject, to the High Commissioner of Danzig to be appointed by the Council, with a request that he should consider the question and report to the Council which would then be in possession of all information necessary for a final decision.

No. 11.

Reports of
Viscount Ishii
on the defence
of the Free
City and on
the protection
of Poland's
right of
access to the
sea through
Danzig, dated
22nd June
1921, and
Note of
the French
delegation of
the same date.

REPORTS OF VISCOUNT ISHII ON THE DEFENCE OF THE FREE CITY AND ON THE PROTECTION OF POLAND'S RIGHT OF ACCESS TO THE SEA THROUGH DANZIG, DATED 22ND JUNE 1921, AND NOTE OF THE FRENCH DELEGATION OF THE SAME DATE.

LEAGUE OF NATIONS.

ANNEX 212

to the Minutes of the thirteenth Session of the Council, held at Geneva, from Friday, June 17th, to Tuesday, June 28th, 1921.

THE FREE CITY OF DANZIG.

Defence of the Free City.

REPORT BY VISCOUNT ISHII, REPRESENTATIVE OF JAPAN,
ADOPTED BY THE COUNCIL ON JUNE 22ND, 1921.

In the report, which I had the honour to present to the Council on November 17th, 1920, concerning the position of the Free City

of Danzig regarding the League of Nations, I drew the attention of my colleagues to the question of the defence of the Free City. The Council, by a resolution adopted on the same date, approved the conclusions of that report. The Council decided that the Polish Government appeared particularly fitted to be, if circumstances required it, entrusted by the League of Nations with the duty of ensuring the defence of the Free City.

After having carefully examined all the documents that have been submitted to the Council on that important matter since that date, I consider that there is no reason for modifying the conclusions of my report of November 17th, 1920.

On the basis of the facts stated in the documents on this question and with the object of reconciling the views expressed by the Danzig and the Polish Governments and by the experts of the League of Nations, I beg my colleagues to consider the following draft resolution:

RESOLUTION.

(1) The Polish Government is specially fitted to ensure, if circumstances require it, and in the following conditions, the defence of Danzig by land, as well as the maintenance of order on the territory of the Free City, in the event of the local police forces proving insufficient.

With this object in view, the High Commissioner will, if occasion arises, request instructions from the Council of the League of Nations and will, if he thinks fit, submit proposals.

(2) It will nevertheless be within the competence of the High Commissioner to anticipate the authorization of the Council and to address a direct invitation to the Polish Government to ensure the defence of Danzig, or "the maintenance of order" in the following cases:

(a) in the event of the territory of the Free City being the object of aggression, threat or danger of aggression from a neighbouring country other than Poland, after the High Commissioner has assured himself of the urgency of the danger;

(b) in the event of Poland being, for any reason whatever, suddenly and effectively prevented from exercising the rights possessed by her under Article 28 of the Treaty of November 9th, 1920.

In these two cases the High Commissioner should report to the Council the reasons for the action which he has taken.

(3) As soon as the object in view has been achieved to the satisfaction of the High Commissioner, the Polish troops will be withdrawn.

(4) In all cases where Poland has to ensure the defence of the Free City, the Council of the League of Nations may provide for the collaboration of one or more States Members of the League.

(5) The High Commissioner, after consultation with the Polish Government, will present to the League of Nations a general report on the measures for which it may be necessary to provide in the above-mentioned cases.

(6) The Council does not consider it necessary to decide at the present moment under what conditions the defence of Danzig by sea should be secured.

(7) The High Commissioner should, however, be asked to examine the means of providing in the port of Danzig, without establishing there a naval base, for a "port d'attache" for Polish warships.

ANNEX 213.

FREE CITY OF DANZIG.

**The protection of Poland's right of free access to the sea
through Danzig.**

REPORT PRESENTED TO THE COUNCIL BY VISCOUNT ISHII,
THE JAPANESE REPRESENTATIVE, ON JUNE 22nd, 1921.

The delegate of the Polish Government to the League of Nations addressed the following note on March 5th, 1921, to the President of the Council of the League of Nations:

"I venture to draw the attention of the Council of the League of Nations to the fact that according to Article 28 of the Polish-Danzig Treaty of November 9th, 1920, Poland has the right to import and export through Danzig merchandise of every kind, including any war material.

"To avoid possible accidents, it is indispensable that all war material sent to Poland across the territory of Danzig should be placed under effective control from the time of its arrival in the harbour.

"It is therefore a matter of immediate necessity:

"(1) That Poland should be able to maintain the guards and military escorts at Neufahrwasser which have been stationed there since September, 1920, with the permission of the High Commissioner of the Free City. Their duty would be to supervise the unloading of war material, its storage, the loading and the escort of the trains across the territory of the Free City.

"(2) The isolated magazines near the banks of the Vistula should be exclusively reserved for ammunition, explosives, and inflammable matter destined for Poland.

"(3) That a mooring station (*point d'attache*) should be placed at the disposal of the Polish Government in the harbour of Danzig, in order to ensure the mooring, supply and repair of the ships of the Polish Maritime Police to which, in accordance with the Allies' decision, certain naval units have already been attached.

"(4) That the High Commissioner, who has no executive means at his disposal, should be able to appeal directly to the Polish Government to provide him with the means he considers necessary to ensure to Poland the rights of free access to the sea, which she possesses under the treaties."

The Secretary-General of the League of Nations in a letter of March 26th, 1921, drew the attention of the Polish delegate to the fact that it might perhaps be difficult to decide some of the points raised by the Danzig-Polish note before these questions had been submitted to the Port and Waterways Board, and—in the case of disputes between Poland and the Free City—before the High Commissioner had decided the question in the first instance, in accordance with Article 103, paragraph 2, of the Treaty of Versailles and of the Treaty of November 9th, 1920, between Poland and Danzig. As to the Polish proposal regarding the guards and military escorts at Neufahrwasser, the Secretary-General would remind the Polish delegate that the question had already been submitted to the High Commissioner.

In a note dated April 20th, 1921, to the Secretary-General, the High Commissioner of the League of Nations at Danzig stated his views with regard to this question.

On April 27th, 1921, the Polish delegate to the League of Nations submitted a new note in reply to the Secretary-General's letter of March 26th. With regard to the question of the military guards at Neufahrwasser, he pointed out that this question had already formed the subject of a special appeal to the Council of the League of Nations. As to the question of procedure raised by the Secretary-General, the Polish delegate represented that his note of March 5th had dealt with these questions in their general aspect and that the Council was surely competent to give effect to the basic principle of Poland's right of free access to the sea, by complying with the four requests put forward in the note of March 5th. Once the Council had acknowledged the justice of these requests and had approved them in substance, the examination of further details and of any technical measures required for putting them into practice should be submitted to the Harbour Board and to the High Commissioner. The Polish delegate added that it appeared very desirable that the questions of a general nature raised in his note of March 5th should be decided directly by the Council of the League of Nations.

The Government of the Free City of Danzig has expressed its views on the question in various notes addressed to the High Commissioner of the League of Nations at Danzig. Copies of these notes have been distributed to the Members of the Council.

CONCLUSIONS.

The first point raised by the note of the Polish delegate of March 5th, namely: the maintenance of a Polish military detachment entrusted with the duty of supervising, at Danzig, the transport of Polish war material will form the subject of a special report, and I do not intend to deal with this question at this juncture.

The second point of the Polish note of March 5th, 1921, refers to the question of allocating isolated magazines near the banks of the Vistula, exclusively for storage of ammunition, explosives and inflammable matter destined for Poland. This particular point appears to be an administrative question, and ought, in the first

instance, to be dealt with by the Danzig Port and Waterways Board in accordance with Article 26 of the Treaty between Danzig and Poland of November 9th, 1920, which lays down that it shall be the duty of the Board to take all measures to assure the development and improvement of the port and means of communication, in order to meet all the requirements of import and export traffic destined for or coming from Poland.

The third point of the Polish note deals with the question of establishing a mooring station (*point d'attache*) in the harbour of Danzig which should be at the disposal of the Polish Government, in order to ensure the harbourage supply and repair of the ships of the Polish Maritime Police, to which, in accordance with the Allies' decision, certain naval units have already been allotted. With regard to this question I would refer to the decision which has already been taken on the question of the defence of the Free City of Danzig. This decision states that it would be advisable to request the High Commissioner of the League of Nations at Danzig to consider what steps should be taken to establish a mooring station (*un port d'attache*) for Polish warships in the harbour of Danzig, without thereby creating a naval base; the same ruling should apply in regard to the vessels attached to the Polish Maritime Police.

The fourth point of the Polish note raises the question whether the High Commissioner should be authorized to request the assistance of the Polish Government, in case of need, to ensure free access to the sea for Poland. This point has also been covered by the decision which the Council has already taken with regard to the defence of the Free City. This decision states, in fact, that the High Commissioner may take the authorization of the Council for granted and may apply direct to the Polish Government to provide him with the necessary means for ensuring the maintenance of order in the territory of the Free City in the event of Poland finding herself, for any reason, suddenly and effectively deprived of the enjoyment of the rights which she possesses in virtue of Article 28 of the Treaty of November 9th, 1920.

ANNEX 213 a.

[Translation.]

FREE CITY OF DANZIG.

Poland's right of free access to the sea through Danzig.

NOTE PRESENTED BY THE FRENCH DELEGATION ON JUNE 22nd, 1921.

In a letter dated March 5th, 1921, M. Askenazy requested:

1. That Poland should be allowed to maintain military guards for handling and escorting war material unloaded at Danzig.
2. That isolated magazines should be reserved for munitions and explosives consigned to Poland.

3. That a mooring station (*point d'attache*) in the port of Danzig should be placed at the disposal of the Polish Government for the naval police vessels which Poland is authorized by the Allies to possess.

4. That the High Commissioner should be allowed to apply directly to the Polish Government to provide him with the means which he considers necessary for the protection of Poland's right of free access to the sea.

Points 3 and 4 are in principle agreed upon in the text already adopted by the British and French Governments and reproduced in the draft resolution contained in Viscount Ishii's report upon the defence of Danzig.

The French delegation considers that the Council, by giving satisfaction to the Polish request that magazines should be reserved for munitions and explosives consigned to Poland, would only be contributing towards the safety of the Free City, since it is to the interest of the latter that these munitions and dangerous explosives should be kept under supervision. The most suitable site for the erection of these magazines appears to be Holm Island, where there is a wide extent of ground completely separated from the City. This ground formerly belonged to the German Empire and should, therefore, be allotted by the Allocation Commission.

With regard to the Polish request for military guards, the French delegation considers that the Polish Government should be allowed to maintain two types of personnel on the spot:

(a) A civil staff for the unloading, transport and handling of war material.

(b) A staff for guard and control duties to ensure the maintenance of order and safety necessitated by the presence, from time to time, of dangerous material. In view of the nature of its duties, this staff should be allowed to carry arms and wear a uniform.

DRAFT RESOLUTION.

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.

The Polish Government shall for this purpose be allowed to maintain within the territory of the Free City, first, the civil staff required for the unloading, handling and transport of war material, and secondly, within the premises allotted to it, a staff for guard and control duties for ensuring the maintenance of order and safety necessitated by the presence, from time to time, of dangerous material. In view of the nature of its duties, the latter staff shall carry arms and wear a uniform.

The strength of this police force shall be fixed by the High Commissioner in agreement with the Polish Government.

Minutes of
the meeting
of the Council
of the League
of Nations
and Resolu-
tion of the
22nd June
1921.

MINUTES OF THE MEETING OF THE COUNCIL
OF THE LEAGUE OF NATIONS AND RESOLUTION
OF THE 22nd JUNE 1921¹.

401.—THE DEFENCE OF THE FREE CITY OF DANZIG.

M. ASKENAZY, representative of Poland, M. SAHM, the President of the Senate of Danzig, and General HAKING, attended.

A report on the defence of Danzig was presented to the Council.

M. HANOTAUX asked that a few slight modifications in drafting should be introduced in order to bring the French and English texts into agreement. He further asked that the following observations should be reproduced in the minutes:

In regard to Article 5, it is understood that the High Commissioner shall present a general report on the defence of Danzig, that this report shall be drafted after he has consulted the Polish Government, and that the Council, before discussing this report, shall consult the Permanent Advisory Commission for Military, Naval and Air Questions.

M. ASKENAZY referred again to General Haking's report of January 25th, 1921, against which the Polish Government had protested in a note of April 12th and to General Haking's reply to that note, dated May 5th, communicated by a note of the Secretary-General of May 21st. He asked that this protest, which he now renewed, since General Haking had raised the whole contents of his report in his last reply, should be recorded in the Minutes. He described the course of the Defence Mandate through the three phases through which it had passed—and was passing—October-November, December-January, and at the present moment, referring particularly to the report of the Permanent Advisory Commission of December 1st, and stated that the present draft would not ensure an effective defence of the City.

Mr. FISHER said that the Polish protest against the report of the High Commissioner was not relevant to the question under discussion. He had no doubt that it had been received with surprise by the Council, and that it would be received with surprise by the British Government.

M. SAHM asked that the Resolution of the Council of November 17th, 1920, might serve as a basis of discussion, and he proposed, among other amendments to the report, that the High Commissioner (Article 5) should consult not only the Polish Government but also representatives of the Free City.

M. ASKENAZY observed that the report of the High Commissioner regarding the defence of Danzig could not be passed over in silence. He had protested by order of his Government, and had been careful not to go beyond his instructions.

¹ See letter from the Danzig Agent to the Registrar of November 7th, 1931, p. 435 (No. 56). [*Note by the Registrar.*]

On the proposal of M. HANOTAUX, THE COUNCIL DECIDED to adhere to the report of Viscount Ishii, which was adopted, with the textual amendments suggested by M. Hanotau. (Annex 212¹.)

402.—THE FREE ACCESS OF POLAND TO THE SEA THROUGH DANZIG.

A report was read by Viscount Ishii on the free access of Poland to the sea. (Annex 213².)

M. ASKENAZY regretted to have to protest once more against the two statements contained in the High Commissioner's report of April 20th, 1921. The High Commissioner had declared: (1) that Poland was endeavouring to obtain in the Free City more political and economic rights than were given her by the Treaty of Versailles, either by the Convention or by some other means, such for example as those proposed by M. Askenazy, and (2) had described as "incendiary" the fourth proposal of M. Askenazy's note of the 5th March, seeking to authorize the High Commissioner to appeal to the Polish Government, in case of necessity, in order to ensure to Poland a free access to the sea—a proposal which the Council had just accepted in connection with the defence of Danzig. He begged the Council to defend Poland against such accusations and recalled the absolute equality of all Members of the League of Nations. He asked that the report should be completed on one important point, viz.: that the Council would sanction the right of Poland to have isolated magazines, the details to be arranged at Danzig by agreement with the Harbour Board, the Repartition Commission, and the High Commissioner.

M. HANOTAUX remarked that the Polish Government had seized the Council with four requests: that of the "port d'attache" and that of the land defence of Danzig were settled by the report which had just been adopted (Annex 212). It remained to settle the question of the transit of munitions and that of their storage. M. Hanotau submitted a note on this subject to the Council. (Annex 213 a.)]

THE COUNCIL DECIDED that a Committee would study the details of the two Polish requests which remained to be settled. The representatives of the two Parties and the High Commissioner would form part of this Committee, which would work on the base of the resolution of M. Hanotau and of the report which the Permanent Commission was shortly to furnish.

No. 13.

DECISION OF THE HIGH COMMISSIONER OF THE LEAGUE OF NATIONS IN DANZIG OF THE 15th AUGUST 1921³.

I.

1.—The Governments of Poland and of the Free City of Danzig having failed to come to an agreement regarding the ownership,

Decision of the High Commissioner of the League of Nations in Danzig of the 15th August 1921.

¹ See pp. 119 and 123 above.

² " " 120-122 above.

³ Pour le texte français, voir *Société des Nations, Journal officiel*, II^eme année, n° 9 (nov. 1921), pp. 970-974. [Note du Greffier.]

control, administration and exploitation of the railways situated within the territory of the Free City of Danzig, have applied to me for a decision under Article 39 of the Treaty of November 9th, 1920.

2.—After carefully considering all the arguments supporting the views held by each Government, and comparing them with the terms of the Convention between Poland and Danzig dated November 9th, 1920, it appears to be quite clear that if this Convention is to serve any useful purpose the full rights and responsibilities of the Harbour Board must be recognized and given effective scope, otherwise the Treaty falls to the ground.

3.—It must be accepted, therefore, as a main principle, both by the Polish and Danzig Governments:

(a) That the Harbour Board has been established by the Polish-Danzig Treaty to apply the economic principles laid down in the Treaty of Versailles as regards the relations between Poland and Danzig.

(b) That the Harbour Board is the proper organization to administer and deal with questions referring to the port and the use of the port, and which are in any way in conflict.

4.—I propose, therefore, in my decision to follow this principle and to ensure:

(i) That Poland obtains the full economic rights granted to her by the Treaty of Versailles and the Treaty of November 9th, 1920.

(ii) That the political integrity of Danzig, as limited by that Treaty and the Polish-Danzig Treaty, is maintained.

(iii) That the Harbour Board shall be given its full rights according to the letter and spirit of the Treaty of November 9th, 1920.

5.—Acting on this basis, it is necessary to consider the various points in dispute between the two countries regarding the ownership, control, administration and exploitation of the railways within the territory of the Free City of Danzig.

6.—In the Treaty of Versailles, and in the Polish-Danzig Treaty, reference is made to three administrators and owners—the Poles, the Danzigers and the Harbour Board. From a practical point of view it is administratively and financially important to have only one administrative system for such a small railway organization as that within the territory of the Free City. It is necessary, therefore, to find a means of carrying out the various clauses of the Treaty, and, at the same time, ensure that the administration of the railways is in the hands of one organization. The first paragraph of Article 20 lays down that the Harbour Board shall exercise, within the limits of the Free City, the control, administration, and exploitation of the whole railway system especially serving the port. To do this, the Harbour Board must either create an administration themselves, or obtain the services of an existing administration to do the work for them. If they create the administration themselves it will be a very costly affair. The alternative is for them to use the existing Polish Administration, ready to their hand, to do the work for them. The Polish Railway Administration is so deeply interested in the economical success of the port that it can be trusted to exercise

for the Harbour Board the control, administration, and exploitation of those railways especially serving the port, provided the Board, in accordance with Article 25, is given the ownership of these railways, and has permanent railway officials, serving on the staff of the Polish Railway Administration, to make known to the latter their wishes as regards the control, administration, and exploitation of their own railways.

7.—Article 20 lays down that "it shall rest with the Board to determine which railways shall be considered as especially serving the port". The Board have done this, and they have claimed the existing railways shown on the attached plan, and which are enclosed within the red circle, but not including the City tramways or the narrow-gauge light railways. I have considered the arguments put forward against this claim, but I cannot find sufficient reason for not accepting it.

8.—It remains, therefore, to consider what railways serve primarily the needs of the Free City. It cannot be said with truth that any of the main-line railways serve primarily the Free City. The Free City and its railways only exist because of the sea, the harbour, the Vistula, and the hinterland; if it were not for the three last, Danzig would never have come into existence as a great port. It is evident, therefore, that the main-line railways and their stations and goods yards serve the Harbour and the hinterland more than they serve the Free City, and, therefore, they do not primarily serve the needs of the Free City. The light railways and the tramways serve the City of Danzig and its territory more than they serve the Harbour and the hinterland, and, therefore, they serve primarily the needs of the Free City.

9.—I decide therefore:

(i) That the ownership, control, administration, and exploitation of the existing railways and of all property and establishments belonging thereto, which especially serve the port, and which are indicated within the red line drawn on the attached plan, belong to the Harbour Board, except

(a) The *Eisenbahndirektion*.

(b) The tramways and the narrow-gauge light railways.

(ii) That the railways and tramways primarily serving the needs of the Free City are the existing narrow-gauge railways and tramways within the territory of the Free City, and the ownership, control, administration, and exploitation of those railways and tramways, with the property appertaining thereto, belong to the Free City.

(iii) The ownership, control, administration, and exploitation of all other existing broad-gauge railways within the territory of the Free City, with the property appertaining thereto, including the *Eisenbahndirektion*, belong to Poland, under Article 25 of the Treaty.

(iv) The Harbour Board, whilst retaining the ownership of the railways allotted to it in paragraph (i) above, will make use of the existing Polish Railway Administration for carrying out the Harbour Board's work of control, administration, and exploitation. For this purpose three delegates,

appointed by the Harbour Board, will be attached to the Polish Railway Administration to convey to the latter the wishes and requirements of the Harbour Board. The Polish Railway Administration will engage to do their utmost to fulfil the wishes and requirements of the Harbour Board. The latter will also retain the ownership of half of the locomotives and wagons, the property of the late German Government: These locomotives and wagons to be maintained in good condition, and replaced (when required) by the Polish Railway Administration.

(v) The Polish Railway Administration, working for the Harbour Board, will collect all dues, taxes and receipts in connection with the railway system belonging to the Harbour Board, and will, in accordance with Article 23, defray the cost of upkeep, control, exploitation, improvement and development of that system.

(vi) The Government of the Free City of Danzig will have the right to appoint one railway official, to serve on the Polish Railway Administration, in order to keep that Administration informed regarding the requirements of the Free City and the towns and villages in its territory, especially as regards local passenger traffic and merchandise sent or received by the inhabitants of the Free City. The Polish Railway Administration will engage to deal with these requirements with the same efficiency as they deal with the requirements of their own traffic.

(vii) The Polish Government will engage to make full use of the port of Danzig, whatever other ports she may open in the future on the Baltic coast.

(viii) The Government of Danzig will engage to safeguard the interests of Poland as regards free access to the sea at all times, this free access being further guaranteed to Poland by the instructions issued to me by the Council of the League of Nations in their decision, dated June 22nd, 1921.

(ix) It is necessary for the Polish and Danzig Governments to reconsider, in the light of the present decision, the questions in dispute regarding the terms of the agreements to be concluded under Article 22 of the Polish Danzig Treaty, and also the payment of certain money by Poland to Danzig in virtue of the second paragraph of Article 23 of the Polish-Danzig Treaty. If no agreement can be reached, an appeal should be made to me at the earliest possible date.

(x) With the exceptions mentioned in (ix), this decision will be accepted, subject to appeal to the Council of the League of Nations by both Governments, as the interpretation of the Treaty of November 9th, 1920, on all railway matters referred to herein and now in dispute between the two States.

(Signed) R. HAKING (Lieut.-General),
High Commissioner, League of Nations,
Free City of Danzig.

Danzig, August 15th, 1921.

No. 14.

REPORT OF THE HIGH COMMISSIONER
OF THE 10th SEPTEMBER 1921¹.Report of
the High
Commissioner
of the 10th
September
1921.REPORT OF THE HIGH COMMISSIONER ON THE ESTABLISHMENT OF A
"PORT D'ATTACHE" FOR POLISH WAR VESSELS IN DANZIG.

Dated 10th September 1921.

1. In their resolution H. para. 7², dated 22nd June, 1921, the Council of the League of Nations asked the High Commissioner "to examine the means of providing in the port of Danzig, without establishing there a naval base, for a 'port d'attache' for Polish warships". My first difficulty has been to discover the meaning of the term "port d'attache"; there is evidently no equivalent for it in English because in the English text of the resolution of the Council the words are quoted in French. I have asked several French authorities what it means, but without obtaining any satisfactory reply. Local press opinion apparently gives it a wide meaning because it is stated that anyone who can form a "port d'attache" without also forming a naval base could square the circle. One cannot avoid the idea that one is really directed to give Poland a naval base but to call it a "port d'attache". In these conflicting circumstances it is necessary to consider which is the most important instruction of the two, and it appears that the prohibition to form a naval base is more imperative than the selection of a "port d'attache", because the former is clearly laid down by the Council of the League of Nations in their above-quoted resolution, as one of the conditions under which a "port d'attache" is to be established.

2. It appears therefore that a limited meaning must be attached to this term, and that Poland is not to be given any permanent establishment on shore, but merely an anchorage or wharf accommodation where Polish war vessels can be moored, and which is always available for that purpose. If this is the case the question naturally arises as to the conditions under which Polish war vessels can remain indefinitely in the port of Danzig without forming there a naval base.

In the same resolution paras. 1 to 4 the High Commissioner has been given clear instructions as to the course to be followed in the event of the territory of the Free City being the object of aggression, etc., from a neighbouring country or in the event of Poland being, "for any reason whatever", suddenly and effectively prevented from exercising her rights of import and export through the port of Danzig. In accordance with para. 3 of the same resolution, the Polish troops must withdraw when the object in view has been achieved to the satisfaction of the High Commissioner. If this restriction is forced on Poland for her land forces and at the same time she is prohibited from forming a naval base at Danzig, it seems necessary that the High Commis-

¹ Pour le texte français (extrait), voir *Société des Nations, Journal officiel*, VIII^{me} année, n° 10 (oct. 1927), pp. 1121-1122. [Note du Greffier.]

² P. 120 above.

sioner should be given power to request the withdrawal of Polish warships whenever he considers such a course of action is necessary, otherwise the presence of these warships in the port might bring on the very situation contemplated in para. 2 (b) of the Council's resolution which it is in the interests of all Parties to avoid.

3. If therefore it is correct to assume that Poland has only the limited right of anchorage or wharfage for her warships in the port of Danzig and must remove her warships from the port if the High Commissioner considers it is necessary owing to the local situation at the moment, she will have few more privileges for her warships than any other foreign Power. In fact her main privilege will be that she can always find anchorage or accommodation at a wharf for her warships and keep her ships there as long as she pleases provided the High Commissioner does not exercise his suggested power of requesting their withdrawal.

4. There is, however, another point to be considered which is of considerable importance, and that is the question of the rights of the Free City of Danzig. It is true that the administration of the Harbour has, by the Treaty of the 9th November 1920, been handed over to the Harbour Board, but this is a purely economic arrangement, and the Harbour Board, as such, is subject to the rights of the Free City and is not an independent State. Danzig to maintain her undoubted rights must have a voice in the question of foreign ships of war, especially considering that she has entered into an engagement with the League of Nations, under whose protection she lives, that she will not establish a naval and military base on her territory. If Polish warships are given the right to enter the port of Danzig whenever they please and stay there as long as they like without any permission from the Government of the Free City, the latter can no longer guarantee that no naval base will be formed on her territory and her rights will be violated, unless the High Commissioner has some power of intervention.

5. From these arguments it appears that the right of Danzig must be protected by the League of Nations and consequently that Polish warships, on principle, can only enter the port of Danzig with the permission of the Government of Danzig and that they must quit the port when that Government considers that it is desirable. Considering, however, the peculiar relations between the States of Poland and Danzig, it is possible to give Poland an anchorage or wharf accommodation for her permanent use, and then draw up regulations which would safeguard the rights of both the League of Nations and the Government of the Free City.

6. During my visit to Warsaw I discussed this question with the Polish Government and the Chief of the Staff of the Polish army. I proposed to them:

(a) That the High Commissioner of the League of Nations at Danzig should be given the power to request the withdrawal of Polish warships from the port of Danzig if he considered the situation demanded it.

(b) That the Polish warships whilst being given a permanent locality for berthing their ships should not have any permanent establishment on shore.

7. As regards the first of these proposals I informed the Polish Government that it was extremely unlikely that I should ever be called upon to exercise this power, but that in my opinion some such regulation was necessary in order to avoid the imputation that a naval base was being established at Danzig. The Polish Government were unable to consent to either of these conditions, and the Chief of the General Staff of the Polish Army, at my request, forwarded to me a statement showing what the Polish Government considered to be a "port d'attache" as compared with a "naval base". I attach a copy of this document which explains very clearly the requirements of the Polish Government.

8. In my opinion it is a matter for the naval experts on the League of Nations rather than for the High Commissioner to consider this question and for them to advise the Council of the League of Nations. My point of view is that Poland must be given every facility for mooring her warships in the port of Danzig under such conditions that a naval base is not established there, and that consequently the engagements of the League of Nations and of the Government of Danzig are not violated.

(Signed) R. HAKING,
High Commissioner of the League
of Nations in Danzig.

10th September 1921.

Annex to No. 14.

STATEMENT FROM THE POLISH GOVERNMENT.

Regarding the right of Polish warships to use the port of Danzig, I have the honour to submit the following observations:

If the geographical formation of the Polish sea-coast is considered, it can be seen that 13 Polish warships cannot in case of bad weather, and particularly in winter, find shelter anywhere on the whole coast, even including the one Polish fishing port—Puck. This port not only has a very small draught of water but it is connected with the sea by so narrow a channel (6 metres wide) that no warship can enter.

It is also impossible to anchor small ships at Dirschau (Tczew) on account of the draught of water of the Vistula (2 metres in normal conditions).

Consequently the only shelter left for Polish warships is Danzig.

In maritime parlance the "port d'attache" means a port where the warships of a given State can find shelter, stores to complete their provisioning, and the equipment necessary for making indispensable repairs.

The enjoyment of rights recognized by the League of Nations involves, in my opinion, liberty for Polish warships to take shelter at any time in the port of Danzig, to make indispensable repairs there, and to keep a stock of fuel, lubricating oil and naval armament, with suitable space for storing such materials. Small installations of this kind in the port of Danzig belonging to the

Polish State do not in any way imply the establishment of a Polish naval base at Danzig, for the latter term is defined as a port so organized and fortified that the fleet can at any time find rest and shelter there against enemy action. In the naval base are stored all materials necessary for the complete repair of the fleet, for preparing it for battle and for supplying it with all necessary equipment and personnel. The base is so organized that the fleet can go in and out in entire safety and can anchor with complete protection against attack.

As an example of "ports d'attache" we may cite Shanghai, which is a port of register for English, French and Japanese vessels. Each of these States possesses in this port its own docks and stores, yet Shanghai is not a naval base for any of these States—nor is it fortified by any of them.

No. 15.

Report of
Viscount Ishii,
dated 16th
September
1921.

REPORT OF VISCOUNT ISHII, DATED 16th SEPTEMBER 1921¹.

ANNEX 258.

Port d'attache for Polish war vessels in Danzig.

REPORT BY VISCOUNT ISHII, REPRESENTATIVE OF JAPAN, AND RESOLUTION
ADOPTED BY THE COUNCIL ON SEPTEMBER 16th, 1921.

The resolution of the Free City of Danzig, which was adopted by the Council on June 22nd, 1921, contained the following paragraph:

"The High Commissioner should, however, be asked to examine the means of providing, in the port of Danzig, without establishing there a naval base, for a 'port d'attache' for Polish war ships."

In pursuance of this decision, the High Commissioner, on September 10th, submitted a report to the Council on this problem. In this report he explains the difficulties he has encountered in attempting to define the term "port d'attache", and discusses the question as to the conditions under which Polish war vessels can remain indefinitely in the port of Danzig without forming there a naval base. After considering the rights of the Free City, the position of the League of Nations in Danzig, and the arrangements for the withdrawal of Polish troops from Danzig under paragraph 3 of the Defence Resolution, he expresses the opinion that:

(a) the High Commissioner of the League of Nations at Danzig should be given the power to request the withdrawal of Polish warships from the port of Danzig if he considers the situation demands it;

(b) the Polish warships, whilst being given a permanent locality for berthing their ships, should not have any permanent establishment on shore.

¹ Pour le texte français, voir l'annexe 258 au P.-V. de la XIV^{me} session du Conseil de la S. d. N., tenue à Genève du 12 septembre au 12 octobre 1921; 2^{me} Partie, p. 142. [Note du Greffier.]

The High Commissioner further reports that he discussed this question with representatives of the Polish Government in Warsaw, that they were unable to consent to either of the conditions mentioned above—(a) or (b)—and he has forwarded a statement showing what the Polish Government considers to be a "port d'attache", as compared with a "naval base". According to this statement, Polish warships should have liberty to take shelter at any time in the port of Danzig, to make indispensable repairs there, and to keep a stock of fuel, lubricating oil and naval armaments, with a suitable place for storing such materials. Small installations of this kind in the port of Danzig, the statement adds, will not in any way imply the establishment of a fortified naval base where the Polish fleet could at any time find shelter against enemy action. Shanghai is cited as an example of a "port d'attache" for English, French and Japanese vessels.

The High Commissioner concludes by expressing the opinion that the naval experts of the League of Nations, rather than the High Commissioner, should advise the Council on this question.

I have therefore the honour to suggest the adoption by the Council of the following resolution:

"That the report of the High Commissioner of the League of Nations in Danzig, of September 10th, 1921, with its annex concerning the establishment of a 'port d'attache' for Polish warships in Danzig, together with any observations of the representatives of Poland and Danzig, be referred to the Permanent Advisory Commission for Military, Naval and Air Questions, for such observations as they may care to submit to the Council."

No. 16.

MINUTES OF THE MEETING OF THE COUNCIL
OF THE LEAGUE OF NATIONS AND RESOLUTION
OF THE 16th SEPTEMBER 1921¹.

Meeting held September 16th, 1921.

486.—"PORT D'ATTACHE" FOR POLISH WAR VESSELS IN DANZIG.

Viscount ISHII read his report (Annex 258).

The Council also noted a letter from the High Commissioner, dated September 16th, in which he asked the Council not to take any final decision until they had heard the views of the Danzig Government.

General HAKING, when questioned by the Council, pointed out that, before he drew up his report on this question, he thought it advisable to consult the Polish Government in order to know whether the proposal that he was going to make would meet with the approval of Poland. The observations of the Polish Government were contained in the annex to his report. He was of

Minutes of
the meeting
of the Council
of the League
of Nations
and Resolu-
tion of the
16th Septem-
ber 1921.

¹ Pour le texte français, voir *op. cit.*, p. 83. [Note du Greffier.]

opinion that it would also be advisable to obtain the views of the Free City.

M. ASKENAZY remarked that the normal procedure would be to ask for the observations of the Free City after the Permanent Advisory Commission had handed in its report to the Council. The Polish Government was also proposing to present some observations then. He was, however, willing to accept the procedure proposed by General Haking.

M. SAHM stated that the question was of the utmost interest to the Free City. He explained that there was a clause in the Constitution prohibiting the establishment of a military or naval base at Danzig. He desired to refer it to his Government and he begged the Council to postpone any decision on the matter until its next session.

M. LÉON BOURGEOIS considered that, as the two Parties could present their observations when the question came up again for discussion before the Council, it would suffice to grant them a short time-limit to put forward any preliminary remarks which they might wish to submit for the examination of the Permanent Advisory Commission.

M. SAHM accepted the time-limit of 15 days proposed by M. Hymans. He declared that he was ready to accept the suggestion of the Marquis Imperiali, and to present his memorandum at the earliest possible moment.

In these circumstances THE COUNCIL DECIDED to adopt the following resolution :

"The report of the High Commissioner of the League of Nations in Danzig of September 10th, 1921, with its annex concerning the establishment of a 'port d'attache' for Polish warships in Danzig, together with any observations submitted by the representatives of Poland and the Free City, is referred to the Permanent Advisory Commission on Military, Naval and Air Questions, for such observations as they may care to submit to the Council."

No. 17.

REPORT OF THE NAVAL SUB-COMMISSION OF 24th SEPTEMBER 1921¹.

Report of
the Naval
Sub-Commis-
sion of 24th
September
1921.

[Communicated to the Council.]

No. 57.

No. C. 368, 1921.

REPORT BY THE NAVAL SUB-COMMISSION OF THE PERMANENT
ADVISORY COMMISSION TO THE COUNCIL OF THE LEAGUE
OF NATIONS ON THE QUESTION OF A "PORT D'ATTACHE"
FOR POLISH WAR VESSELS IN DANZIG.

Geneva, 24th September, 1921.

The Council by its decision of the 16th September, 1921, referred to the P. A. C., for any observations it might desire to make, the

¹ Pour le texte français (extrait), voir *Société des Nations, Journal officiel*, VIII^{ème} année, n° 10 (oct. 1927), p. 1122. [Note du Greffier.]

report of the High Commissioner at Danzig, dated 10th September, 1921, together with remarks by the Polish delegation and the President of the Senate of the Free City, on the question of a "port d'attache" for Polish war vessels at Danzig.

This report was drawn up as a result of the Council's decision of the 22nd June, 1921, to ask the High Commissioner "to examine the means of providing in the port of Danzig, without establishing there a naval base, for a 'port d'attache' for Polish warships". The report states that the High Commissioner is unable to decide what actually constitutes a "port d'attache" as distinct from a "naval base," and expresses the opinion that it is for the naval experts of the League of Nations to consider and advise the Council on this question.

The Naval Sub-Commission, acting on behalf of the Plenary Commission of the P. A. C. at the latter's desire, and in conformity with Article 10 of its Constitution, submits the following observations and opinion to the Council:

After hearing the Polish naval delegate who defined the difference between a "naval base" and a "port d'attache" as follows:

A "naval base" is used only for war purposes, whereas a "port d'attache" supplies the normal needs of ships in peace time,

and having also heard the representative of the Free City of Danzig, the Naval Sub-Commission was unanimous in deciding that Polish war vessels should be granted facilities for sheltering, storing, and effecting necessary repairs in the port of Danzig until such time as the Polish port of Gdingen (now in course of construction) is available.

A divergence of views, however, existed as to the means of ensuring these facilities. The British delegation, taking into consideration the conditions at present existing and the necessity for respecting the rights of the Free City, considered it advisable, in the general interest of Poland and Danzig, that Poland should not possess shore establishments in Danzig, but should be given the right of shelter and wharfage, any necessary stores being obtained either from private firms or brought by river craft from Poland, and repairs executed under the same conditions.

This view was shared by the Japanese delegation.

The French delegation, on the other hand, held the opinion that a mandate has been given to Poland for the defence of the Free City in case of aggression, and that in consideration of this fact and of the right she possesses of free access to the sea through Danzig, it is essential from their point of view that she should be granted a permanent establishment ashore, where her naval units using the port could replenish stores (other than war material) and effect repairs.

This point of view, amended by the Italian delegation to the extent that establishments should be *leased temporarily* by Danzig to Poland for these purposes, was concurred in by the delegations of Brazil, China, Spain and the Polish delegate sitting temporarily as a member of the Commission.

The Naval Sub-Commission therefore submits the following Opinion to the Council:

OPINION OF THE NAVAL SUB-COMMISSION.

(1) Poland has a new port under construction at Gdingen on the Baltic coastline. If the privilege of using Danzig as a "*port d'attache*" is to be conceded, it should be confined to the period which must elapse until the new Polish naval port is complete.

(2) During this period, it is clearly necessary for Polish ships of war, other than those whose draught will permit them to make use of Dirschau, a river port situated 32 miles up the river, to stay at Danzig for longer periods than it is customary for the ships of war of one nation to remain in the port of another State.

(3) In view of the above, and bearing in mind the fact that it has already been definitely decided that no naval base is to be established in the port of Danzig, we suggest the following Regulations for the provision of a "*port d'attache*" for these ships:

"(a) Polish ships of war shall have the right of shelter and of wharfage in the port of Danzig at any time. For this purpose there shall be leased to them on equitable conditions by the Free City a definite site which might with advantage be situated at the spot intended for the unloading of the Polish material in transit.

They shall have freedom of passage on the same footing as Polish commercial vessels, in the maritime and river waters of the Free City, and use of the locks which afford communication between these waters.

Areas, corresponding to their wharves, shall be conceded to them on lease in order that they may establish there stores for fuel and material of all sorts—not of a military nature—which are necessary for their navigability and upkeep.

These concessions cannot be suspended or withdrawn except by decision of the Council, or in case of emergency, of the High Commissioner.

(b) Submarines in no case shall attempt to submerge in the territorial waters of the Free City or to enter territorial waters in a submerged condition.

(c) Ammunition may be embarked at Danzig if brought from Poland by local craft, or if arriving at Danzig direct from foreign firms, after previous notice has been given to the Danzig harbour authorities.

(d) The above privileges shall only remain in force until the port of Gdingen is sufficiently far advanced to provide the necessary accommodation, or for a period of one year. In the event of the port not being completed in this period, the matter will be further considered by the Council.

(e) Should the Council consider it necessary, a Commission nominated by the League of Nations shall be sent to the spot in order to decide, after consultation with the High Commissioner and the Danzig and Polish authorities, on the area strictly essential for the purposes indicated above."

(Signed) General LIANG,
President of the P. A. C.

No. 18.

PROVISIONAL ARRANGEMENT CONCERNING BERTHS FOR
POLISH WARSHIPS IN DANZIG, DATED 8th OCTOBER 1921¹.

Provisional
Arrangement
concerning
berths for
Polish
warships
in Danzig,
dated 8th
October 1921.

Danzig, 8th October 1921.

The Secretary-General, League of Nations.

Sir,

In reply to your letter of the 1st October, 1921, I have the honour to inform you that I had a meeting this morning with the President of the Danzig Senate, and a representative of the Polish Government, when the following arrangement was agreed to by both Parties :

1. Poland wishes to continue to use the port of Danzig for her warships until the question of a *port d'attache* is decided by the Council of the League of Nations.

2. Poland will inform the President of the Danzig Senate regarding the number of ships she wishes to keep in the port, and the President of the Senate will raise no objection to these ships remaining in the port.

3. The Harbour Board will provide the necessary berths for these ships.

4. This arrangement does not commit either side as regards any future agreement on the subject between the two States, or as regards any decision of the Council.

I have, etc.

(Signed) R. HAKING,
High Commissioner, League of Nations,
Free City of Danzig.

No. 19.

REPORT OF THE HIGH COMMISSIONER
OF THE 7th DECEMBER 1921¹.

Report of
the High
Commissioner
of the 7th
December
1921.

Danzig, 7th December 1921.

H. C. D. 9/5 B.

REPORT BY THE HIGH COMMISSIONER ON THE ESTABLISHMENT
OF A "PORT D'ATTACHE" FOR POLISH WARSHIPS.

A.—Establishment of a "port d'attache".

3. The establishment of a "port d'attache" for Polish war vessels in the harbour of Danzig is almost entirely a political one so far as Danzig is concerned, and apparently an administrative one so far as Poland is concerned. There is no administrative reason why Poland should not be given definite berths for her ships,

¹ Pour le texte français, voir *Société des Nations, Journal officiel*, VIII^{me} année, n° 10 (oct. 1927), p. 1123. [Note du Greffier.]

where they can be repaired, provided with oil or coal fuel, and where they can receive their necessary supplies of all kinds. The trade of Danzig is, unfortunately, so small at present that there is ample berthing accommodation for the limited number of ships that Poland wishes to keep there. There are local repair shops where everything required by a ship, except arms and ammunition, can be supplied, and there are local supplies of food and fuel available to be purchased. As regards war material the Polish Railway Administration, which is a State organization, has the control of all railways right up to the wharves, and can bring this material to the ships without any hindrance at all times, either in peace or in war. The only difficulty, which applies also to the establishment of a depot for war material, is that no one knows how the harbour of Danzig will develop in future, and if, as seems probable, she is to become the sea port for the great hinterland of Poland, a great increase of accommodation, involving the construction of docks and wharves, will be required. For this reason the harbour authorities are naturally unwilling to allot any locality to Poland either as a "port d'attache" or as a depot for war material which she can hold in perpetuity, and would greatly prefer to designate a temporary locality for both these organizations.

4. From a political point of view there is great opposition on the part of the Government of Danzig to the establishment of any "port d'attache" or depot for war material in the harbour of the Free City, such an establishment being looked upon with some suspicion. If, as is to be hoped, and as I personally anticipate, the feeling of suspicion between the two Governments will shortly disappear, there seems to be no reason why Danzig should not say to Poland: "Certainly, keep your warships here if you like, we can trust you not to take any action which can be interpreted as a threat against our political integrity or our sovereign rights." This of course would mean that Poland has asked Danzig to permit her to keep her warships at Danzig, whereas Poland has, so far, demanded it as a right. If it is going to remain a question of "right" it can only be solved by the most carefully worded guarantees, such as those put forward by the Permanent Advisory Committee on Naval and Military Affairs of the League of Nations, and Poland's power of using the harbour for her warships will consequently be limited both as regards space and period of time. If Poland has really no political designs on the integrity of the Free City, and by her recent agreement with Danzig it is apparent that she has not, there seems to be no reason why an amicable arrangement with Danzig cannot be concluded which would be much more satisfactory to Poland than the limited and carefully safeguarded permission which would be given by a decision of the Council of the League. In fact it is probable that Poland can have for the asking far more than she will receive by any claim.

5. Assuming that no such agreement can be reached, and taking into consideration the arguments put forward by both sides, and which have already been forwarded to the Council of the League, and which are well known by both Governments, I am of opinion:

(1) That having regard to the accommodation available, and the requirement of trade, sufficient berths must be allotted to the

Polish warships, by the Harbour Board, where these ships can lie undisturbed, and for any period they please, subject to the conditions given below.

(ii) That the President of the Free City of Danzig, the President of the Harbour Board and the High Commissioner of Danzig are to be informed in the first instance of the number of warships and their total personnel which it is intended to retain in the harbour and will be further advised if at any time the original number of either of these is exceeded.

(iii) That the Government of the Free City of Danzig will give permission for these ships to remain, and will not withdraw that permission without notifying the Government of Poland and the High Commissioner at least three months before it is proposed to withdraw such permission. Any disagreement on the subject to be dealt with under Article 39 of the Polish-Danzig Convention dated 9th November 1920.

(iv) That the allotment of the accommodation mentioned in (i) and (ii) above will not be changed by the Harbour Board authorities unless actually necessary on account of the increased trade of the port, or of the exploitation of the port, at least three months' notice being given as under (iii) above.

(v) That the Harbour Board, having regard to the conditions mentioned in (i) and in agreement with the Polish authorities, will allot such temporary accommodation as is required on shore for the storage of supplies, other than explosives (in cartridge, shell or otherwise), provided no accommodation on shore is allotted for habitation, or for repair works, all personnel being accommodated on the ships as part of the ship's company. That any explosives required for these ships must be brought to the ship's side by railway, barge or steamer, and must not be stored or retained on shore.

(vi) That any guards on shore must be provided by the ship's company and must come under the conditions of the agreement reached by the two Governments and recorded in the proceedings of the Council of the League of Nations at their meeting in June 1921.

(vii) That the Harbour Board authority will give priority over other traffic to Polish warships entering and leaving the harbour so far as is possible.

(viii) That when, owing to the development of the trade of Danzig and the exploitation of the harbour, it is possible to do so, a permanent locality will be allotted by the harbour authority for Polish warships in conformity with the above conditions, and in agreement between the Governments of Poland and Danzig, with power of reference to the High Commissioner under Article 39 of the Convention of 9th November 1920, either in this or in any other matter referred to in paras. (i) to (vii) above.

(ix) The above conditions can only be suspended or changed by a decision of the Council of the League of Nations, or, in case of emergency, of the High Commissioner, who will report at once his action and his reasons for it to the Governments of Poland and the Free City, and to the League of Nations.

Report of
Viscount Ishii,
dated 12th
January 1922,
and Resolu-
tion of
Council.

REPORT OF VISCOUNT ISHII, DATED 12th JANUARY 1922, AND RESOLUTION OF COUNCIL¹.

ANNEX 301.

THE FREE CITY OF DANZIG.

Port d'attache for Polish warships in Danzig.

REPORT BY VISCOUNT ISHII, AND RESOLUTION ADOPTED
BY THE COUNCIL ON JANUARY 12th, 1922.

On June 22nd, 1921, the Council adopted a Resolution, by the terms of which (para. 7) the High Commissioner was asked to examine the means of providing in the port of Danzig a "port d'attache" for Polish warships, without establishing there a naval base.

In a report dated September 10th, 1921, the High Commissioner discussed the situation and suggested that the opinion of the naval experts of the League should be obtained, particularly with regard to the definition of the term "port d'attache", and the Permanent Advisory Commission on Military, Naval and Air Questions subsequently submitted their views, which have been laid before the Members of the Council. In view of the approach of winter, the President of the Council, on October 1st, 1921, suggested that the High Commissioner should take up with the Danzig Government the question of providing shelter and necessary harbour facilities for Polish warships in the port of Danzig until the Council had considered the matter, and without prejudice to any final solution. An agreement between the representatives of Poland and Danzig on these lines was reached a week later, and the text of this Agreement² was circulated to the Members of the Council.

The High Commissioner's final report on this question was drawn up on December 7th, 1921; it also deals with the question of a depot in Danzig for war material and explosives destined for Poland. The High Commissioner sent his report to the Polish and Danzig Governments on December 8th, 1921, requesting them to inform him whether, in the light of this report, the two Governments could come to an agreement. The intention was to lay the matter before the Council if they were unable to do so. No further information on this subject has yet been received.

I have already said that the report considers also the question of a depot in Danzig for war material and explosives destined for Poland. In this connection I ought to mention that I have been informed that the President of the Council has just received from the Polish delegation to the League of Nations a note dated January 9th, 1922, with regard to the importation into Poland through Danzig of goods, including war material and explosives.

¹ Pour le texte français, voir *Société des Nations, Journal officiel*, III^eme année, n° 2 (févr. 1922), p. 147. [*Note du Greffier.*]

² P. 137 above.

There is no opportunity in the present report, which is concerned with the question of the "port d'attache", to enter into the questions raised by the Polish note, but I believe that all my colleagues will be in agreement with me if I express my sincere belief that the Government of the Free City of Danzig will do its utmost in order that obstacles shall not be placed in the way of the importation through the territory of Danzig of goods of any kind whatever, including material of war and explosives destined for Poland in accordance with Article 28 of the Treaty of November 9th, 1920.

I beg to propose the following resolution to the Council:

RESOLUTION.

"The Council decides to postpone consideration of the question of the 'port d'attache' for Polish war vessels in Danzig to a later session. Until the question has been considered by the Council, the preliminary Agreement already concluded between the Free City and Poland with the object of providing safety and necessary harbour facilities for Polish war vessels in the port of Danzig will remain in force."

No. 21.

MINUTES OF THE MEETING OF THE COUNCIL OF THE LEAGUE OF NATIONS ON THE 12th JANUARY 1922¹.

Minutes of the meeting of the Council of the League of Nations on the 12th January 1922.

551.—DANZIG: "PORT D'ATTACHE" FOR POLISH WARSHIPS.

Viscount ISHII read a report (Annex 301) which concluded with the following resolution:

"The Council decides to postpone consideration of the question of the 'port d'attache' for Polish war vessels in Danzig to a later session. Until the question has been considered by the Council, the preliminary Agreement already concluded between the Free City and Poland with the object of providing safety and necessary harbour facilities for Polish war vessels in the port of Danzig will remain in force."

M. HANOTAUX asked whether the resolution adopted by the Council of the League on June 23rd had been communicated to the Board, and what action had been taken on the resolution which directed the Harbour Board to fix, in agreement with the Allocation Commission, a site for the unloading of war material and explosives at Danzig. It had been suggested in this resolution that the Island of Holm might be a suitable site for this purpose.

M. COLBAN, Director of the Administrative Commissions Section of the Secretariat, said that the resolution had been forwarded to the High Commissioner and to the Harbour Board.

M. ASKENAZY accepted the resolution before the Council, but said he wished to make certain reservations.

¹ Pour le texte français, voir *op. cit.*, pp. 97-98. [Note du Greffier.]

The note of the High Commissioner referred to in the report dealt with two questions which were entirely distinct: namely, the *port d'attache* and the site for the unloading of war material.

The Council had asked the opinion of the High Commissioner on the first question only, but in his note he had referred also to the question of the site. The Polish representative was therefore bound to make a general reservation on this point of procedure. He was also bound to make a special reservation on the opinion expressed in the High Commissioner's note as to the giving of a temporary site to Poland. The Resolution of the Council of June 23rd implied that this site should be assigned to Poland by the Harbour Board, in agreement with the Allocation Commission. The site should be selected from among former German State property, and should be permanent.

The Government of Danzig had unfortunately shown evidence of a regrettable spirit of animosity in the affair of the "Gauja", a vessel which had arrived in Danzig carrying explosives for Polish coal-mines. He referred to the note which he had sent to the President of the Council on this subject.

He noted with pleasure that the Rapporteur had expressed his "sincere belief that the Government of the Free City of Danzig would do its utmost in order that obstacles might not be placed in the way of the importation through the territory of Danzig of goods of any kind whatever, including material of war and explosives, destined for Poland", and he asked that this declaration should be inserted in the Minutes because, if Poland agreed to the postponement of this question to the next session, she must have the double assurance that until the next session she would have no difficulties as regards warships at Danzig or as regards transports carrying explosives.

M. SAHM remarked that the question on the agenda was that of the *port d'attache*, but that the representative of Poland had dealt in his speech with the question of transit of war material. On the other hand, at the beginning of his declaration, he had made a special protest against combining the question of the *port d'attache* with that of a depot for war material, as the High Commissioner had done in his report.

The Free City fully recognized the right of Poland to have war material taken in transit through the territory of Danzig, but in the affair of the "Gauja" to which allusion had been made, the workers had stopped out of regard for their personal safety. The Senate had effectively intervened in order to have the work duly executed.

The PRESIDENT said that the incident was closed.

The resolution moved by Viscount Ishii was adopted.

The PRESIDENT thanked Viscount Ishii for his reports.

M. Sahm, M. Askenazy and General Haking left the Council table.

No. 22.

DECISION OF THE HIGH COMMISSIONER
OF THE 6th DECEMBER 1921.

Decision of
the High
Commissioner
of the 6th
December
1921.

LEGAL POSITION OF PROPERTY OF THE POLISH "FISC", POLISH AUTHORITIES, OFFICES AND EMPLOYEES, AND POLISH SHIPS IN THE TERRITORY OF THE FREE CITY OF DANZIG.

Decision dated 6th December, 1921.

I. I have been requested by the Governments of Poland and Danzig to give a decision under Article 39 of the Polish-Danzig Convention regarding the following questions, upon which the two Governments have been unable to come to an agreement:

I. The legal position of the property of the Polish "Fisc" situated in the territory of the Free City of Danzig.

II. The legal position of the Polish authorities, offices and employees.

III. The legal position of the Polish ships.

2. The point of view of the Polish Government regarding these questions has been put forward in a general letter, together with a proposed Convention containing 39 articles, an explanation of that document and several annexes. The main point in dispute is that Poland, under the Versailles Treaty and under the Convention of 9th November 1920, claims certain extra-territorial rights for Polish property, personnel and ships in the territory of the Free City. The Danzig Government opposes these claims on the grounds that such rights are not supported by the Treaty of Versailles or by the Convention of 9th November 1920, that if granted they would in no way improve Poland's right of free access to the sea, that they are incompatible with the independence of the Free City and would mean the establishment of a State within a State.

3. The Polish Government urges that the Convention of 9th November 1920 is not an international treaty between two equal States but merely the development of the rights given to Poland by the Treaty of Versailles, which created the Free City of Danzig exclusively in the interests of Poland and with the object of assuring her free access to the sea. From this standpoint it is argued further that Article 104 of the Versailles Treaty and also the Convention of 9th November 1920 aims solely at providing guarantees for Poland's free access to the sea. Furthermore that certain State property and certain functions of the Danzig State having been handed over to Poland by these treaties, the only logical conclusion is that this property, including Polish ships, and this administration, including Polish personnel, must be excluded from the judicial and executive authority of the Government of the Free City.

4. Acting on the above assumption, Poland claims:

I. That her right to purchase, sell, or possess property of all kinds cannot be subject to any limitation on the part of the

Government of the Free City, either in the form of expropriation, redemption or pre-emption.

II. That all regulations of the Polish authorities, within their competence, must be respected equally with those of the Danzig authorities, that is to say they must be obligatory for the citizens, authorities and tribunals of the Free City.

III. That the Polish Government is responsible for any misdemeanours and, with certain exceptions, for any crimes committed by their officials or employees, and that the Danzig Government has no authority over them.

IV. That the legal position of the harbour of Danzig should be similar to that which it would hold if it were situated within the territory of the Polish Government.

5. Taking first the question of the international nature of the Convention of 9th November 1920, para. 3, above, it appears from the Versailles Treaty that this Convention was negotiated by the Allied and Associated Powers between the Government of Poland and the Free City of Danzig, and therefore each was a contracting Party and Poland was not imposing a treaty upon Danzig. The rights given to Poland by the Treaty of Versailles as indicated in Article 104 of that Treaty, do not become operative until the Convention has been negotiated, because it clearly states that the Allies will negotiate a treaty "with the following objects". It appears to me, therefore, to be quite clear that the Convention was an international treaty between the two States and that it contained the objects described in Article 104, and was the only authoritative interpretation and application of these objects, and was not merely the development of the rights given to Poland by the Treaty of Versailles.

6. I cannot find sufficient support to enable me to accept entirely the statement (para. 3 above) that the Free City of Danzig was created exclusively in the interests of Poland, or exclusively with the object of assuring to Poland free access to the sea. If this had been the case Danzig would have been handed over to Poland together with the province of Posen and the "Corridor". In Article 87 of the Versailles Treaty, which transfers this territory to Poland, it states: "The provisions of this Article do not, however, apply to the territories of the Free City of Danzig as defined in Article 100 of Section XI, Danzig."

7. The suggestion that Article 104 of the Versailles Treaty and also the Convention of 9th November 1920 aim solely at providing guarantees for Poland's free access to the sea, appears to me to be open to argument. Article 104 suggests that Poland must be given certain extensive rights regarding the free access to the sea by means of a treaty which is to be negotiated by the Allies. It is a well known fact that when this treaty was negotiated it was found that the Polish demands for the "free use and service" of the harbour of Danzig were so opposed to the Danzig demands as a "Free" City, that the Allies adopted a compromise by the creation of the Harbour Board to ensure this "free use and service" of the harbour to Poland without interfering with the title "Free" which they had already given to Danzig. The

result of this Convention was that almost the whole of the objects mentioned in Article 104 were to be carried out by the Harbour Board and not by Poland. Nevertheless it is only natural and right that Poland should require guarantees for her free access to the sea, and it is necessary therefore to consider what guarantees she possesses already and whether further guarantees are possible.

8. The guarantees now possessed by Poland to ensure the free passage of her exports and imports through the port of Danzig are as follows:

I. The Allied and Associated Powers created a Harbour Board consisting of an equal number of Polish and Danzig officials with a neutral President, and gave it the power to exercise the control, administration and exploitation of the port, etc., and further to ensure to Poland the free use and service, without any restriction, and, in so far as it may be necessary, for Polish imports and exports, of the port and means of communication mentioned in Article 20. Thus the onus for ensuring these objects of Article 104 lie with the Harbour Board and not with Poland, and therefore the Harbour Board is the first guarantee.

II. By the decision of the Council of the League of Nations dated 22nd June 1921, Poland was given a very powerful political and military guarantee. The High Commissioner was authorized to address a direct invitation to the Polish Government to ensure the maintenance of order in the event of Poland being, for any reason whatever, suddenly and effectively prevented from exercising the rights possessed by her under Article 28 of the Convention of 9th November 1920.

III. Poland has been given the administration of the broad gauge railways from her territory right up to the wharves where her imports and exports are unloaded and loaded on the ships. Thus from an administrative point of view the chain of traffic is complete from Poland to the open sea either by rail or river.

IV. Under Article 39 of the Polish-Danzig Convention, Poland, like Danzig, can obtain a decision from the High Commissioner regarding any matter in dispute between the two Governments, with right to appeal to the Council of the League of Nations against that decision.

V. The Free City itself is deeply interested in this Polish traffic being maintained because without it she cannot exist.

9. It would appear from the above that Poland has good and sufficient guarantees to assure to her the free use and service of the harbour for her imports and exports, and that she has sufficient control of the administrative machinery to carry her imports between her own country and the open sea. Poland urges, however, that all these guarantees are useless unless she is given complete extra-territorial rights over her property, personnel and administration located in the territory of the Free City. The Government of Danzig strenuously opposes this view in a series of arguments which are summarized in Appendix "A".

10. Taking first the Polish claim regarding the right to acquire property. That portion of the property, the ownership of which

is allotted to the Harbour Board, does not come into question, because the Harbour Board is given (Art. 25 of the Convention) the right "to lease or acquire such other property, movable or immovable, situated in the territory of the Free City as it may deem necessary for the control, administration and exploitation of the port, waterways and railways under its charge, or for their development and improvement. The Free City of Danzig undertakes to carry out the necessary measures to give effect to the decisions of the Board, and in particular to proceed to any expropriations necessary for this purpose." Whilst these extended rights as regards property over the whole of the territory of the Free City are given to the Harbour Board, Poland is given only certain limited rights in the following words—Article 25 (4): "The Free City undertakes not to refuse the expropriations in favour of Poland, under equitable conditions, of such land and other property as may be necessary for the exploitation of the services referred to in Article 21." The only services in this Article now under Polish ownership and control are the broad gauge railways allotted to her under para. 9 (III) of my Decision of 15th August 1921. The remaining broad gauge railways being owned by the Harbour Board who has made use of the Polish Railway Administration to administer them. Then again (Art. 30): "The Free City of Danzig undertakes to lease or sell to Poland in equitable terms the necessary land or buildings for the establishment and working of the services provided for in Article 29 (Post, Telegraph and Telephones) as well as in Article 21." Furthermore the necessity for Poland to acquire a large amount of property to assure to her the free use and service of the port, for her imports and exports, is greatly modified by Article 26 of the Convention, which finally disposes of Article 104 (2) of the Versailles Treaty by repeating almost in the same words: "It shall be the duty of the 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."

II. So far as the Treaty of Versailles and the Convention between Poland and Danzig are concerned, and it is on these that all decisions must rest, there appears to be no doubt regarding the following points:

(a) The right of purchase is transferred from Poland to the Harbour Board so far as the domain of the latter extends. Poland's right of purchase in the domain of the Harbour Board does not exist, and elsewhere it is regulated for certain definite purposes by an undertaking on the part of Danzig not to refuse expropriation under equitable conditions (Art. 25 [4]). Danzig further undertakes to lease or sell to Poland, on equitable terms, the necessary land and buildings for certain other definite purposes (Art. 30).

(b) The Harbour Board and not Poland is the responsible organization to carry out and ensure to Poland the requirements of Article 104 (2).

12. It appears from the above that the amount of property actually to be owned by Poland on the territory of the Free City is considerably limited, as are her powers for purchasing fresh property. The necessity for giving extra-territorial rights to this property is nowhere mentioned in either the Versailles Treaty or the Convention, and it has been already shown that the arguments brought forward in support of this claim are not sufficiently supported by either Treaty. Nevertheless it is the intention of both Treaties that Poland should possess certain property in the territory of the Free City, and though that property can be protected equally well by Danzig as by Polish law, it appears to be right that Poland should be given special facilities for using that property, in the same manner as that which she was given as regards the railways in para. 11 of my Decision dated 5th September 1921, the object being that Poland should be able to enjoy the property she possesses in Danzig without being subject to any claims upon it as regards rates and taxes.

13. The Polish claim to treat Polish ships in the harbour of Danzig in the same manner as if they were in a Polish port, is opposed not only by the State rights of the Government of Danzig, but also by the rights given to the Harbour Board. This claim is nowhere supported either in the Treaty of Versailles or in the Convention of 9th November 1920. Since, however, the interests of Danzig are so closely allied to those of Poland in all questions of shipping, there is no reason why the Government of Danzig should not give more favourable terms to Polish vessels using the port than to other vessels, by agreement between the two States.

14. The Polish claims as regards extra-territorial rights for her officials and employees working in the territory of the Free City do not appear to be supported by any article of the Treaty of Versailles, or of the Convention, except in Article 104 (5), which states that one of the objects of the Allied Powers in negotiating the Convention is "to provide against any discrimination within the Free City of Danzig to the detriment of citizens of Poland and other persons of Polish origin or speech". This object is given effect to in Articles 33, 34 and 35 of the Convention, but no mention is made in these Articles of granting extra-territorial rights to any "nationals of Poland and other persons of Polish origin or speech". Furthermore this claim is weakened by Article 35, which states that "a special arrangement shall be concluded to provide for the execution in Poland and in the territory of the Free City of the judgments of Polish and Danzig tribunals respectively and for the arrest of criminals taking refuge in the territory of Poland or the Free City of Danzig and for their extradition and for all other judicial questions".

15. It appears, therefore, that the reason why the efforts to conclude "a special arrangement between Poland and the Free City of Danzig to provide for all other judicial questions" have failed, is primarily because the Government of Poland wishes to impose conditions on Danzig which she cannot accept, and which, as shown above, cannot be sufficiently supported by the Treaty of Versailles or by the Convention of 9th November 1920.

The Danzig objection that there are more Polish officials and organizations in the territory of the Free City than are contemplated in the Treaty of Versailles or the Convention of 9th November 1920 is a question which does not come within the scope of this Decision, which is limited to the legal position of Polish property, administration and personnel in the territory of the Free City: *vide* para. 1 above.

16. It appears to me that if the rights now claimed by Poland are accepted in their totality, with the full results indicated in para. 4 above, Danzig can no longer be called a Free City. Furthermore the confusion that would arise within the territory of the Free City, the constant friction of officials small and great, the antipathy created by such a large number of Polish officials within the territory of the Free City with extra-territorial rights, the suspicion that would exist between the two States regarding the treatment of these officials, etc., could only lead to interminable disputes, and would be as harmful for Poland as for Danzig.

17. I decide therefore :

I. That the Harbour Board must retain its full administrative powers and activities as laid down in the Convention dated 9th November 1920. That Polish ships using the Danzig port and waterways are subject to the administration of the Harbour Board, and to the Danzig tribunals and authorities, like all other vessels, Danzig or foreign, using those waters.

II. That Polish property situated in the territory of the Free City of Danzig is to be treated in the same manner as laid down in para. 11 of my Decision dated 5th September 1921 regarding the railway property, the details to be settled between the two Governments on the same lines as those were settled, except that Polish ships are not exempt from the harbour dues, or any charges or regulations imposed by the Harbour Board: *vide* I above.

III. That all persons of Polish nationality entering the territory of the Free City of Danzig or her territorial waters, being already protected under Article 33 of the Polish-Danzig Convention dated 9th November 1920, must be subject to the laws and judiciary system of the Free City, excepting the diplomatic representation referred to in Article 1 of the Convention of 9th November 1920, and also subject to any agreement arrived at by the two Governments under para. IV below.

IV. That in the light of this Decision the terms of Article 35 shall be carried out by negotiation between the two States as early as possible, and nothing in this Decision shall prevent the Government of Danzig from granting in a liberal spirit any judicial exceptions or extensions required by Poland as regards the Polish buildings, property or inhabitants in the territory of the Free City, provided always that such judicial

exceptions or extensions in no way limit or interfere with the rights of the Harbour Board: *vide* para. I above.

(Signed) R. HAKING, Lt. General,
High Commissioner, League of Nations,
Free City of Danzig.

Danzig, 6th December, 1921.

No. 23.

MINUTES OF THE MEETING OF THE COUNCIL
OF THE LEAGUE OF NATIONS, 8th SEPTEMBER 1927¹.

Minutes of
the meeting
of the Council
of the League
of Nations,
8th September
1927.

2001.—FREE CITY OF DANZIG: "PORT D'ATTACHE" FOR POLISH WARSHIPS AT 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 PRESIDENT read the following report:

"At its meeting of September 1st, 1927, during the discussion of its agenda, the Council considered the question of a 'port d'attache' for Polish warships at Danzig. The representative of Danzig asked that the question should be examined and settled at the Council's present session, while the Polish delegate asked that it should be postponed until December. The Rapporteur expressed the wish to examine the question and submit, during the present session, his suggestions, both as regards procedure and as regards the substance of the dispute. In order to give the Members of the Council an idea of the situation, I have felt it advisable to give a short statement of the antecedents of the question.

"1. The report of the Permanent Advisory Commission for Military, Naval and Air Questions, dated December 12th, 1920, and addressed to the Council in pursuance of the latter's Resolution of November 17th, 1920, on the subject of the steps to be taken to ensure the defence of Danzig, contains the following paragraph:

'(9) Without waiting for the result of the examination of the defensive organization of the Free City, the Polish Government should be given sufficient harbourage in the port of Danzig to assure the sheltering and repairing of those small naval units which were given it by the Allies for the policing of its waters.'

"This report was sent by decision of the Council, dated December 12th 1920, to the High Commissioner of the League of Nations for examination.

"2. In his letter of March 5th, 1921, concerning the safeguarding of Poland's right of free access to the sea, the Polish delegate asked, among other things, 'that a mooring station in the port of

¹ Pour le texte français, voir *Société des Nations, Journal officiel*, VIII^{me} année, n° 10 (oct. 1927), pp. 1121-1126. [Note du Greffier.]

Danzig should be placed at the disposal of the Polish Government in order to ensure the harbourage, supply and repair of ships of the Polish Maritime Police, to which, in accordance with the Allies' decision, certain naval units have already been allotted'.

"3. On June 22nd, 1921, the Council adopted the following conclusions of its Rapporteur:

'With regard to the question of a mooring station in the port of Danzig, I would refer to the decision which has already been taken on the question of the defence of the Free City of Danzig. This decision states that it would be advisable to request the High Commissioner of the League of Nations at Danzig to consider what steps should be taken to establish a mooring station for Polish warships in the harbour of Danzig, without thereby creating a naval base; the same ruling should apply in regard to the vessels attached to the Polish Maritime Police.'

"4. In the report of the Permanent Advisory Commission on the manufacture, sale, storage, and transport of war material examined by the Council on June 23rd, 1921, occurs the following passage:

'As regards the site alluded to in paragraph 5, the Belgian, Brazilian, Spanish, Italian, and French delegations suggested that:

'The Island of Holm, where the German State formerly possessed a considerable area—the future ownership of which is still to be decided by the Allocation Commission—appears a suitable situation. This site might, at the same time, be allotted as a harbourage and depot for the victualling and maintenance of the Patrol Flotilla ceded to Poland.'

"5. On September 10th, 1921, the High Commissioner submitted to the Council a report in which he outlined the difficulties encountered in defining the expression 'port d'attache' as opposed to 'naval base'. The High Commissioner expressed the opinion that:

'(a) The High Commissioner of the League of Nations at Danzig should be given the power to request the withdrawal of Polish warships from the port of Danzig if he considers the situation demands it.

'(b) The Polish warships, whilst being given a permanent locality for berthing their ships, should not have any permanent establishment on shore.'

"The High Commissioner also forwarded a statement by the Polish Government showing what it considered to be a 'port d'attache' as compared with a 'naval base'. Shanghai was cited as an example of a 'port d'attache' for English, French and Japanese vessels.

"6. On September 16th, 1921, the Council decided to submit the question to the Permanent Advisory Commission for Military, Naval and Air Questions.

"7. On September 24th, 1921, the Naval Sub-Committee acting for the Permanent Advisory Commission, after considering the report of the High Commissioner of the League of Nations and the observations of the Polish delegation and of the President of the Senate of the Free City, submitted the following opinion:

'(1) Poland has a new port under construction at Gdingen on the Baltic coast line. If the privilege of using Danzig as a 'port d'attache' is to be conceded, it should be confined to the period which must elapse until the new Polish naval port is complete.

'(2) During this period, it is clearly necessary for Polish ships of war, other than those whose draught will permit them to make use of Dirschau, a river port situated 32 miles up the river, to stay at Danzig for longer periods than it is customary for the ships of war of one nation to remain in the port of another State.

'(3) In view of the above, and bearing in mind the fact that it has already been definitely decided that no naval base is to be established in the port of Danzig, we suggest the following Regulations for the provision of a 'port d'attache' for these ships.

'(a) Polish ships of war shall have the right of shelter and of wharfage in the port of Danzig at any time. For this purpose there shall be leased to them on equitable conditions by the Free City a definite site which might with advantage be situated at the spot intended for the unloading of the Polish material in transit.

'They shall have freedom of passage on the same footing as Polish commercial vessels, in the maritime and river waters of the Free City, and use of the locks which afford communication between these waters.

'Areas corresponding to their wharves shall be conceded to them on lease in order that they may establish there stores for fuel and material of all sorts—not of a military nature—which are necessary for their navigability and upkeep.

'These concessions cannot be suspended or withdrawn except by decision of the Council or, in case of emergency, of the High Commissioner.

'(b) Submarines in no case shall attempt to submerge in the territorial waters of the Free City or to enter its territorial waters in a submerged condition.

'(c) Ammunition may be embarked at Danzig if brought from Poland by local craft, or if arriving at Danzig direct from foreign firms, after previous notice has been given to the Danzig harbour authorities.

'(d) The above privileges shall only remain in force until the port of Gdingen is sufficiently far advanced to provide the necessary accommodation, or for a period of one year. In the event of the port not being completed in this period, the matter will be further considered by the Council.

'(e) Should the Council consider it necessary, a Commission nominated by the League of Nations shall be sent to the spot in order to decide, after consultation with the High Commissioner and the Danzig and Polish authorities, on the area strictly essential for the purposes indicated above.'

'This opinion represents the views of the majority of the Sub-Commission (the French, Italian, Brazilian, Chinese, Spanish and Polish delegations, the latter sitting temporarily as a member of the Commission). The Sub-Committee was 'unanimous in deciding

that Polish war vessels should be granted facilities for sheltering, storing and effecting necessary repairs in the port of Danzig until such time as the Polish port of Gdingen (now in course of construction) is available'. The British delegation, however—and also the Japanese delegation—'taking into consideration the conditions at present existing, and the necessity for respecting the rights of the Free City, consider it advisable, in the general interests of Poland and Danzig, that Poland should not possess shore establishments, but should be given the right of shelter and wharfage, any necessary stores being obtained either from private firms or brought by river craft from Poland, and repairs executed under the same conditions'.

"8. In a letter dated September 29th, 1921, the Polish delegate asked that the question should be settled as soon as possible. Owing to the approach of winter the President of the Council of the League of Nations instructed the Secretary-General on October 1st, 1921, to ask the High Commissioner to take up 'with the Danzig Government the question of providing safety and necessary harbour facilities for Polish war vessels in the port of Danzig until the matter has been considered by the Council and without prejudice to any final solution'.

"9. On October 8th, 1921, the following agreement was concluded between the Parties:

'(1) Poland wishes to continue the use of the port of Danzig for her warships until the question of a 'port d'attache' is decided by the Council of the League of Nations.

'(2) Poland will inform the President of the Danzig Senate regarding the number of ships she wishes to keep in the port, and the President of the Senate will raise no objection to these ships remaining in the port.

'(3) The Harbour Board will provide the necessary berths for these ships.

'(4) This arrangement does not commit either side as regards any future agreement on the subject between the two States, or as regards any decision of the Council.'

"10. On December 7th, 1921, the High Commissioner drew up his final report. This report was communicated to Danzig and Poland, who were asked whether, in the light of this report, the two Governments could come to an agreement. Assuming that no such agreement could be reached, the High Commissioner expressed the following opinion:

'I. That, having regard to the accommodation available and the requirements of trade, sufficient berths must be allotted to the Polish warships, by the Harbour Board, where these ships can lie undisturbed and for any period they please, subject to the conditions given below.

'II. That the President of the Free City of Danzig, the President of the Harbour Board and the High Commissioner of Danzig are to be informed in the first instance of the number of warships and their total personnel which it is intended to retain in the harbour, and will be further advised if at any time the original number of either of these is exceeded.

'III. That the Government of the Free City of Danzig will give permission for these ships to remain, and will not withdraw that permission without notifying the Government of Poland and the High Commissioner at least three months before it is proposed to withdraw such permission. Any disagreement on the subject to be dealt with under Article 39 of the Polish-Danzig Convention dated November 9th, 1920.

'IV. That the allotment of the accommodation mentioned in I and II above will not be changed by the Harbour Board authorities unless actually necessary on account of the increased trade of the port, or of the exploitation of the port, at least three months' notice being given as under III above.

'V. That the Harbour Board, having regard to the conditions mentioned in I and in agreement with the Polish authorities, will allot such temporary accommodation as is required on shore for the storage of supplies, other than explosives (in cartridge, shell or otherwise), provided no accommodation on shore is allotted for habitation, or for repair works, all personnel being accommodated on the ships as part of the ship's company. That any explosives required for these ships must be brought to the ship's side by railway, barge or steamer, and must not be stored or retained on shore.

'VI. That any guards on shore must be provided by the ship's company and must come under the conditions of the agreement reached by the two Governments and recorded in the proceedings of the Council of the League of Nations at their meeting in June 1921.

'VII. That the Harbour Board authority will give priority over other traffic to Polish warships entering and leaving the harbour, so far as is possible.

'VIII. That when, owing to the development of the trade of Danzig and the exploitation of the harbour, it is possible to do so, a permanent locality will be allotted by the harbour authorities for Polish warships in conformity with the above conditions, and in agreement between the Governments of Poland and Danzig, with power of reference to the High Commissioner under Article 39 of the Convention of November 9th, 1920, either in this or in any other matter referred to in paragraphs I to VII above.

'IX. The above conditions can only be suspended or changed by a decision of the Council of the League of Nations or, in case of emergency, of the High Commissioner, who will report at once his action and his reasons for it to the Governments of Poland and the Free City and to the League of Nations.'

'II. The two Parties having submitted no observations before the Council's January session, the latter decided as follows on January 12th, 1922:

'The Council decides to postpone consideration of the question of the 'port d'attache' for Polish war vessels in Danzig to a later session. Until the question has been considered by the Council, the preliminary Agreement already concluded between the Free City and Poland with the object of providing safety and necessary harbour facilities for Polish war vessels in the port of Danzig will remain in force.'

"12. In a letter dated February 27th, 1922, the Senate declared itself ready to open negotiations with the Polish Government on the question of the 'port d'attache' and of a depot for Polish war material, under the presidency of the High Commissioner and with the President of the Harbour Board in attendance. On March 3rd, 1922, the Polish representative stated that, considering that the question of a 'port d'attache' was subject to the debates of the Council, his Government, wishing to avoid prejudice to the Council's Resolution, had no intention of entering into negotiations with the Danzig Government.

"13. In a note dated October 30th, 1925, with reference to a Polish guard on the *Westerplatte*, the Danzig Government again raised the question of the 'port d'attache'. It stated that Poland had concluded the construction of a naval base at Gdingen (in Poland) which was ready to receive Polish warships, and that consequently Danzig did not feel able to allow the provisional Agreement of October 8th, 1921, to continue.

"On December 9th, 1925, the Council decided that the question of the 'port d'attache', which was not at the time before the Council, should remain open.

"14. In a note addressed to the President of the Council of the League of Nations on August 2nd, 1927, the Senate of the Free City of Danzig stated that the most important ground on which Danzig had expressed its readiness to sign the provisional Agreement of October 8th, 1921, was the fact that Poland at that time possessed no port in which its warships could shelter in bad weather, more particularly in winter. The agreement was never intended to be anything but a provisional settlement. The Danzig note also recalls the fact that the Naval Sub-Commission's report dated September 24th, 1921, expressly stated that the privilege accorded to Poland of using Danzig as a 'port d'attache' should be confined to the period which must elapse until the new Polish naval port was completed. 'The port of Gdingen', says the Danzig note, 'is now so far complete that Polish warships can use it for shelter in all weathers and more especially in winter. It was actually so used in the winter of 1926-1927. There is therefore no longer any reason for maintaining the agreement concluded in 1921. Accordingly, on May 20th, 1927, Danzig gave notice to terminate it. Poland, however, has not accepted this notice.' The Danzig Senate therefore asks that the Council should examine this question anew and give a definite decision upon it. The Senate adds that, in its opinion, the permanent possibility of an unannounced and indefinitely long stay on the part of an indefinitely large number of Polish warships in the port of Danzig conflicts with Section I, Article 5, of the Constitution of the Free City of Danzig, as guaranteed by the League of Nations, whereby Danzig cannot serve as a naval base. Danzig also considers that there are serious economic reasons against too frequent visits to the port of Danzig by relatively large numbers of warships, since peaceful trade is thereby interfered with.

"15. In a note dated August 24th, 1927, addressed by the Polish representative at Danzig to the High Commissioner of the League of Nations, the Polish Government declared its inability, within the

brief period remaining before the opening of the Council's September session, to determine its attitude on the substance of the question raised by the Senate and asked that it should be postponed until the December session. At the same time, the Polish Government expressed the opinion that the period of 40 days prescribed by the Rules of Procedure for appeals to the Council in disputes between Danzig and Poland was applicable by analogy to the present case, which would prevent the placing of the question on the agenda of the Council's present session.

"16. As I said at the beginning of my report, the Council discussed the question at its meeting of September 1st, 1927, during the debate on the agenda of the present session. The Danzig representative reiterated his request that the question should be examined and settled at the Council's present session, while the Polish delegate referred to the declarations already made in his note of August 24th, 1927, and asked for a postponement until December.

"I feel some hesitation in insisting on an immediate decision of this question in face of the Polish representative's statement that he is not prepared to discuss it. On the other hand, I consider that it would be well not to postpone the discussion purely and simply until December without endeavouring forthwith to make a real step in advance.

"I have asked myself whether it would not perhaps be desirable to refer this question once more to our Naval Sub-Committee, but, as the Council has not yet pronounced on the opinion furnished by this Sub-Committee in 1921, I do not think it would be advisable to refer the matter to the Sub-Committee without having definite questions to put to it. I therefore incline rather to suggesting for the moment that the Council should ask the Polish Government to put forward its observations in detail on the substance of the question before October 15th next. These observations might be communicated to the High Commissioner at Danzig, who would then immediately submit them to the Government of the Free City. The High Commissioner might perhaps think fit to invite at the same time the Danzig Government and the Polish representative to enter into direct negotiations under his presidency. It would perhaps also be advisable for the President of the Harbour Board to be invited to take part in such negotiations. The High Commissioner should forward to the Secretary-General the Polish Government's observations, together with a report on the result of the negotiations at Danzig, in good time for all the relevant documents to be in the hands of the Members of the Council not later than three weeks before the opening of the Council's next session.

"I consider that, by adopting this procedure, we should be taking account of the difficulties which the Polish delegate finds in discussing the question forthwith and of the Danzig Government's wish to have a final decision as soon as possible."

Dr. SAHM, President of the Senate of the Free City, regretted that the Rapporteur had been unable to submit a definite resolution to the Council. That course would have facilitated the

solution of the question and would have made it unnecessary to include the item in the agenda of the next session of the Council. His regrets were all the more keen in that, to his mind, the question was perfectly simple.

He wished to make two observations to supplement the Rapporteur's report. He desired first to draw the Council's attention to an important statement made by the Polish Government and contained in the High Commissioner's report of September 10th, 1921. He attached special importance to this statement, because it formed the basis of the question conveniently known as the "Polish port d'attache at Danzig". That statement was as follows:

"Regarding the right of Polish warships to use the port of Danzig, I have the honour to submit the following observations:

"If the geographical formation of the Polish sea-coast is considered, it can be seen that 13 Polish warships cannot in case of bad weather, and particularly in winter, find shelter anywhere on the whole coast, even including the one Polish fishing port—Puck....

"Consequently the only shelter left for Polish warships is Danzig."

It would certainly not be incorrect to say that this argument, originally submitted to the League by the Polish Government in 1921 in support of its claim to a Polish "port d'attache" at Danzig, was no longer tenable.

The second observation which he wished to make was as follows: It had been said on the Polish side, on another occasion, that the maintenance of the present state of affairs was dictated by economic reasons, since, while there were naval building-yards at Danzig, the plant at Gdingen was inadequate for any repairs that might be required for Polish ships of war.

Dr. Sahm was unable to regard this argument as conclusive, for even if there were no "port d'attache" for Polish warships at Danzig, vessels could at any time, and without any hindrance, provided the existing international rules were observed, call at the port of Danzig, to effect any necessary repairs in the Danzig naval yards. There was no international rule, no decision of the Council and no stipulation in the Danzig Constitution to preclude such procedure.

In conclusion, he trusted that, at any rate, the Council would find a final solution for this problem at its December session. The only question to be decided—in conformity with the advisory opinion of the Naval Sub-Committee of the Permanent Advisory Commission—was whether the port of Gdingen was sufficiently far advanced for the Polish fleet to shelter there.

M. STRASBURGER considered the procedure proposed by the Rapporteur very practical. The matter would be discussed at Danzig under the chairmanship of the High Commissioner so that it would be possible to have, in addition, the opinion of the Chairman of the Harbour Board. During the proceedings at Danzig, Dr. Sahm would be in a position to submit the observations which he had just made to the Council. The Polish Government, too, would make known its views. The President

of the Senate of the Free City had concluded by expressing the hope that this question would come before the Council in December. M. Strasburger hoped that it would be possible to settle it on the spot by negotiation between the Senate of the Free City and the Polish Government.

Dr. STRESEMANN said that he heartily associated himself with the hope expressed by the Polish representative that the Free City of Danzig and Poland would endeavour to arrive at a friendly settlement of the question before it was brought before the Council in December. In case, however, that hope proved too optimistic, he would be obliged to make the following remark. The President of the Council, in his capacity as Rapporteur, had raised the question of the desirability of referring at once to the Naval Sub-Committee the subject of the "port d'attache" at Danzig. The Rapporteur had said that in his opinion it was not desirable to do so.

Dr. Stresemann felt that it would be highly undesirable to refer this matter to the Naval Sub-Committee only at its next session and not before that date. If, however, that reference were necessary, it was at any rate essential to submit to the Sub-Committee certain quite definite questions. These questions might be formulated as follows: Is the work in the port of Gdingen sufficiently far advanced to meet the legitimate requirements of Poland in regard to its war fleet, or should the "port d'attache" at Danzig be retained at Poland's disposal pending the further development of the work at Gdingen?

Moreover, general international rules existed according to which the Danzig naval dockyards could, like any other shipyards, be placed at the disposal of Polish vessels for any repairs to be effected.

M. STRASBURGER said that the Polish Government was unable, and moreover did not desire to prevent the discussion in the Council, or in the technical organizations of the League, of questions affecting Poland and Danzig, in particular, that of the "port d'attache" at Danzig. Poland's only desire was that such questions should not be brought before the Council or before the other organs of the League and discussed by them until they had been adequately prepared on the spot. That was not the case with regard to the "port d'attache" at Danzig.

The question had been discussed six years ago, but had never been considered since that time. In his opinion, it was not yet sufficiently ripe for discussion by the organs of the League or by the Council.

He would accordingly propose more exhaustive investigations on the spot, the more so because he was not absolutely certain that the Naval Sub-Committee was competent to give an opinion on the question whether the port under construction at Gdingen was sufficiently far advanced or not. Furthermore, the Polish Government had not yet announced its view on this point.

The Polish Government consequently accepted the conclusion reached by the Rapporteur. It would furnish its explanations by the date indicated, namely, October 15th. It proposed to leave

the exhaustive examination of the matter in the first place to the authorities on the spot—the President of the Harbour Board and the High Commissioner.

The PRESIDENT, in his capacity as Rapporteur, said that he fully understood the wish expressed by Dr. Sahn that the question, like all other outstanding questions between Poland and Danzig, might be settled as soon as possible. He had had, however, to take account of Poland's desire to have sufficient time in which to submit the observations she thought necessary. It was for that reason that he had proposed October 15th as the time-limit for the transmission of the Polish observations to the High Commissioner. He hoped that the question would be settled by agreement between the Parties. If, however, that desire were not realized before November 15th he would propose that the Council should refer the records on the matter to the Naval Sub-Committee so as to give it all necessary information on the subject.

Dr. STRESEMANN fully concurred in the President's proposal. It had never been his intention to suggest that the question should be referred to the Naval Sub-Committee before negotiations had been carried out between Poland and Danzig and before the Council of the League had received full information from the competent authorities of Danzig and Poland. His wish was that, when negotiations were resumed next December the Council should be in possession of all the information it required on the subject, including the records of the Naval Sub-Committee. His wish had now received complete satisfaction in view of what the President had said.

M. STRASBURGER wished merely to add that Poland placed full reliance in the Naval Sub-Committee. His Government would accordingly be glad if the Sub-Committee were to examine the matter after the negotiations which were to take place at Danzig. All the records might be submitted to the Sub-Committee, which would examine them not merely with the object of enquiring whether the work in the port of Gdynia was sufficiently advanced or not—a question which was not within the competence of the Sub-Committee—but first and foremost in order to gain an idea of the whole problem.

Dr. STRESEMANN desired to point out that it was of course for the Sub-Committee itself to define its competence and its powers, which could not be laid down by only one of the Parties.

Dr. VAN HAMEL understood that in his report the President of the Council was proposing that negotiations should be conducted at Danzig not only with the object of definitely ascertaining the facts and of allowing the two Parties to expound their arguments, but also, and mainly, for the purpose of attempting to reach an agreement between them. Dr. van Hamel thought that the President of the Senate of the Free City would share entirely the hope expressed by the Polish Commissioner-General.

In view of this possible agreement for which it was his first duty to work on all occasions he felt that a method of procedure should be chosen for endeavouring to arrive at an agreement on the spot.

As regards the President's proposal, he therefore thought that the possibility of consulting naval experts on the spot should in no wise be excluded even during the negotiations to be held at Danzig under his own chairmanship. In that respect every right should be reserved, and it should be possible, if it seemed necessary, to have recourse to a naval expert who could be consulted on the spot, in accordance with the principles of the existing procedure. Such an expert being on the spot would then be able to give his opinion on any definite points submitted to him.

The High Commissioner especially hoped that this procedure would be put on record as a possible one, because it would increase the chance of an agreement on the spot.

Dr. SAHM gladly availed himself of the statement made by the High Commissioner to say that in this matter, as in all others, it was the desire and the ardent hope of the Free City to arrive at an arrangement with Poland by friendly negotiation.

The PRESIDENT thought that, in the circumstances, the report might be adopted. It was fully understood that Poland would have till October 15th to submit her observations, and that until November 15th every endeavour would be made to reach an agreement under the chairmanship of the High Commissioner, in accordance, as the High Commissioner had suggested, with the existing procedure.

He hoped that the negotiations would lead to the desired results, otherwise the whole question would be referred to the Naval Sub-Committee, which would be instructed to furnish such information as it thought necessary for a solution of the problem.

The conclusions of the report were adopted, together with the proposals made by the President.

Dr. Sahm and Dr. van Hamel withdrew.

No. 24.

MINUTES OF THE MEETING OF THE COUNCIL OF THE LEAGUE OF NATIONS, 8th DECEMBER 1927¹.

2087.—FREE CITY OF DANZIG: ACCESS TO AND ANCHORAGE IN THE PORT OF DANZIG FOR POLISH WAR-VESSELS.

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.

M. VILLEGAS read the following report:

"At its last session, in September 1927, the Council was called upon to consider afresh, on September 1st and 8th, 1927, the question then known as that of a 'port d'attache'² for Polish warships at Danzig'.

¹ Pour le texte français, voir *Société des Nations, Journal officiel*, IX^{me} année, n° 2 (févr. 1928), pp. 159-161. [*Note du Greffier.*]

² The Council was informed in document C. 570. M. 202. 1927. I, dated November 18th, 1927, that the Danzig and Polish Governments had agreed for the future to call the question of a "port d'attache for Polish warships at Danzig": "Access to and anchorage in the port of Danzig for Polish war vessels."

Minutes of the meeting of the Council of the League of Nations, 8th December 1927.

"At the meeting on September 8th, I had the honour to remind the Council, in my report, of the various stages through which the question had passed since it first came before the Council at its session in December 1920.

"At the close of the debate which followed the reading of my report, it was agreed that the Polish Government should be given until October 15th, 1927, to submit its observations on the question, and that until November 15th, 1927, an endeavour should be made to reach an agreement between the Parties by direct negotiation at Danzig, the High Commissioner presiding and the President of the Harbour Board attending if required. It was further decided that, if no such agreement was reached by that date, the whole question should be referred to the Naval Sub-Commission of the Permanent Advisory Commission, which would be instructed to furnish such information as it thought necessary for the solution of the problem. In addition, on the proposal of the High Commissioner, the Council considered that naval experts might be consulted during the negotiations at Danzig.

"In a letter dated November 15th (Annex 1004), which was communicated to the Council on November 19th, the High Commissioner informed the Secretary-General that he had been unable to submit the report referred to in the Council Resolution of September 8th, because it had not been possible for negotiations to take place between Poland and the Free City owing to various circumstances which he explained. The Polish Government forwarded its observations to the High Commissioner on October 15th, i.e., at the expiry of the time-limit fixed in the Council Resolution. The High Commissioner promptly informed the Senate of the Free City of the substance of these observations, and the Senate sent in its reply on November 10th. The notes of the two Parties have been communicated to the Council.

"The discussion which then took place at Danzig, under the direction of the High Commissioner, was confined to a statement by the President of the Senate of the Free City to the effect that Poland should not possess any right of access to and anchorage in the port for her war vessels, and that consequently the only question at issue was that of the application of the existing rules of international law relevant to the question. The President of the Senate stated that he was willing to enter at once into negotiations regarding these rules. The Polish representative said that he did not wish to discuss specifically a question of law, but that a practical solution must be found for the question by exhaustive negotiations. The President of the Senate said he was willing to negotiate until the representatives of Poland and the Free City left for Geneva, but the Polish representative, referring to the time-limit fixed in the Council Resolution of September 8th, demanded that not less than four weeks should be devoted to negotiations. The President of the Senate having rejected this proposal, the High Commissioner concluded that it was impossible to conduct the negotiations contemplated in the Council Resolution.

"In his letter of November 15th, the High Commissioner states that neither the President of the Danzig Harbour Board (consultation with whom had been recommended during the debate in

the Council) nor he himself has had any opportunity of going into the question with the Parties. He adds that he has not an opportunity of asking for the assistance of a naval expert.

"The cases submitted by the two Parties in the notes they have forwarded to the High Commissioner since the last session of the Council, together with the suggestions¹ made by certain members of the Council concerning the procedure to be followed in this matter, are contained in the documents which have been communicated to the Council. If the Members of the Council agree, it will not perhaps be necessary to enter into a detailed study of the information contained in these documents. It seems to me that the first essential is to settle the future procedure. I have been informed that the Danzig Government, referring to a declaration already made before the High Commissioner at Danzig, is now ready to suggest detailed proposals concerning a practical arrangement destined to allow Polish war vessels access to and anchorage in the port of Danzig, in accordance with the rules of international law. In these conditions, and leaving aside the legal aspect of the question, I think it would be desirable to invite once more the two Parties to engage in direct negotiations, under the presidency of the High Commissioner and with the assistance of the President of the Harbour Board. I trust that we shall thereby be in a position at our next session to take note of a final agreement between the two Parties. If, contrary to our expectations, no agreement has been reached four weeks before the opening of the next session of the Council, the High Commissioner should ask the Secretary-General to invite the President of the Naval Sub-Committee to appoint two experts to go to Danzig to assist the High Commissioner during the rest of the negotiations and enable him to present to the Council definite proposals regarding the technical regulations required.

"The arrangements for the consultation by experts, if necessary, should be made in conformity with the procedure fixed by the Council's Resolution of June 11th, 1925."

Dr. SAHM said that, in October 1921, the Government of the Free City had concluded with the Polish Republic a provisional agreement concerning access to and anchorage for Polish war vessels in the port of Danzig. Danzig had always denied the right of Poland to claim a *port d'attache*. The Free City had concluded a provisional agreement, following the advice of the Secretariat of the League of Nations, with the sole object of meeting the wishes of Poland, which at that time had no naval harbour of its own at its disposal. Now that this reason no longer existed, the Government of the Free City had denounced the provisional agreement by means of a declaration made last May. Accordingly, since May there had been no treaty or agreement in existence regulating the question, which meant that, as long as the Government of the Free City did not promulgate, unilaterally, special provisions relating to the matter, existing international regulations applied. On behalf of the Government of the Free City, he had declared himself ready, during the conversations

¹ See Doc. C. 587. 1927. I. [Not reproduced.]

which had taken place at Danzig, to accept those international regulations as a basis for the negotiations, for which there were still about three weeks available.

Now that the Polish Government had refused to negotiate at Danzig, and the question must again be discussed before the Council, he would have preferred the Council to take first a decision on the question of law, laying down that, under the treaties in force, Poland had no right to claim a *port d'attache* at Danzig. In view of the proposal of the Rapporteur, he would declare himself ready, reserving his legal case, to enter into the proposed negotiations.

The Government of Danzig had already considered the drafting of regulations concerning access to and anchorage of war vessels in the port of Danzig in time of peace. The Government of the Free City, in acting in this way, was inspired by three principles: the requirements of international courtesy; freedom of traffic; regard for the necessities of commerce. He was convinced that the application of those regulations would not give rise to any practical difficulties for Polish warships as regarded their access to and anchorage in the port of Danzig.

If, contrary to all expectations, direct negotiations between Danzig and Poland did not result in agreement, and if the High Commissioner, after having heard two experts, submitted further proposals to the Council, he naturally reserved to himself the right to bring forward all legal and other arguments relating to those proposals.

M. STRASBURGER said he would merely point out that Poland, as always, was prepared to enter into negotiations with Danzig on this question. His Government had indicated its point of view on October 15th. The Senate of Danzig now declared itself in agreement with that proposal. He accordingly thought that it would now be possible to settle the matter at Danzig, having special regard to the practical aspect of the question.

Dr. VAN HAMEL said that he had no observations to make.

M. VILLEGAS was happy to note that the President of the Free City of Danzig and the representative of Poland were agreed in principle. He hoped that it would be possible at the next session of the Council to record a final agreement on a question with which the Council had been dealing for so long.

He proposed that the Council should adopt the following resolution:

"The Council adopts the conclusions of the report submitted by the representative of Chile."

The conclusions of the report were adopted.

No. 25.

MINUTES OF THE MEETING OF THE COUNCIL
OF THE LEAGUE OF NATIONS, 8th SEPTEMBER 1928¹.

Minutes of
the meeting
of the Council
of the League
of Nations,
8th Septem-
ber 1928.

2256.—FREE CITY OF DANZIG: DANZIG-POLISH AGREEMENTS ON THE
"WESTERPLATTE" QUESTION AND ON THE QUESTION OF ACCESS
TO AND ANCHORAGE IN THE PORT OF DANZIG FOR POLISH WAR
VESSELS.

M. Sahm, President of the Danzig Senate, and M. van Hamel,
High Commissioner in Danzig, came to the Council table.

M. VILLEGAS read the following report and draft resolution²:

"With regard to the question of access to and anchorage in the
port of Danzig for Polish war vessels, the agreement just concluded
consists in the extension of the provisional agreement conclud-
ed on October 8th, 1921, which was denounced by Danzig on
May 20th, 1927. Danzig has withdrawn her denunciation, stating her
readiness to allow the agreement to remain in force; no denun-
ciation of this agreement can be made before July 1st, 1931.
In this case also the Parties have reserved their respective legal
positions.

"I venture to submit to the Council the following draft reso-
lution:

'The Council:

Notes the agreements concluded on August 4th, 1928,
between Danzig and Poland with regard to the question of the
Westerplatte and that of the access to and anchorage in the
port of Danzig for Polish war vessels;

Congratulates the Parties on the conclusion of these as
well as other agreements reported by the High Commissioner,
and expresses the hope that the negotiations regarding the
other questions still outstanding between Danzig and Poland
will be brought to a successful conclusion.'"

¹ Pour le texte français, voir *Société des Nations, Journal officiel*, IX^{me}
année, n° 10 (oct. 1928), pp. 1488-1489. [*Note du Greffier*.]

² Doc. C. 462. 1928. I.

7.

MÉMOIRE DU GOUVERNEMENT POLONAIS

[16 OCTOBRE 1931.]

Par requête en date du 19 septembre 1931, le Conseil de la Société des Nations a soumis à la décision de la Cour permanente de Justice internationale aux fins d'avis consultatif, conformément à l'article 14 du Pacte, la question suivante :

[*Voir p. 9.*]

La question qui est soumise à l'appréciation de la Cour a été longtemps désignée dans les documents de la Société des Nations sous la dénomination : « port d'attache pour les navires de guerre polonais ». Il résulte d'une communication du Haut-Commissaire de la Société des Nations à Dantzig, en date du 15 novembre 1927, que le Gouvernement polonais et le Sénat de la Ville libre de Dantzig se sont mis d'accord pour substituer à cette dénomination le titre suivant : « Accès et stationnement des navires de guerre polonais dans le port de Dantzig. » En conséquence, ces termes ont été repris dans le libellé de la question actuellement soumise à la Cour.

Il est indispensable, pour la bonne compréhension du problème, de rappeler les circonstances dans lesquelles la question dite à cette époque du port d'attache des navires de guerre polonais à Dantzig s'est posée devant les organes de la Société des Nations. L'examen des documents démontre clairement que cette question s'est trouvée liée dès son origine aux deux considérations fondamentales qui ont joué un rôle absolument décisif dans la résolution des Puissances alliées et associées de constituer Dantzig en Ville libre. Ces Puissances ont voulu, d'une part, assurer à la Pologne « un libre et sûr accès à la mer », condition d'une vie économique indépendante ; à cette fin, elles lui ont accordé dans le port et dans les voies d'eau de Dantzig des droits particulièrement étendus¹. C'est pour atteindre ce but qu'elles ont entendu, d'autre part, « établir entre la Ville libre et la Pologne les relations les plus intimes ». Dans une communication adressée au nom de la Conférence des Ambassadeurs, le 20 octobre 1920, par M. Cambon au Secrétaire général de la Société des Nations, on relève le passage suivant :

« Ainsi qu'en témoigne la réponse faite, le 16 juin 1919, par les Puissances alliées et associées aux Remarques de la

¹ Réponse faite le 16 juin 1919 par les Puissances alliées et associées aux Remarques de la délégation allemande sur les Conditions de paix.

délégation allemande sur les Conditions de paix, l'intention des Puissances, en constituant en Ville libre Dantzig et le territoire visé à l'article 100 du traité, a été d'établir entre la Ville libre et la Pologne les relations les plus intimes. Elles voulaient, en effet, rendre à la Pologne un libre accès à la mer. A cette fin, la Ville libre a été placée en dedans des limites de la frontière douanière polonaise; la Pologne s'est vu reconnaître le contrôle et l'administration des communications postales, télégraphiques et téléphoniques entre elle et le port où elle jouit, d'autre part, de droits étendus; enfin, la conduite des affaires extérieures de la Ville libre lui appartient. »

De ces deux considérations essentielles : 1) nécessité d'assurer à la Pologne un libre accès à la mer ; 2) établissement de liens intimes entre la Ville libre et la Pologne, la Conférence des Ambassadeurs a déduit tout aussitôt une conséquence qui est en rapport direct avec la question soumise à la Cour. Ici encore on ne peut mieux faire que de citer le texte même de la lettre de M. Cambon :

« Aussi bien en raison de l'étroite liaison ainsi établie entre la Ville libre et la Pologne qu'en considération de la volonté clairement exprimée des Puissances signataires du Traité de Versailles de donner à la Pologne un libre accès à la mer, le Gouvernement polonais paraît donc désigné pour recevoir de la Société des Nations le mandat d'assurer éventuellement la défense de la Ville libre. »

Cette opinion a été expressément confirmée par une résolution du Conseil de la Société des Nations du 17 novembre 1920. Le Conseil, approuvant les conclusions de son rapporteur, s'exprime comme suit :

« Le Conseil décide que :

Le Gouvernement polonais paraît particulièrement désigné pour recevoir éventuellement de la Société des Nations la tâche d'assurer la défense de la Ville libre ;

La Commission permanente consultative militaire, navale et aérienne est chargée d'examiner les mesures qui permettront d'assurer le plus efficacement possible la défense de Dantzig dans les cas mentionnés dans le rapport du représentant du Japon. »

Ainsi le Conseil a fait sienne et a transformé en une résolution expresse l'opinion de la Conférence des Ambassadeurs : l'idée du mandat polonais de défense de la Ville libre. Cette notion de défense est énoncée dans les termes les plus généraux : elle s'étend à la défense maritime aussi bien qu'à la défense terrestre. C'est, du reste, dans ces termes tout à

fait généraux que le rapport du représentant du Japon avait envisagé le problème de la protection de la Ville libre en cas de conflit international armé. Particulièrement important est le passage suivant où le rapporteur, prévoyant le cas d'une agression, menace ou danger d'agression contre la Ville libre, le vicomte Ishii s'est exprimé comme suit : « Autant qu'il est possible de le prévoir actuellement, le Conseil de la Société, ayant en vue l'intérêt tout particulier de la Pologne de sauvegarder la Ville libre de Dantzig contre toute occupation étrangère, s'adressera certainement à la Pologne pour lui demander de prêter main-forte pour la défense du territoire de la Ville libre. ».

Ainsi, en formulant le principe du mandat de défense, le Conseil de la Société des Nations, à l'exemple de la Conférence des Ambassadeurs, s'est inspiré des deux considérations fondamentales rappelées ci-dessus. Il a tenu compte et de l'existence des liens intimes que la création de la Ville libre implique entre Dantzig et la Pologne, et des intérêts économiques essentiels que représente pour la Pologne le libre accès à la mer, ainsi que de la protection des droits concédés à cet effet à la Pologne par l'article 104 du Traité de Versailles. C'est sur la base de ces deux intérêts indissolublement unis que le Conseil a déclaré le Gouvernement polonais « particulièrement désigné pour recevoir éventuellement de la Société des Nations la tâche d'assumer la défense de la Ville libre ».

Le principe admis, la nécessité s'imposait de lui donner une organisation adéquate, prévue d'ailleurs dans la résolution précitée du Conseil. C'est à cette fin que, par lettre du 5 mars 1921, le Gouvernement polonais s'adressa au Conseil de la Société des Nations en demandant d'assurer à la Pologne le droit au libre accès à la mer par le port de Dantzig, reconnu par le Traité de Versailles et la Convention polono-dantzikoise du 9 novembre 1920. En énumérant la série de droits concrets résultant du libre accès à la mer, le Gouvernement polonais pria entre autres le Conseil de décider qu'un point d'attache dans le port de Dantzig fût mis à la disposition du Gouvernement polonais pour assurer le stationnement, le ravitaillement et l'entretien des navires de guerre polonais.

Ainsi la question se trouvait nettement posée. Elle l'était, il convient d'insister sur ce point, non pas, ainsi que l'a soutenu le Sénat de la Ville libre, en considération de certains besoins urgents et momentanés, besoins auxquels il avait déjà été pourvu¹, mais sur le terrain des principes qui

¹ Dans sa séance du 27 novembre 1920, la Sous-Commission navale de la Société des Nations avait, en vue de ces besoins momentanés, ajouté à son rapport le paragraphe suivant : « 7° Que, sans attendre le résultat des études d'organisation défensive de la Ville libre, il convient d'attribuer au Gouvernement polonais dans le port de Dantzig un emplacement suffisant pour assurer l'abri et l'entretien des petites unités navales qui lui ont été concédées par les Alliés pour la police de ses eaux. »

ont présidé à la création même de la Ville libre et, par conséquent, **sur le terrain du droit.**

Dans sa session de juin 1921, le Conseil de la Société des Nations a statué par deux résolutions en date du même jour (22 juin) sur la défense de la Ville libre et sur la question soulevée par la lettre précitée (5 mars 1921) du Gouvernement polonais.

La première résolution, relative à la défense de la Ville libre, contient, relativement à la défense terrestre, certaines dispositions qui : 1° confirment expressément le titre particulier du Gouvernement polonais pour assurer éventuellement la défense de Dantzig, ainsi que le maintien de l'ordre sur le territoire de la Ville libre ; 2° déterminent dans quelles éventualités et moyennant quelles conditions une invitation pourra être adressée à cette fin au Gouvernement polonais.

Relativement à la défense maritime, le Conseil a pris les résolutions suivantes :

« 6. Le Conseil n'estime pas nécessaire de déterminer dès à présent dans quelles conditions serait assurée la défense maritime de Dantzig.

7. Toutefois, il y a lieu de demander au Haut-Commissaire d'étudier le moyen de créer dans le port de Dantzig, sans établir une base navale, un port d'attache pour les navires de guerre polonais. »

La portée de cette double décision est parfaitement claire. Le point 6 ne remet pas le moins du monde en question le principe antérieurement admis de la défense même maritime de Dantzig par la Pologne. Au contraire, il implique clairement que ces principes restent absolument intacts, puisque le Conseil se borne à surseoir à son organisation. Cette attitude pouvait s'expliquer très simplement par le fait qu'à cette époque la Pologne ne disposait pas d'unités navales suffisamment nombreuses et importantes pour pouvoir, dès ce moment, assurer de façon effective la défense maritime de la Ville libre.

Le Conseil n'entend cependant pas que ce sursis s'applique au droit de la Pologne d'obtenir un point d'attache pour ses navires de guerre à Dantzig. Aussi ajoute-t-il immédiatement et en liaison directe avec le point précédent : « Toutefois, il y a lieu de demander au Haut-Commissaire d'étudier le moyen de créer dans le port de Dantzig, sans établir une base navale, un port d'attache pour les navires de guerre polonais. » La liaison est encore soulignée par le passage suivant du deuxième rapport adopté le même jour (22 juin) par le Conseil relativement à la demande d'un point d'attache contenue dans la lettre du Gouvernement polonais en date du 5 mars 1921. Le rapporteur s'y exprimait comme suit :

« Au sujet de la question du point d'attache dans le port de Dantzig, je me référerai à la décision déjà prise au sujet de la défense de la Ville libre de Dantzig. D'après cette décision, il y a lieu de demander au Haut-Commissaire d'étudier le moyen d'installer dans le port de Dantzig, sans établir de base navale, un port d'attache pour les navires de guerre polonais. La même règle doit être appliquée aux navires affectés à la police maritime polonaise. »

On ne peut mettre un instant en doute que ces deux résolutions très étroitement coordonnées entre elles impliquent la reconnaissance à la Pologne d'un véritable droit à établir un port d'attache à Dantzig. On s'accorde, en effet, à reconnaître que l'interdiction contenue dans la résolution du Conseil d'établir une base navale constitue une décision de droit. Pour quel motif attribuerait-on un caractère différent à la décision évidemment impliquée dans la même phrase qui prévoit l'installation d'un port d'attache? La distinction que le Sénat de la Ville libre a voulu introduire sous ce rapport manque de toute base. Le rapport du vicomte Ishii venait de poser nettement et dans toute son ampleur le problème de la défense de la Ville libre. La lettre du Gouvernement polonais du 5 mars 1921 revendiquait sur la base du droit fondamental d'accès à la mer un port d'attache à Dantzig. De part et d'autre, les intérêts les plus essentiels liés à l'érection de la Ville libre se trouvaient en jeu. Le Conseil se devait de rendre une décision de principe propre à renfermer dans de justes limites les prétentions de chacun. Il se devait de rendre une décision qui, tenant compte de l'interdiction prononcée **en droit** de la création d'une base navale, fût au même titre une décision **de droit** relativement à l'installation du port d'attache.

C'est en vain que le Sénat de la Ville libre, dans une note adressée le 10 novembre 1927 au Haut-Commissaire de la Société des Nations, a tenté de minimiser la portée de ces résolutions en disant qu'elles ne comportaient qu'une invitation au Haut-Commissaire de procéder à un examen et qu'elles n'impliquaient nullement la reconnaissance d'un droit. Cette façon de présenter les choses est inexacte; elle est en contradiction avec les termes mêmes de la formule employée par le Conseil. Celui-ci demande au Haut-Commissaire de mettre à l'étude les moyens pratiques de créer un port d'attache pour les navires de guerre polonais. **Cette demande impliquait de toute évidence une décision ferme prise par le Conseil quant au principe de cette création.** Il est tout naturel et parfaitement logique que, le principe admis, le Conseil ait chargé le Haut-Commissaire d'en étudier les modes de réalisation pratique, question qui ne pouvait être décidée que sur place

et qui rentrait donc tout naturellement dans l'ordre de ses attributions.

L'examen de divers documents, les uns antérieurs aux résolutions du 22 juin 1921, les autres postérieurs, confirment de la façon la plus nette que, dans cette question, la Conférence des Ambassadeurs d'abord, les organes de la Société des Nations ensuite, ont eu en cette matière une doctrine nettement arrêtée et que leurs décisions ne présentent aucunement le caractère d'une simple réglementation de fait qui aurait laissé subsister sans solution la question de droit.

Dès le 7 mai 1920, une résolution de la Conférence des Ambassadeurs avait décidé :

« 1° Il y a lieu de conclure, dans le plus bref délai, la convention visée à l'article 104 [Traité de Versailles] ;

« 2° La Pologne ne saurait toutefois être autorisée à établir à Dantzig une base militaire ou navale. »

La liaison établie par le texte entre les deux points de cette résolution est tout à fait caractéristique. En même temps qu'elle presse les Parties de conclure la convention qui est destinée à assurer à la Pologne le libre accès à la mer, la Conférence des Ambassadeurs déclare que ce but peut être atteint sans constitution d'une base navale. Si l'on rapproche cette décision des résolutions prises le 22 juin 1921 par le Conseil, on se rend compte de la parfaite continuité de vues dont témoignent ces dernières. Le Conseil, comme la Conférence des Ambassadeurs, a écarté l'idée de la création d'une base navale ; mais en même temps il a déclaré conciliable avec cette interdiction l'idée du port d'attache dont il décide la création.

L'article 104 du Traité de Versailles, ainsi que les articles de la Convention de Paris qui en constituent l'exécution, ont accordé à la Pologne des droits dont l'importance est vitale pour elle, puisqu'il a été reconnu qu'ils sont la condition d'une vie économique indépendante (Réponse des Puissances alliées et associées aux Remarques de la délégation allemande sur les Conditions de paix). Or, ces droits peuvent éventuellement être mis en danger, et la nécessité d'assurer leur protection n'a certainement pas échappé au Conseil de la Société des Nations lorsque, approuvant le rapport précité du vicomte Ishii qui souligne « l'intérêt tout particulier de la Pologne à sauvegarder Dantzig contre toute occupation étrangère », il s'est prononcé en faveur d'un mandat de défense à accorder éventuellement à la Pologne. Le Conseil a entendu que la protection du libre accès fût assurée là même où il pouvait se trouver le plus dangereusement menacé ; il a confié cette protection à l'État polonais comme étant le plus directement intéressé. C'est à ce titre qu'il a décidé la création du port d'attache.

2. Ainsi donc, si, pour assurer à la Pologne le libre accès à la mer que devait lui garantir la convention prévue à l'article 104 du Traité de Versailles, il n'a pas été jugé nécessaire de lui accorder une base navale à Dantzig, le Conseil a reconnu la légitimité de la demande d'un port d'attache que lui avait adressée, en connexion étroite avec le droit au libre accès à la mer, le Gouvernement polonais par sa lettre du 5 mars 1921. C'est au même titre, c'est-à-dire au titre de décisions rendues en droit, que le Conseil écarte la création d'une base navale et concède l'installation d'un port d'attache. L'examen de divers documents postérieurs aux résolutions du 22 juin 1921 conduit à la même conclusion. Investi de la mission d'organisation pratique que lui ont conféré ces résolutions, le Haut-Commissaire, général Haking, s'est aussitôt rendu compte que la mise à exécution de la décision du Conseil exigeait une compréhension exacte de la distinction à maintenir entre la notion de **base navale** et celle de **port d'attache**. Dans son rapport au Conseil du 10 septembre 1921, il expose les difficultés auxquelles on se heurte pour définir ces deux termes. Pour le surplus, les propositions contenues dans son rapport tendent à mettre sur pied le régime prévu par les résolutions du Conseil, régime qui, sans créer une base navale, accorderait à la Pologne les droits inhérents à la notion du port d'attache.

Les propositions faites dans cet ordre d'idées par le Haut-Commissaire peuvent se résumer comme suit :

a) Il ne convient pas d'accorder à la Pologne des installations à terre, mais seulement des installations de quai auprès desquelles les navires de guerre pourraient s'abriter et qui seraient toujours disponibles pour cet usage.

b) Il devrait être reconnu au Haut-Commissaire le droit de demander le retrait de navires de guerre polonais dans les cas où il jugera utile de prendre cette mesure.

c) La Pologne doit toutefois posséder pour ses navires de guerre certains privilèges supérieurs à ceux accordés à d'autres Puissances étrangères : ce privilège principal sera justement le droit de la Pologne à un port d'attache où ses navires stationneraient aussi longtemps qu'il lui plairait.

d) Il conviendrait de reconnaître en principe qu'en liaison avec l'interdiction insérée dans la Constitution de Dantzig d'établir une base navale, les navires de guerre polonais ne peuvent séjourner dans le port de Dantzig que sur consentement du Sénat, mais que, vu « les relations particulières de la Pologne et de Dantzig », il est possible d'accorder à la Pologne le moyen de mettre ses bateaux à l'ancre ou à quai pour son usage permanent, et d'édicter ensuite des règlements qui garantissent les droits à la fois de la Société des Nations et du Gouvernement de la Ville libre.

Enfin, le général Haking proposait de soumettre l'ensemble de la question à l'avis des experts navals du Conseil de la Société des Nations.

Ainsi que l'indique très exactement le rapport du vicomte Ishii au Conseil du 16 septembre 1921, « le **Haut-Commissaire discutait la question de savoir sous quelles conditions les navires polonais peuvent rester indéfiniment dans le port de Dantzig sans que celui-ci soit une base navale** ». Encore une fois, le rapporteur du Conseil montre clairement dans ce passage qu'à ses yeux la question est nettement posée sur le terrain des principes.

En somme, il ressort clairement du rapport du général Haking :

a) Que, malgré l'interprétation très restrictive du droit accordé à la Pologne par le Conseil de la Société des Nations, le général Haking n'en établit pas moins que ce droit signifie l'usage permanent, sans limitation de séjour et sans aucune condition dirimante, du port de Dantzig pour les navires de guerre polonais, ainsi que la possession à cette fin d'un emplacement désigné dans le port.

b) Le général Haking reconnaît plus loin que les navires de guerre polonais doivent bénéficier de plus grands privilèges que les navires d'autres Puissances étrangères : solution qui s'imposait d'ailleurs, attendu qu'une interprétation différente des résolutions du 22 juin eût conduit à enlever toute signification quelconque à la décision du Conseil de créer en faveur des navires de guerre polonais un port d'attache à Dantzig.

c) Nonobstant son interprétation extensive des droits du Sénat, interprétation erronée, suivant le Gouvernement polonais, le général Haking, prenant très justement en considération **les relations particulières de la Pologne et de Dantzig**, a reconnu possible d'accorder à la Pologne le droit à un poste d'amarrage permanent avec recommandation d'édicter par la suite un règlement établissant les droits de la Société des Nations et des autorités dantziennes.

Conformément aux propositions du Haut-Commissaire, le Conseil transmet le 16 septembre 1921 la question du port d'attache à l'examen de la Commission permanente consultative pour les questions militaires, navales et aériennes.

En vue de cet examen, la Ville libre a exposé son point de vue dans un mémoire en date du 20 septembre 1921. En ordre principal, le Sénat s'appliquait dans ce document à combattre l'idée que les navires polonais bénéficient dans le port de Dantzig d'un régime privilégié. D'après lui, l'octroi de tout privilège impliquait création d'une base navale. Thèse manifestement insoutenable, parce qu'en contradiction évidente avec la décision du Conseil du 22 juin : en reconnaissant à

la Pologne un droit à un port d'attache, le Conseil lui avait évidemment reconnu du même coup des droits spéciaux, supérieurs à ceux dont jouissent les navires de guerre d'après les règles du droit international commun ; en distinguant la notion de port d'attache de celle de base navale, il avait tout aussi clairement indiqué que la concession des droits spéciaux liés à la notion de port d'attache était compatible avec l'interdiction d'une base navale. Aussi bien, se rendant compte que son argumentation aboutit à mettre le Conseil en contradiction avec lui-même, le Sénat s'est-il trouvé amené, dans la troisième partie de son mémoire précité, à formuler les considérations suivantes :

« Si la résolution du Conseil de la Société des Nations doit être interprétée dans ce sens que la Pologne doit obtenir tout au moins le droit d'établir un port d'attache dans le port de Dantzig, on devra en tirer la conclusion que les vaisseaux de guerre polonais auront dans le port de Dantzig des droits supérieurs aux navires de guerre des autres nations, nonobstant les deux principes énoncés au paragraphe I.

« D'une façon générale, les navires de guerre de toutes les nations ont le droit de faire usage du port de Dantzig, mais seulement conformément aux règlements généraux de police et avec les restrictions auxquelles ils doivent se plier quant à leur emplacement et à la durée de leur séjour sous les ordres des autorités dantzikoises. En envisageant le droit au « port d'attache », on pourrait apporter une exception au principe ci-dessus en faveur des navires polonais en les déchargeant de l'obligation d'annoncer leur arrivée et en leur assurant un mouillage permanent.

« Mais, afin d'empêcher que l'on porte préjudice aux intérêts de la navigation de commerce, ainsi qu'au libre accès à la mer de la Pologne, le Gouvernement polonais devra toujours faire savoir le nombre de navires qu'il désire faire mouiller dans le port de Dantzig. En ce qui concerne la durée de leur séjour, les navires de guerre polonais ne devront être soumis à d'autres restrictions que celles qui s'appliquent également aux navires de commerce (voir II b). Mais le Gouvernement dantzikois devra se réserver le droit de prier les navires polonais de quitter le port si des circonstances spéciales l'exigeaient. »

Ainsi, dans ce passage, le Sénat lui-même reconnaît que le droit à un port d'attache signifie un traitement privilégié des navires de guerre polonais dans le port de Dantzig, et surtout tout au moins leur exemption du devoir d'être précédemment annoncés aux autorités dantzikoises, ainsi que la garantie d'un mouillage permanent sans restrictions de séjour dans le port.

La Sous-Commission navale de la Commission permanente consultative a présenté le 24 septembre 1921 son rapport au Conseil de la Société des Nations. Il est nécessaire de fixer très nettement le caractère de ce document. Le rapport en question n'a été ni examiné ni approuvé par le Conseil, ni accepté par les Parties. Du point de vue juridique, il ne possède donc aucune autorité et est dénué de tout caractère obligatoire. On ne peut le considérer, par conséquent, que comme l'expression de l'opinion d'experts, intéressante au point de vue des précisions qu'il contient relativement aux droits que comporte la notion du port d'attache ; on ne saurait d'aucune façon le considérer comme un acte susceptible de changer ni même d'interpréter les droits reconnus à la Pologne par le Conseil de la Société des Nations.

Ceci dit, le rapport de la Sous-Commission appelle deux observations :

1° Ainsi que nous l'avons vu, la consultation de la Sous-Commission navale avait été motivée avant tout par les hésitations qu'éprouvait le général Haking à fixer les notions de **port d'attache** et de **base navale**. On aurait pu s'attendre à voir la Sous-Commission s'attacher avant tout à élucider cette question. Elle a cependant compris un peu différemment son rôle, et elle a mis sur pied un projet de règlement fixant les conditions de l'usage du port de Dantzig par la Pologne.

A ce point de vue, ses suggestions, d'ailleurs importantes, se ramenaient aux points suivants :

a) les vaisseaux de guerre polonais posséderont, en tout temps, le droit d'abri et de quaiage dans le port de Dantzig ;

b) à cet effet, il leur sera loué à bail par la Ville libre un emplacement permanent, avantageusement situé au même endroit que celui destiné au débarquement du matériel polonais en transit ;

c) ils auront le droit de passage dans les eaux maritimes et fluviales du territoire de la Ville libre ;

d) des terre-pleins, correspondant à leurs quais d'amarrage, leur seront concédés à bail pour y établir des approvisionnements de combustible et de matériel de toutes sortes, nécessaires à leur navigation et à leur entretien ;

e) il est interdit aux sous-marins de pénétrer en plongée dans les eaux territoriales de la Ville libre ;

f) les navires pourront prendre dans le port les munitions amenées directement par les bateaux fluviaux ou expédiées directement à Dantzig par les manufactures étrangères.

Ainsi donc, la Sous-Commission, dont l'autorité technique ne saurait assurément être mise en doute, s'est trouvée amenée à formuler largement les droits qu'implique la notion de port d'attache en accordant aux navires de guerre non seulement

le droit de stationnement permanent et d'approvisionnement, mais aussi celui de ravitaillement en munitions dans le port de Dantzig.

2° Le rapport de la Sous-Commission contient le passage suivant : « Si l'on accorde à la Pologne le privilège d'utiliser Dantzig comme port d'attache, il conviendrait de ne le lui donner que jusqu'au moment où ce nouveau port polonais [de Gdynia] sera achevé. » Il est clair que par cette suggestion la Sous-Commission navale n'a pu ni voulu porter atteinte, si peu que ce fût, aux droits que la résolution du Conseil du 22 juin 1921 avait reconnus à la Pologne. Nous savons que, par cette résolution, le Conseil lui avait concédé le droit à l'installation d'un port d'attache, et ceci de façon absolue et pour un temps indéterminé, en se bornant à exclure la création d'une base navale. La tâche de la Sous-Commission devait donc se borner à fixer les conditions techniques d'utilisation du port de Dantzig par les navires polonais de manière à rester dans les limites de la notion du port d'attache.

La Sous-Commission navale n'a donc pu songer un seul instant à remettre en question les droits que la Pologne possédait à titre permanent, en vertu des résolutions du Conseil, pour ses navires de guerre à Dantzig. En réalité, cette dernière question ne fut aucunement abordée par la Sous-Commission. La réserve que celle-ci a formulée relativement à la période d'achèvement du port de Gdynia s'explique donc par la circonstance qu'ayant à examiner la question non du point de vue juridique, mais du point de vue technique et pratique, elle s'est préoccupée uniquement de préciser les droits particulièrement larges qu'il y avait lieu de reconnaître immédiatement à la Pologne en attendant l'achèvement du port de Gdynia. C'est aussi l'urgence d'un arrangement, en raison de l'approche de l'hiver, qui explique que l'expert polonais à la Sous-Commission se soit prononcé en faveur de cette idée. Les droits spécifiquement prévus à cette fin et l'organisation détaillée qui leur était donnée pouvaient ne pas devoir être maintenus de façon permanente.

C'est également parce qu'elle s'est placée à ce point de vue d'intérêt pratique que la Sous-Commission a passé sous silence la question qui avait vivement préoccupé le Haut-Commissaire de la distinction à tracer entre la notion de port d'attache et celle de base navale.

La nécessité d'un règlement rapide de la question, toute question de droit réservée — bien que cette question fût tranchée aux yeux du Gouvernement polonais —, a déterminé vers la même époque le Gouvernement polonais et le Sénat de la Ville libre à conclure un arrangement provisoire. Cet arrangement provisoire, conclu le 8 octobre 1921, a été — malgré une dénonciation faite par le Sénat de Dantzig en 1927

— maintenu en vigueur jusqu'au 15 septembre 1931. Les termes sont les suivants :

« 1° La Pologne désire continuer à faire usage du port de Dantzig pour ses bâtiments de guerre jusqu'à ce que la question d'un port d'attache ait été réglée par le Conseil de la Société des Nations.

« 2° La Pologne notifiera au président du Sénat de Dantzig le nombre des bâtiments qu'elle désire conserver dans le port, et le président du Sénat ne soulèvera aucune objection au séjour de ces bâtiments dans le port.

« 3° Le Conseil du Port fournira les emplacements nécessaires.

« 4° Le présent accord n'engagera aucune des Parties en ce qui concerne tout accord ultérieur conclu éventuellement sur le sujet entre les États ou toute décision du Conseil. »

Il ressort clairement de ces dispositions que cet accord ne constitue qu'un arrangement purement pratique, chacune des Parties réservant expressément son point de vue de droit, ainsi que la faculté d'en appeler ultérieurement à la Société des Nations. Pour le surplus, deux points doivent être soulignés :

1° Le principe du port d'attache n'est pas mis en question. La Pologne exprime son désir de continuer à faire usage du port pour ses navires de guerre. Les termes « jusqu'à ce que la question d'un port d'attache ait été réglée par le Conseil » constituent une formule neutre, volontairement choisie par les Parties qui, de part et d'autre, réservaient leur opinion en droit.

2° L'accord ne limite pas les droits de la Pologne en ce qui concerne leur durée : il est essentiel d'observer qu'il ne les fait aucunement dépendre de l'achèvement du port de Gdynia.

Il convient de souligner que, par décision du Haut-Commissaire, comte Gravina, en date du 19 septembre courant, décision acceptée par les Parties, l'état de choses créé par l'arrangement provisoire de 1921 a été maintenu en vigueur jusqu'au règlement définitif de l'affaire.

Le 7 décembre 1921, le Haut-Commissaire de Dantzig, général Haking, dépose son rapport définitif. Ce document a une importance toute particulière en raison tout d'abord de la grande expérience à la fois administrative et militaire de son auteur, ensuite et surtout en raison du fait qu'il a été établi en pleine connaissance de tous les éléments de droit et de fait qui avaient été l'objet des discussions entre Parties, ainsi que des délibérations de la Sous-Commission navale.

Le rapport du général Haking débute par cette très juste appréciation :

« L'établissement dans le port de Dantzig d'un port d'attache pour les vaisseaux de guerre polonais est, du point de vue de Dantzig, presque entièrement une question d'ordre politique, tandis que du point de vue de la Pologne elle pourrait être une question d'ordre administratif. Il n'y a aucune raison d'ordre administratif pour que la Pologne ne reçoive pas certains postes d'amarrage fixes pour ses bateaux, où ils pourront subir les réparations nécessaires, trouver leur combustible en pétrole ou en charbon et embarquer des approvisionnements de toute nature. »

Quant au stationnement des navires de guerre polonais dans le port de Dantzig, le général Haking propose l'allocation aux navires de guerre polonais de postes d'amarrage suffisants, où ils pourront séjourner aussi longtemps qu'il sera nécessaire sous certaines réserves et conditions qu'il spécifie. Il est important de remarquer que le Haut-Commissaire, bien que connaissant les propositions de la Sous-Commission navale, s'abstient délibérément de reproduire la suggestion de cette dernière qui limite la durée de ces droits à la période de temps nécessaire à l'achèvement du port de Gdynia.

D'après les propositions du Haut-Commissaire, les navires de guerre polonais pourraient utiliser de façon permanente le port de Dantzig sans avoir à informer de chaque arrivée ni les autorités dantziennes ni les autorités du port. Le Haut-Commissaire, le Sénat et le président du Conseil du Port ne devraient recevoir notification que du nombre global des bâtiments de guerre qui séjourneront dans le port et du total de leurs effectifs, ainsi que de toutes augmentations ultérieures qui pourraient se produire soit dans le nombre des bâtiments, soit dans les effectifs des équipages. Modifiant ses premières propositions, le général Haking reconnut que le Conseil du Port doit affecter également à la Pologne des terrains pour des dépôts destinés au ravitaillement des navires, et que ceux-ci pourraient aussi s'y approvisionner en matériel de guerre, même en explosifs, sans que des dépôts spéciaux soient installés à cette fin, mais par transbordement direct des navires ou des wagons de chemins de fer. Au lieu du droit du Haut-Commissaire, prévu dans les propositions précédentes, d'ordonner, en tout temps, le retrait des navires, le général Haking propose la dénonciation par le Sénat du droit de séjour, avec cependant la faculté pour la Pologne de recourir au Haut-Commissaire, conformément à la voie prévue à l'article 39 de la Convention de Paris. Ces propositions furent portées à la connaissance des Parties avec la suggestion d'un accord à conclure entre elles.

Bien que les Parties n'eussent pas réussi à s'entendre, elles renoncèrent pour l'instant, vu l'accord provisoire précédemment

intervenue, à une procédure devant le Conseil de la Société des Nations, qui, par résolution du 12 janvier 1922, décida d'ajourner l'affaire.

A partir de cette date il n'y a plus de changement à relever dans l'état de la question. La démarche du Sénat de Dantzig auprès du Conseil de la Société des Nations en date du 2 août 1927, dont il sera question ci-après, n'apportera au développement de l'affaire aucun élément nouveau. Le point de droit se trouvant expressément réservé entre les Parties, l'arrangement provisoire du 8 octobre 1921 régit désormais leurs relations.

De cet aperçu historique, qui est à la base de la revendication par la Pologne d'un droit d'accès et de stationnement pour ses navires de guerre à Dantzig, se dégagent les conclusions suivantes :

A) Tenant compte tout à la fois du principe dominant du libre et sûr accès de la Pologne à la mer, principe consacré par le Traité de Versailles et développé par la Convention de Paris, et de l'idée du mandat éventuel de la Pologne de défendre la Ville libre, le Conseil de la Société des Nations a reconnu à la Pologne le droit à un port d'attache pour ses navires de guerre dans le port de Dantzig. Ce droit a été accordé purement et simplement ; il n'a été limité à aucune période de temps ni subordonné à aucune condition quelconque. En particulier, ce droit est complètement indépendant de la construction d'un port quelconque sur le littoral polonais.

B) Le Haut-Commissaire, général Haking, qui a examiné à deux reprises les conditions de la réalisation de ce droit, reconnu chaque fois qu'il implique : a) le droit des navires à s'abriter dans le port pendant le temps voulu et sans préavis aux autorités dantziennes ; b) le droit de faire usage d'un poste permanent d'amarrage des navires ; c) le droit de se ravitailler dans le port de Dantzig en matériel de navigation et en combustible ; d) enfin, le droit d'utiliser le chantier et les docks dantziens. Lors de l'examen repris par lui après réception du rapport de la Sous-Commission navale, le Haut-Commissaire compléta ces droits : a) par le droit d'utiliser des terre-pleins sur le quai pour le dépôt de matériel de toute sorte ; b) le droit de s'approvisionner en munitions de guerre et en explosifs.

Le Haut-Commissaire n'a jamais considéré ces droits comme conditionnés à l'avancement des travaux dans le port de Gdynia.

* * *

Par lettre du 2 août 1927, le Sénat de la Ville libre porta à nouveau l'affaire devant le Conseil de la Société des Nations.

Le Sénat lui demandait de reconnaître que la Pologne n'a pas le droit à un port d'attache à Dantzig, ni aucuns droits pour ses navires autres que ceux dont jouissent les navires d'autres Puissances. La thèse du Sénat se résumait comme suit :

1° Le motif le plus important pour lequel Dantzig avait consenti à signer l'Accord du 8 octobre 1921, consistait dans le fait qu'à ce moment la Pologne ne possédait pas sur son littoral de port où ses navires pussent venir s'abriter.

2° A cette heure, la Pologne possédait à Gdynia un port complètement construit.

3° La Sous-Commission navale s'était exprimée en ce sens que la Pologne ne pouvait jouir du droit de posséder un port d'attache que jusqu'au moment où le port de Gdynia serait terminé.

4° Le droit à un séjour de durée indéterminée et sans préavis des navires polonais dans le port de Dantzig est une violation de la disposition de la Constitution dantzigoise aux termes de laquelle il est interdit d'établir une base navale à Dantzig.

5° D'importantes raisons d'ordre économique militaient contre le séjour dans le port de Dantzig de navires de guerre dont la présence gênait le trafic commercial.

Le Gouvernement polonais ne peut admettre la justesse de cette argumentation.

La thèse juridique qui est à sa base est erronée. Il est foncièrement inexact de vouloir limiter les droits d'accès et de stationnement des navires de guerre polonais à Dantzig selon les règles du droit international commun applicable aux navires de guerre dans les ports étrangers. A ce droit général déroge le droit spécial, institué par les résolutions du Conseil de la Société des Nations, établissant le principe d'un port d'attache en faveur des navires de guerre polonais. On connaît les considérations qui ont déterminé le Conseil à édicter ces résolutions (voyez *supra*).

Le Conseil n'ignorait pas non plus que précisément dans une question très voisine qui, elle aussi, met en jeu tout à la fois le libre accès de la Pologne à la mer et les intérêts militaires polonais, la Convention de Paris contient un article qui impose à la Ville libre au profit de la Pologne une obligation très spéciale, qui déroge également dans le même ordre d'idées au droit international commun. Cette disposition est l'article 28 ainsi conçu :

« En tout temps et en toutes circonstances, la Pologne aura le droit d'importer et d'exporter par Dantzig des marchandises de quelque nature qu'elles soient, non prohibées par les lois polonaises. »

On sait que cet article s'applique au transport des munitions et de matériel de guerre même en temps de guerre. C'est d'ailleurs ce qui a été constaté explicitement par le vicomte Ishii dans son rapport du 17 novembre 1920, approuvé par le Conseil de la Société des Nations. Prévoyant le cas d'une agression de la Pologne par un État quelconque, le rapporteur a cité l'article 28 en ajoutant :

« Cette stipulation comprend certainement aussi des munitions et autre matériel de guerre. Il ressort de ce que j'ai dit ci-dessus que je ne considère pas cette stipulation contraire au Traité de Versailles et que, partant, la protection de la Société des Nations doit s'étendre aussi à l'importation en Pologne des nécessités de guerre pendant les hostilités. »

L'argument que le Sénat de la Ville libre veut déduire des motifs qui ont pu le déterminer à signer l'Accord du 8 octobre 1921 est sans pertinence aucune : tout d'abord, parce qu'il n'est fait aucune mention d'une telle considération dans l'accord ; ensuite parce que l'accord lui-même n'a, comme nous l'avons dit, que le caractère d'un règlement de circonstance et réserve expressément le point de vue juridique.

Quant à l'argument déduit du rapport de la Sous-Commission navale, il a déjà été réfuté plus haut.

Enfin, c'est complètement à tort que le Sénat de Dantzig cherche à opposer à la thèse polonaise la prescription de la Constitution dantzikoise qui porte que la Ville libre ne pourra (sans le consentement de la Société des Nations dans chaque cas) servir de base militaire ou navale et qu'il tente d'expliquer par cette prescription constitutionnelle l'interdiction par le Conseil de la Société des Nations d'établir une telle base.

La décision des Principales Puissances alliées et associées, chargées (art. 102 du Traité de Versailles) de constituer Dantzig en Ville libre, de ne pas laisser établir une base navale remonte, ainsi que nous l'avons dit, à une résolution de la Conférence des Ambassadeurs du 7 mai 1920. Elle constituait l'une des conditions générales qui ont présidé à l'érection de la Ville libre. La disposition invoquée par le Sénat n'est qu'une application de ce principe fondamental dans un document constitutionnel qui, au surplus, n'a pas été l'œuvre souverainement libre ni exclusive des représentants de la Ville libre. Ce document n'entre donc pas en ligne de compte ici.

Au surplus, on sait qu'il ne s'agit pas ici de la création d'une base navale. Le Conseil de la Société des Nations a nettement distingué la concession à la Pologne d'un port d'attache de l'interdiction d'une base navale. Si, par hypothèse, on pouvait tirer quelque argument du texte invoqué par le Sénat, il se retournerait plutôt contre sa thèse, puisque, connaissant ce texte, le Conseil a considéré la création d'un

port d'attache comme étant parfaitement compatible avec l'état de droit en vigueur.

* * *

Il faut signaler, en outre, l'intérêt incontestable qui s'attache à ce que certains bâtiments de guerre fluviaux polonais puissent passer de leurs ports d'attache polonais à la mer ou dans les eaux territoriales polonaises et *vice versa*. Cette question doit être comprise sous celle de l'accès et du stationnement des navires de guerre polonais dans le port de Dantzig. En mettant obstacle au passage de ces bâtiments par le port de Dantzig, on les couperait de leurs ports fluviaux ou de la mer, contrairement au principe du libre accès garanti à la Pologne par le Traité de Versailles.

Au point de vue économique, l'article 104, 2°, du Traité de Versailles « assure à la Pologne, sans aucune restriction, le libre usage et le service des voies d'eau, des docks, bassins, quais et autres ouvrages sur le territoire de la Ville libre nécessaires aux importations et exportations de la Pologne ». Il en est de même de l'article 26 de la Convention de Paris. Dans la mesure où l'accès et le stationnement des navires de guerre à Dantzig comportent une activité économique propre, telle que le ravitaillement et l'approvisionnement des navires et de leurs équipages, la réparation des bâtiments, ainsi que l'utilisation des chantiers et des industries, les dispositions précitées leur garantissent à Dantzig toutes les facilités économiques et techniques qui leur sont nécessaires.

D'autre part, le droit de la Pologne à l'accès et au stationnement des navires de guerre dans le port de Dantzig n'entrave aucunement, ainsi que l'avait déjà reconnu le Haut-Commissaire, général Haking, dans son rapport du 7 décembre 1921, le développement des intérêts économiques de la Ville libre. L'examen de la question conduit à la conclusion qu'ils correspondent en réalité aux intérêts mêmes de Dantzig. L'approvisionnement des navires de guerre polonais dans le port de Dantzig, ainsi que l'utilisation des chantiers et des docks dantziens, répondent sans aucun doute aux intérêts de l'industrie et du commerce de la Ville libre. Il faut ajouter ici que la Pologne est co-propriétaire de la grande entreprise *The Engineering and Shipbuilding Company*, située sur le territoire de Dantzig, au port même. Ce chantier est destiné en premier lieu à des réparations de navires et à leurs approvisionnements en installations et en appareils techniques.

Il faut également mentionner que les dépôts de matériel nécessaires à la navigation se trouvent dans le port de Dantzig, notamment les citernes de pétrole, les dépôts d'huile, etc. Bornons-nous à ces exemples. A d'autres points de vue encore,

le commerce de Dantzig tire des avantages, les uns directs, les autres indirects, du stationnement de navires de guerre polonais. Citons seulement les achats faits pour compte des navires polonais, comme, par exemple, du mobilier, des matériaux divers, des produits chimiques, etc., ainsi que les achats faits par les officiers et marins du bord. Si la Pologne se voyait interdire le droit d'utiliser le chantier de Dantzig dont elle est co-propriétaire, elle serait amenée à cette solution paradoxale de devoir installer sur son propre littoral un chantier et des docks de concurrence, ainsi qu'à devoir transférer de Dantzig les dépôts de pétroles, d'huile, etc., le tout au plus grand préjudice des intérêts de la Pologne et de ceux de la Ville libre.

* * *

Sous réserve de conclusions ultérieures, le Gouvernement polonais prie respectueusement la Cour de répondre à la question posée dans le sens suivant :

1° Il résulte des principes qui sont à la base de la création de la Ville libre de Dantzig, principes consacrés par le Traité de Versailles, par la Convention de Paris, ainsi que des décisions du Conseil de la Société des Nations, que la Pologne a acquis un droit à l'installation d'un port d'attache et, par conséquent, à l'accès et au stationnement de ses navires de guerre à Dantzig.

2° L'organisation de ces droits comporte nécessairement l'attribution en faveur des navires de guerre polonais de certains privilèges dont la teneur précise n'a pas été l'objet d'une réglementation définitive.

La Haye, le 16 octobre 1931.

L'Agent du Gouvernement polonais :
(Signé) V. MODERÓW.

8.

SECOND STATEMENT OF THE GOVERNMENT
OF THE FREE CITY OF DANZIG

(WITH FURTHER APPENDIX OF DOCUMENTS).

[NOVEMBER 5th, 1931.]

I.

PRELIMINARY.

1.—Before proceeding to comment on the statement submitted by the Polish Government in this case, the Government of the Free City has to refer to its Statement of the 20th October 1931 and to supply the text of the report of the High Commissioner of Danzig, dated the 25th January 1921, on the subject of the defence of the Free City. This is the report referred to in the last line of paragraph 10 of the first Statement of the Free City.

Appendix
Document
No. 26.

2.—The Government of the Free City also submits the full texts of the Resolution of the Ambassadors' Conference of the 7th of May 1920 referred to by Mr. Balfour at the meeting of the Council of the League on the 12th December 1920, and also of the letter of the President of the Ambassadors' Conference dated the 20th October 1920 referred to on page 164 of the Statement of the Polish Government. Further, the Government of the Free City submits the full text of the recent regulation of the High Commissioner dated the 19th September 1931 referred to in line 33 of page 175 of the Statement of the Polish Government, together with the text of the covering letter by which it was communicated to the President of the Senate of the Free City. At the same time the Government of the Free City desires to indicate that it is in agreement with what it understands to be in view of the Polish Government that this regulation is not a "relevant decision" within the meaning of the question now put to the Court.

Appendix
Document
No. 27.

Appendix
Document
No. 28.

3.—The Government of the Free City also takes this opportunity to explain, with reference to a Resolution of the Council of the League of Nations dated the 9th December 1925, mentioned in Document No. 23 in the Appendix to its previous Statement¹, that this particular Resolution is, in the

¹ See line 18 of page 154 of the previous Statement (English version).

opinion of the Government of the Free City, wholly without importance for the question now before the Court, and the Government of the Free City has therefore not thought it necessary to bring the exact text of that Resolution to the attention of the Court.

4.—For the convenience of the Court, the Government of the Free City has attached a sketch map of Danzig and the surrounding country.

Appendix
Document
No. 30.

II.

FURTHER OBSERVATIONS.

5.—The Statement of the Polish Government permits the question at issue to be considerably reduced in compass. The Polish Government in effect relies solely on the decisions of the Council of the League of Nations of the 17th November 1920 and the 22nd June 1921, to establish a claim to special rights for its warships in the port of Danzig.

The Polish Government does not claim that these rights are conferred by the Treaty of Versailles taken by itself, nor by the Convention of Paris nor by any decision of the High Commissioner. Thus, out of the four possible sources of the rights claimed by Poland, mentioned in the question put to the Court, three may be eliminated, and the attention of the Court may be concentrated on these two decisions of the Council of the League.

It is therefore necessary to examine with special care the language, the antecedents, and the surrounding circumstances of these decisions.

6.—On the 17th November 1920, the date of the first decision, the position was as follows:

(1) A Convention between Danzig and Poland—the Convention of Paris—had been signed a few days earlier giving to Poland with great particularity and in execution of Article 104 of the Treaty of Versailles the special rights in relation to Danzig which had been indicated in more general terms in that Article. In particular Articles 19 to 28 of the Convention (Article 26 may be specially mentioned in this connection) had secured to Poland that right of free and secure access to the sea through Danzig which it had been the policy of the Allied and Associated Powers to establish¹. On this point nothing remained to be settled. But it was the fact that, in the negotiations for the Convention, Poland had asked for,

¹ See report of Viscount Ishii, Document No. 6 in Appendix to Statement of the Government of the Free City, page 97 (English version).

but had not obtained, the right to "use the port of Danzig and its equipment for the anchorage, repair and revictualling of her ships and vessels of war".

(II) The Council of the League of Nations was called upon to consider the draft of the Constitution of the Free City. It had before it a report of Viscount Ishii, which proposed amongst other things that this Constitution should be amended by the insertion of a provision that the territory of the City should not without the previous consent of the League of Nations in each case be used as a military and naval base, a provision which had already been proposed by a declaration of the Conference of Ambassadors on the 7th May 1920.

(III) This report of Viscount Ishii further insisted that under the Treaty of Versailles the protection of the Free City was the business of the League of Nations, that this protection implied¹ "the exclusion, save for restrictions provided at the time of the establishment of the Free City, of all individual interference by other Powers in the affairs of Danzig", and that the Free City "must be protected against all undue interference on the part of any country". The report then proceeded to discuss a question on which the Treaty of Versailles, the Convention of Paris and the Constitution of the Free City were silent, namely the defence of the Free City in the event of war.

(IV) On this latter point the report was confined to the expression of the personal opinion of the very distinguished Rapporteur that² "the Polish Government appears particularly fitted to receive, *if the circumstances require it*³, from the League of Nations the mandate to ensure the defence of the Free City, but it is important to make clear that this mandate can never be made exclusive and that it can only be given after due consideration by the Council of the League of the particular circumstances in each case....".

7.—In these conditions the Council approved the conclusions of the report of Viscount Ishii, declared that the Free City would be placed under the protection of the League and its Constitution placed under the guarantee of the League, decided that the Polish Government appeared particularly fitted to be, if the circumstances required it, entrusted by the League with the duty of insuring the defence of the Free City, and instructed the Permanent Advisory Commission on Military, Naval and Air questions to consider the measures which would ensure the most effective defence of Danzig in

¹ Statement of the Free City, pages 96-97 (English version).

² Statement of the Free City, Appendix, Document No. 6, page 104 (English version).

³ Italics not in the original.

certain cases. The Council also requested that the Constitution of the Free City should be amended by inserting a prohibition against the use of the City as a military or naval base.

8.—The Government of the Free City submits with confidence to the Permanent Court of International Justice that it is manifest that this decision of the Council of the League of Nations of the 17th November 1920 vested no right of any kind to Poland in relation to the defence of the City. The decision on this head was in fact most carefully limited to an expression of the opinion that, in certain events which had not happened and might never happen, Poland would be the strongest candidate for the receipt of a mandate for defence. And the decision went on to give definite instructions to the technical advisers of the Council to consider and, impliedly, to report, on the technical aspects of the defence of Danzig. These last mentioned instructions were the one and only definite decision then taken by the Council on the subject of the defence of the Free City.

9.—To insist further on the true character of this decision of 17th November 1920 is perhaps superfluous, but, if any confirmation of the view taken by the Government of the Free City is needed, a reference may be made to the subsequent proceedings of the Council. The Permanent Advisory Commission made a report¹ proposing to give Poland extensive military, naval and air privileges on the territory of the Free City. When this report was received by the Council at its meeting of the 12th December 1920, it met with severe criticism and no suggestion was made by the Representative of any Member of the Council that the decision of 17th November had decided either directly or by implication that Poland was definitely entrusted with the defence of Danzig.

10.—To pass now to the resolutions or decisions of the Council of the League of Nations of the 22nd June 1921:

The High Commissioner, in response to a decision of the Council taken on the 12th December 1920—a decision which, as the Government of the Free City notes, is not relied on by the Polish Government—had already on the 25th January 1921, made a report which was adverse to the Polish claim.

Appendix
Document
No. 26.

The Polish Representative had on the 5th March 1921 presented to the Council four requests: (1) for military guards for war material, (2) for isolated magazines for explosives, (3) for a mooring station for naval police vessels (*point d'attache*—it is only in June that this phrase is changed to *port d'attache* for Polish warships generally), (4) authority to the High Commissioner to apply directly to the Polish

¹ Statement of the Free City, Appendix, Document No. 10.

Government for the means which he considers necessary for the protection of Poland's right of free access to the sea. The Polish Government was thus at that time asking directly only for a mooring station for naval police vessels, and not for any permanent rights as to warships generally.

These proposals had been the subject of correspondence before the Council met.

II.—The Council on the 22nd June 1921, on the basis of two further reports from Viscount Ishii, dealt with the four Polish requests in the following way:

As to (4): the Council treated with particular attention the whole subject of the defence of Danzig, going in fact rather beyond the Polish request of the 5th March 1921; the Council gave general instructions to the High Commissioner for land defence, but declared expressly that it did not consider it necessary to decide at that moment under what conditions the defence of Danzig by sea could be secured¹.

¹ (See Appendix to the previous Statement, Document No. 11, pp. 119-120 [English version].) It may be of assistance to set out again here the Resolution in full:

"RESOLUTION.

"(1) The Polish Government is specially fitted to ensure, if circumstances require it, and in the following conditions, the defence of Danzig by land, as well as the maintenance of order on the territory of the Free City, in the event of the local police forces proving insufficient.

"With this object in view, the High Commissioner will, if occasion arises, request instructions from the Council of the League of Nations and will, if he thinks fit, submit proposals.

"(2) It will nevertheless be within the competence of the High Commissioner to anticipate the authorization of the Council and to address a direct invitation to the Polish Government to ensure the defence of Danzig, or 'the maintenance of order' in the following cases:

"(a) in the event of the territory of the Free City being the object of aggression, threat or danger of aggression from a neighbouring country other than Poland, after the High Commissioner has assured himself of the urgency of the danger;

"(b) in the event of Poland being, for any reason whatever, suddenly and effectively prevented from exercising the rights possessed by her under Article 28 of the Treaty of November 9th, 1920.

"In these two cases the High Commissioner should report to the Council the reasons for the action which he has taken.

"(3) As soon as the object in view has been achieved to the satisfaction of the High Commissioner, the Polish troops will be withdrawn.

"(4) In all cases where Poland has to ensure the defence of the Free City, the Council of the League of Nations may provide for the collaboration of one or more States Members of the League.

"(5) The High Commissioner, after consultation with the Polish Government, will present to the League of Nations a general report on the measures for which it may be necessary to provide in the above-mentioned cases.

"(6) The Council does not consider it necessary to decide at the present moment under what conditions the defence of Danzig by sea should be secured.

"(7) The High Commissioner should, however, be asked to examine the means of providing in the port of Danzig, without establishing there a naval base, for a 'port d'attache' for Polish warships."

As to the general instructions to the High Commissioner, it is important to note that no definite right or attribution of any kind is given to Poland for action to be taken on land on her own initiative. Poland is referred to—in repetition of the similar reference made on the 17th November 1920—as specially fitted to be called in by the High Commissioner on the instructions of the League, or, in case of emergency, on his own motion, but she is not in fact so called in nor given any actual function or duty. The collaboration of other Members of the League is contemplated as a possibility. And, what is of special importance for the solution of the question now before the Court, no attribution or authority of any kind is made to, or conferred upon, Poland or any other Power or even the High Commissioner, as to action by sea.

As to (3)—the mooring station, *point d'attache* now become a *port d'attache*—the High Commissioner is to be asked to examine the means of providing this for Polish warships in the port of Danzig without establishing there a naval base.

The decisions as to (3) and (4) formed the subject of one lengthy resolution, the text of which has been set out at the bottom of the preceding page.

As to (1) and (2)—military guards for war material and isolated magazines—the Council contented itself with deciding that a committee was to study these requests. This formed the subject of another resolution¹.

12.—The Polish Government² finds in the resolution of the 22nd June 1921 as to points (3) and (4) the *implication* (and it is to be observed that the case at this point is put no higher than an "implication") of the recognition to Poland of a definite (*véritable*) right to establish a port d'attache at Danzig. The Government of the Free City would be content to leave this point without further comment to the appreciation of the Court, merely remarking that it is a doctrine dangerous to international good understanding that rights of such importance can be conferred by implication³.

¹ Page 125 of Statement of the Government of the Free City, Appendix, Document No. 12.

² Page 168 of the Polish Statement.

³ On the occasion of the settlement of the Articles of Agreement for a Treaty between Great Britain and Ireland, the specific facilities required for British war vessels in Irish ports were stated with great precision. The Annex to the Articles is as follows:

"ANNEX.

"1. The following are the specific facilities required.

"DOCKYARD PORT AT BEREHAVEN.

"(a) Admiralty property and rights to be retained as at the date hereof. Harbour defences to remain in charge of British care and maintenance parties.

"QUEENSTOWN.

"(b) Harbour defences to remain in charge of British care and maintenance

were it not for one fallacy in the Statement of the Polish Government to which it may be well to draw attention. The Polish Government says:

"It is agreed in fact to recognize that the prohibition against establishing a naval base contained in the resolution of the Council constitutes a legal decision. Why should a different character be attributed to the decision, clearly implied in the same sentence, providing for the installation of a port d'attache?"

The answer is that paragraph 7 of the decision of the Council (which is the paragraph referred to) does not forbid the establishment of a naval base. The establishment of a naval base had been forbidden long ago, and the necessary clause had been inserted in the Constitution of Danzig at the request of the Council of the League. This paragraph 7 neither forbids a naval base nor implies a sanction to a port d'attache. It instructs the High Commissioner to examine the question, thus in effect repeating the instructions given on the 17th November 1920 to the Permanent Advisory Commission, and that is all.

13.—One further remark may be made on the subject of the resolutions of the Council of the League of the 22nd June 1921.

According to the Polish Government, these resolutions give to Poland a definite right to establish a port d'attache. If so, the resolutions give Poland in relation to Danzig higher and more permanent rights at sea than on land. On land, Poland can only act on invitation; at sea, according to the Polish construction, Poland can install her warships in the harbour. And yet the Council said definitely that it was taking no decision at that time as to the defence of Danzig by sea.

parties. Certain mooring buoys to be retained for use of His Majesty's ships.

"BELFAST LOUGH.

"(c) Harbour defences to remain in charge of British care and maintenance parties.

"LOUGH SWILLY.

"(d) Harbour defences to remain in charge of British care and maintenance parties.

"AVIATION.

"(e) Facilities in the neighbourhood of the above ports for coastal defence by air.

"OIL FUEL STORAGE.

"(f) Haulbowline { To be offered for sale to commercial companies under
Rathmullen { guarantee that purchasers shall maintain a certain
minimum stock for Admiralty purposes."

(See *The Irish Free State Constitution Act, 1922. (Session 2.) Second Schedule, Annex.* H.M. Stationery Office, London.

14.—If then the effect of these two decisions of the Council, taken either separately or in combination, is to confer no right upon Poland in relation to the presence of Polish war vessels in the harbour of Danzig, it is superfluous to consider what may be the rights that might be alleged to have been conferred. The Government of the Free City however notes in this connection that the Conclusions of the Polish Government formulate no specific demands, but admit that the precise character of the "certain" privileges claimed has never been definitely decided. At the same time, since the Polish Government claims that the access of its warships to, and their anchorage in, Danzig is one consequence of what it terms its "right to the installation of a port d'attache", it apparently leaves open the door to a claim that the "installation of a port" may imply other privileges.

15.—The Polish Government in its Conclusions¹ seeks support for its claim to a port d'attache in what it terms the "basic principles of the creation of the Free City of Danzig, principles which were recognized (*consacrés*) by the Treaty of Versailles and the Convention of Paris", but it cites no passage in that Convention, and no Article of that Treaty, in which those supposed principles have given expression to the demand now made.

If the matter is to be treated as one to be settled by deductions from principles—even if those principles remain in the foundations and are not given concrete expression in the visible portion of the edifice—and if it be legitimate to look, for the spirit which inspires a document, to the contemporary actions of its authors or those who have been closely associated with them, the Government of the Free City ventures again to call attention to three facts established in its previous Statement:

(1) The Polish Government demanded this very right of access and anchorage in the negotiations for the Convention of Paris and did not succeed in its demand².

(2) The Polish Representative at the meeting of the Council of the League of Nations on the 17th November 1920 asked that Poland might be entrusted with a permanent mandate for the defence of the Free City³; this permanent mandate has never been given.

(3) The proposals of the report⁴ of the Permanent Military, Naval and Air Advisory Commission of the League of Nations

¹ Polish Statement, page 181 (French version).

² Previous Statement of the Free City, page 80, paragraph 32, and Appendix, Document No. 4, page 87 (English version).

³ Previous Statement of the Free City, Appendix, Document No. 7, page 107 (English version).

⁴ Previous Statement of the Free City, Appendix, Document No. 9, pages 113-117 (English version).

dated the 1st December 1920 to establish permanent defensive works on the territory of Danzig and to give immediate harbourage to small naval units were not accepted by the Council of the League at its meeting of the 12th December 1920 or at any later date. In fact, on the 12th January 1922, the Council of the League decided to postpone consideration of the question of the port d'attache.

16.—The Government of the Free City does not think it necessary to follow the Polish Government 'in its examination of the various arguments that have been advanced from time to time since June 1921 and of the various proposals that have been made for a settlement of the question.

Nor is this the occasion on which it would be proper to insist on the complete change in practical conditions which results from the construction of the port of Gdynia..

In any event, reports of the High Commissioner or of technical commissions, made in response to requests for examination of the question of the possibility of establishing, or the meaning to be attached to, a "port d'attache", are, except in so far as they may throw light on any decision which follows them, without importance for the solution of the question put to the Court.

Negotiations after June 1921 are equally for present purposes without interest, even if they are not considered to be, as in fact they were, without prejudice to the legal rights.

17.—Nor will the Court, it is submitted, attach importance to the argument suggested on page 178 of the Polish Statement, that because the Convention of Paris contains one article which imposes on the Free City a very special obligation going beyond ordinary international rights, it may be inferred that another exception to ordinary international rules has been made—and in this case by implication.

The existence of river gunboats (it is not said whether the flotilla was in existence in 1921 nor whether, if it did exist, its existence was brought to the notice of the Council of the League) referred to on page 180 of the Polish Statement, must equally be without effect on the legal rights of the Parties.

Similarly, the economic arguments of convenience developed on page 180 of the Polish Statement are not of any pertinence.

The question at issue is not whether it would be reasonable or economically advantageous, either to Danzig or to Poland, that Polish ships of war should have special privileges in the harbour of Danzig, but whether privileges of this kind have in fact been conferred either by the Treaty of Versailles or by the Convention of Paris or by the decisions of the

Council of the League or by the decisions of the High Commissioner. The Statement of the Polish Government, on whom the onus of proof lies, supplies, it is submitted, no sufficient reason for an affirmative answer to this question.

5th November 1931.

(Signed) JOHN FISCHER WILLIAMS,
Agent of the Government
of the Free City of Danzig.

APPENDIX OF DOCUMENTS.

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No. 26.

Memorandum
by the High
Commissioner
on the defence
of the Free
City of
Danzig, dated
25 January
1921.

MEMORANDUM ON THE DEFENCE
OF THE FREE CITY OF DANZIG.

LEAGUE OF NATIONS.

THE HIGH COMMISSIONER
OF THE FREE CITY OF DANZIG.

1. When considering this question it is necessary to study both the military and political aspect, and above all to ascertain what benefits would accrue both to Danzig and to the Poles by granting the latter a mandate for the defence of Danzig. I do not propose to enter into any questions regarding promises which have been made to the Poles, either by the Council of Ambassadors, or by that of the League of Nations, if such promises exist, which appears to me to be doubtful.

I shall also avoid all questions involving the past or present policy of the Allies, or of the League of Nations, on the subject, because I have neither sufficient knowledge nor sufficient authority to attempt to discuss such matters. I shall confine myself therefore entirely to the local situation, merely pointing out, as occasion demands, the result of any particular decision on the future policy and responsibilities either of the Allies or of the League of Nations.

2. It is not difficult to appreciate the military situation, and the first question which arises is whether Danzig requires any defence at all other than that already provided by the protection, chiefly moral, of the League of Nations. The Poles argue that

military situations arise with great rapidity, even at a time when the world is apparently at peace; that to deal effectively with any military situation it is necessary to make prolonged and carefully planned preparations in peace time, including permanent garrisons, fortifications, etc. This is a perfectly sound argument, but it assumes that Danzig is subject to a sudden attack by some distant or contiguous sea or land Power.

3. Taking first the possibility of an attack by sea, the only Powers that need reasonably be considered are Russia and Germany. Russia is unlikely for many years to be able to carry on an aggressive war on the sea, and, if she wanted to take Danzig, she would certainly conduct her operations in the first instance by land, vide para. 4 below.

Germany with sea bases at Königsberg and Stettin, could carry out such an operation without any great preparation beforehand, but it would be far simpler for her to gain Danzig by land, vide para. 5 below. It is fantastic to suggest that any Member of the League of Nations, except perhaps Poland, would attempt such an enterprise, and Poland could only attack from the land. It appears, therefore, that an attack on Danzig by sea for several years is so unlikely that it is unnecessary to consider it at present.

4. An attack by land upon Danzig, which is completely undefended both as regards a permanent garrison or fortifications, would be a very simple military operation by any Power who possessed, or gained possession of, the territory on the frontiers of the Free State. Omitting as before any Member of the League of Nations, there remain only Russia and Germany who are in a position to attack Danzig by land. Of these Russia cannot reach Danzig until she has overrun East Prussia or Poland. In the first case it would take Russia a considerable time to overthrow East Prussia and occupy, in a military sense, her territory. In fact it is extremely unlikely that she would either attempt to do so or that she would succeed if she did engage upon such an enterprise. In any case the League of Nations would be afforded time to supplement their moral with physical force if they considered it to be necessary. In the second case, if Russia succeeded in occupying the northern portion of Poland, the latter country would be cut off from Danzig, or be in imminent danger of separation, and would be too much engaged in the prosecution of a campaign which had, so far, been unsuccessful, to undertake the defence of Danzig. The idea suggested in para. 3 that, in certain circumstances, Poland might herself attack Danzig, either with or without the consent of her Government, is hardly an argument in favour of giving the defence of the Free City to Poland, because it would mean that Poland, or some Polish force, had designs on the nationality of Danzig which would certainly not be in accord with the wishes of the League of Nations, or of the Allies who have made Danzig a Free City. It appears therefore that there are insufficient arguments in favour of giving Poland a mandate for the defence of Danzig in the event of an attack by the Russians.

5. A possible attack on land by the Germans from a purely military point of view is a simple operation, either from the East or the West or both. Such an operation would mean, however, that Germany was declaring war on the Allies, and, if Germany had prepared for such an operation, neither the Poles nor anyone within reach could prevent its success, especially considering that the German forces would be received with joy both in the "Corridor" and in Danzig.

If Danzig is given to the Poles to defend, it would only add a good reason for making it an objective, because circumstances *might* arise in a few years when Germany might regain her eastern territory now occupied by the Poles before the Allies could interfere. If, however, Danzig was defended by the League of Nations, Germany could not possibly invade her territory without declaring war on the Allies.

6. The above arguments indicate, first that Danzig can only be attacked suddenly by Germany; secondly that if Germany was to undertake such an attack no defence by Poland would be of any avail, because Germany would be more intent upon defeating the Polish forces in the field than upon taking Danzig as a definite objective; thirdly that it would be a far more serious thing for Germany to attack Danzig as a free city, guaranteed by the League of Nations, than as a possession of Poland which it would be bound to become, sooner than later, if Poland is given a mandate for its defence. We can assume therefore that Danzig requires at present no military defence, because any that could be given to it at the moment by the Allies would be inadequate to protect it from the only real, but extremely unlikely, danger, an attack by Germany.

7. Having disposed of the military aspect of the subject, we can now turn to the political arguments. The most powerful of these on the part of Poland is the following:

"You have given us a corridor to the sea so that we can carry on our sea borne trade unmolested, but you have given us no harbour on the sea-board. Danzig is useless to us as a harbour because, owing to political or economic disturbances over which we have no control, Danzig may be closed to us at a most critical time, just as it was closed to us in the summer of 1920."

This argument, almost exactly in these words, was urged upon me by Prince Sapieha in Warsaw last November. He added further that the Poles would never sign an agreement with Danzig unless they were granted the power of military occupation of the Free City. We know now that they have signed such an agreement, but only to-day the Polish Minister here told me in an interview that the most important question at the present time was whether Poland is to be given a mandate for the defence of Danzig. Although Poland is a Member of the League of Nations I am bound to assert my conviction, which is substantiated by the above statements, that Poland does not want Danzig to defend it from an outside enemy, she wants it in order to destroy its nationality and make it part, in fact if not in name, of the Polish Republic.

8. In spite of this fact, however, the above argument carries such force that it cannot be dismissed without some attempt to prove that it will be of little benefit eventually either to Danzig or to Poland to give the latter a mandate for the defence of Danzig or in plain words to enable her to establish in Danzig a military and naval base, which is what she really requires.

9. The Treaty of Versailles and the Convention signed between Poland and Danzig appear to me to contain two very important principles. First, that Danzig is to retain its nationality as a free and independent city under the League of Nations, and secondly that Poland is to be given every possible facility for using the harbour of Danzig. No one knows better than myself the difficulties to be overcome to reconcile these somewhat opposing principles, especially with the present hostile feeling which exists between the two nationalities. I am convinced, however, that if once a final decision is given on the subject of the defence of Danzig by Poland, in favour of Danzig, that two things will happen—first Danzig, having a real nationality of its own, will recognize the fact and slowly draw away from Germany, and secondly the use of the harbour by the Poles will be greatly facilitated.

If, however, the decision is given in favour of the Poles, the Danzigers will to a certainty lose their own nationality and again become German, every possible difficulty will be placed in the way of Poland in the use of the harbour, and she will be compelled more and more to use force and military domination amongst a population of over 300,000 pure Germans. If Danzig had been given out and out to Poland before Germany had recovered from the first shock of her defeat and of her political upheaval, the situation would not have been so bad and in time would have been accepted, but now Germany has recovered from the first shock and Danzig is as German as ever it was.

10. Comparisons are always objectionable, but I am compelled to give as my experience the fact that the Germans are better administrators and harder workers individually than the Poles. For this reason alone the harbour of Danzig, which is its only asset, is certain to become more beneficial both to Poland and to Danzig if it retains its Danzig nationality than if a Polish nationality is forced upon it.

11. I am confident that if the League of Nations will decide in favour of retaining its guarantee for the Free City of Danzig and will allow no one nation to be given a mandate for its defence, I, as High Commissioner under the League, will be able to ensure the full use of the harbour to Poland, and that many of the difficulties at present anticipated both by the Poles and the Danzigers will be overcome.

Danzig, 25th January, 1921.

(Signed) R. HAKING,
High Commissioner
to the Free City of Danzig.

Resolution of
the Ambassadors' Conference dated
7th May 1920.

RESOLUTION OF THE AMBASSADORS' CONFERENCE

DATED 7th MAY 1920¹.

[Translated from the French.]

7th May 1920.

THE AMBASSADORS' CONFERENCE,

Firmly resolved to ensure the strict execution of the stipulations of the Treaty of Versailles relative to Danzig by guaranteeing to the population of the Free City as well as to the Polish Government the free exercise of the rights conferred upon them by the Treaty and firmly resolved also not to tolerate any action in any quarter calculated to disturb the operation of the system of which the main lines have been settled by Articles 102 to 107 (inclusive) of the Peace Treaty or of the system provided for by Article 18 of the Treaty of 28th June between Poland and the Principal Allied and Associated Powers,

Declares

1. That the Convention referred to in Article 104 should be concluded as soon as possible.
2. That Poland however could not be authorized to establish a military or naval base at Danzig.
3. That the necessary dispositions should be included in this Convention to assure to the Free City of Danzig the financial resources which are necessary for it, without departing from either the terms or the spirit of the Treaty.

Persuaded that the prosperity of Danzig can only be arrived by the confident collaboration of the Free City and Poland,

The Conference invites the two Parties to examine in common and in a spirit of conciliation the questions which have to be settled between them in order to allow the operation of the system contemplated by the Treaty.

It expects that the representatives of the Free City and Poland will together continue and shortly complete the preparatory discussions which are necessary for the elaboration of the Convention referred to in Article 104 and which is to be concluded at Paris. These preparatory discussions, in which representatives of Poland and the Free City will participate, will take place at Danzig under the chairmanship of the Representative of the Allies.

At the same time the two Parties are invited to make proposals with a view to an agreement on the allotment of the property referred to in Article 107. They are authorized to proceed forthwith to the division of property the distribution of which can be made by a friendly arrangement.

With a view to ensuring the ultimate improvement of the port in the common interest of Poland and of the Free City of Danzig, the Conference draws the attention of the two Parties to the possible advantage of setting up an administrative council including

¹ Pour le texte français, voir *Zbiór dokumentów urzędowych dotyczących stosunku Wolnego Miasta Gdańska do Rzeczypospolitej Polskiej*, vol. I (1918-1920), pp. 54-55. [Note du Greffier.]

representatives of Poland, the Free City and of the League of Nations in which all waterways, docks, basins and wharves would be vested as well as magazines and other separate constructions.

No. 28.

LETTER FROM THE PRESIDENT
OF THE AMBASSADORS' CONFERENCE
TO THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS
DATED 20th OCTOBER 1920¹.

Letter from
the President
of the Ambassadors' Conference to the
Secretary-General of the
League of Nations dated
20th October
1920.

Paris, October 20th, 1920.

Sir,

On September 20th the Secretary-General of the League of Nations requested the Conference of Ambassadors to communicate to it all the information they felt able to supply with regard to the Convention between the Free City of Danzig and the Polish Government, as laid down by Article 104 of the Treaty of Versailles. I have the honour on behalf of the Conference to send you herewith the text of the draft which has just received the approval of the Conference.

The Principal Allied Powers feel it their duty to take this opportunity of putting before the Council of the League of Nations the following considerations.

As is shown by the reply dated June 16th, 1919, of the Allied and Associated Powers to the observations of the German delegation on the terms of peace, the intention of the Powers in constituting Danzig and the territory specified in Article 100 of the Treaty as a Free City was to establish between Poland and the Free City the very closest relations; their object was indeed to provide Poland with free access to the sea.

With this object the Free City was placed within the Polish Customs frontier; Poland was granted the control and administration of postal, telegraphic and telephonic communications with the port, at which moreover she enjoys extensive privileges. Finally, the administration of the foreign affairs of the Free City belongs to Poland.

Owing the close relations thus established between the Free City and Poland, and also in view of the clearly expressed intention of the Powers who signed the Treaty of Versailles to give Poland free access to the sea, the Polish Government would thus seem to be entitled to receive from the League of Nations the mandate of eventually ensuring the defence of the Free City.

The Conference of Ambassadors thinks it its duty to draw the attention of the Council of the League of Nations to these considerations. At the same time it has the honour of forwarding to you, with a view to their being submitted to the Council of the League, the observations it has to make with regard to the draft constitution drawn up by the representatives of the City of Danzig.

I have, etc.

(Signed) JULES CAMBON.

¹ Pour le texte français, voir *op. cit.*, p. 92. [Note du Greffier.]

Provisional
Regulation
for the access
to and
anchorage in
the port of
Danzig of
Polish war
vessels dated
19th Septem-
ber 1931.

PROVISIONAL REGULATION FOR THE ACCESS TO
AND ANCHORAGE IN THE PORT OF DANZIG
OF POLISH WAR VESSELS

WITH COVERING LETTER OF THE HIGH COMMISSIONER.

[*Translated from the French.*]

Geneva, 19th September 1931.

Mr. President,

I have the honour to transmit to you herewith the text of the provisional regulation for the access to and anchorage in the port of Danzig of Polish war vessels, which I have drawn up in execution of the Resolution of the Council of the 19th September 1931.

I am, Sir, etc.

(Signed) GRAVINA, High Commissioner.

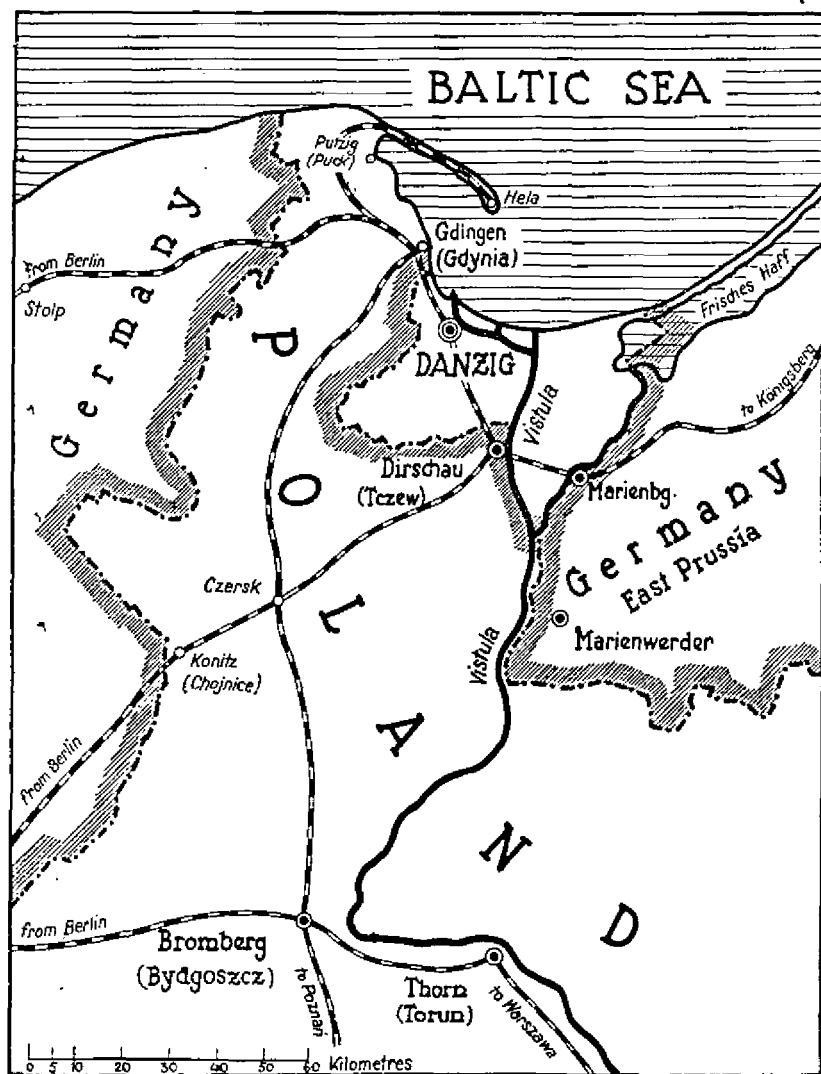
His Excellency the President of the Senate
of the Free City of Danzig.

PROVISIONAL REGULATION FOR THE ACCESS TO AND ANCHORAGE
IN THE PORT OF DANZIG OF POLISH WAR VESSELS.

1. Poland will continue to use the port of Danzig, as during these last years, for her war vessels, until the question of the access to and anchorage in the port of Danzig has been settled definitively by a decision of the Council of the League of Nations.
2. The Polish naval authorities will not, during this period, send marine patrols ashore at Danzig.
3. Any difference of opinion which may arise between Danzig and Poland on the subject of the application of this provisional regulation shall be submitted to the arbitration of the High Commissioner.

SKETCH MAP OF DANZIG
AND THE SURROUNDING COUNTRY.

No. 30. Sketch Map
of Danzig
and Surround-
ing Country.



9.

CONTRE-MÉMOIRE DU GOUVERNEMENT POLONAIS

[2 NOVEMBRE 1931.]

Le Mémoire de la Ville libre de Dantzig en date du 20 octobre 1931 n'a pas rencontré l'argumentation développée dans le Mémoire du Gouvernement polonais.

La thèse polonaise a essentiellement pour fondement, d'une part, les principes qui ont présidé à l'érection de la Ville libre de Dantzig ; d'autre part, une série d'actes officiels dont l'analyse démontre l'étroite coordination et la parfaite concordance. Il n'entre pas dans les intentions du Gouvernement polonais de reprendre cette démonstration dans son ensemble. Certaines appréciations formulées dans le Mémoire de la Ville libre semblent toutefois devoir être relevées.

I.

Le Mémoire de la Ville libre (p. 71, n° 10; — annexes, p. 117) fait état d'une discussion qui s'est élevée au Conseil de la Société des Nations, le 12 décembre 1920, au sujet d'un rapport adopté à l'unanimité par la Commission permanente consultative pour les affaires militaires, navales et aériennes, en date du 1^{er} décembre 1920 (Mesures à prendre pour l'organisation de la défense de Dantzig). L'examen de ce rapport et de la divergence de vues qui s'est manifestée à son sujet au sein du Conseil démontre clairement qu'il n'y a aucun argument à tirer de ces faits. Le rapport discuté avait trait à l'ensemble de l'organisation défensive de la Ville libre et des mesures à prendre pour permettre à la Pologne de s'acquitter du mandat de défense qui, éventuellement, devait lui être conféré par la Société des Nations. Il est manifeste que les objections formulées par un membre du Conseil ne visaient pas spécifiquement la proposition concernant la faculté pour les navires polonais d'accéder dans le port de Dantzig et d'y stationner, proposition qui était conçue dans les termes suivants :

« Que, sans attendre le résultat des études d'organisation défensive de la Ville libre, il convient d'attribuer au Gouvernement polonais dans le port de Dantzig un emplacement suffisant pour assurer l'abri et l'entretien des petites unités navales qui lui ont été concédées par les Alliés pour la police de ses eaux. »

Il est parfaitement clair que ce n'est pas cette suggestion, destinée à parer à des besoins immédiats et indiscutables, qui a pu motiver des objections du caractère de celles qui sont consignées dans l'extrait du procès-verbal de la séance du Conseil du 12 décembre 1920.

II.

On sait l'importance capitale que présente, pour la solution de la question soumise à l'avis de la Cour, la résolution du Conseil de la Société des Nations du 22 juin 1921 (Mémoire du Gouvernement polonais, pp. 167 et suiv.). Le Mémoire de la Ville libre en parle à peine et s'applique vainement à en minimiser la portée (p. 72, n° 11, et p. 78, n° 28). Selon la thèse dantzikoise, cette résolution ne signifierait qu'une chose : elle attesterait seulement la volonté du Conseil de ne prendre pour le moment aucune mesure concernant l'organisation de la défense maritime de Dantzig. En d'autres termes, il n'y aurait lieu de prendre en considération que le seul point 6 de cette résolution :

« 6. Le Conseil n'estime pas nécessaire de déterminer dès à présent dans quelles conditions serait assurée la défense maritime de Dantzig. »

Quant au point 7, si étroitement uni au texte précédent :

« 7. Toutefois, il y a lieu de demander au Haut-Commissaire d'étudier le moyen de créer dans le port de Dantzig, sans établir une base navale, un port d'attache pour les navires de guerre polonais »,

il serait sans portée pratique aucune pour la solution de la question dite du « port d'attache ». Le Conseil ne serait arrivé sur ce point à aucune conclusion ; tout au plus aurait-il envisagé la concession d'un port d'attache comme faisant peut-être partie d'un programme défensif sur lequel, pour le moment, il se refusait à prendre une décision quelconque.

Cette façon de présenter les choses ne répond aucunement à la réalité. Le Mémoire polonais a démontré (pp. 167-169), en s'appuyant sur les termes tout à fait explicites de la résolution du Conseil, que le point 6 de cette résolution ne contient qu'une décision d'ajourner l'examen des mesures d'organisation que pouvait comporter la défense maritime de Dantzig, et que le point 7, étroitement relié au précédent par le mot « Toutefois », **excepte de cette décision d'ajournement la création d'un port d'attache pour les navires de guerre polonais.** C'est sur le rapport du vicomte Ishii que cette résolution a été prise, rapport qui avait pour titre : « Défense de la Ville libre ». Le représentant du Japon y rappelait en termes

généraux l'approbation donnée par le Conseil à son rapport antérieur du 17 novembre 1920 ; il y mentionnait de façon spéciale la résolution prise à cette date par le Conseil :

« Le Gouvernement polonais paraît particulièrement désigné pour recevoir éventuellement de la Société des Nations la tâche d'assurer la défense de la Ville libre. »

Il déclarait enfin qu'après avoir revu soigneusement tous les documents qui, depuis lors, avaient été soumis au Conseil sur cette importante question, il estimait n'y avoir lieu de modifier les conclusions de son rapport précédent.

En adoptant les nouvelles conclusions de son rapporteur, le Conseil a donc évidemment confirmé sa résolution de principe du 17 novembre 1920. On ne peut, par conséquent, donner aux points 6 et 7 de la résolution du 22 juin 1921 une interprétation qui tendrait à les mettre en opposition avec ce principe antérieurement admis. Celui-ci restant définitivement acquis, le Conseil n'avait plus désormais qu'à examiner l'opportunité des mesures d'organisation propres à lui donner effet. C'est dans ce cadre que se placent indistinctement toutes les conclusions adoptées le 22 juin 1921 : le Conseil (point 6) a déclaré surseoir à l'organisation de la défense maritime de Dantzig ; mais la question de l'établissement d'une base navale et celle de la création d'un port d'attache ayant été étroitement liées, dans les négociations antérieures, à cette organisation défensive, **il prend à cet égard une décision immédiate :**

« Toutefois, il y a lieu de demander au Haut-Commissaire d'étudier le moyen de créer dans le port de Dantzig, sans établir une base navale, un port d'attache pour les navires de guerre polonais. »

Ainsi donc, loin d'être absorbée dans la décision d'ajournement que formule le point 6, la résolution énoncée au point 7 s'en détache de la façon la plus nette ; elle comporte une double décision : interdiction d'une base navale, autorisation d'un port d'attache.

Le Mémoire polonais a également démontré (p. 168) que la demande adressée par cette résolution au Haut-Commissaire d'étudier le moyen de créer dans le port de Dantzig un port d'attache pour les navires de guerre polonais impliquait forcément une décision définitive quant au principe de cette création, le Haut-Commissaire n'ayant pour mission que d'en étudier les modes de réalisation pratique. A l'appui des arguments déjà présentés en ce sens, il y a lieu de joindre les observations suivantes :

a) Le 22 juin 1921, le Conseil a été saisi d'un second rapport du vicomte Ishii, celui-ci concernant le droit de libre

accès de la Pologne à la mer par Dantzig. On lit dans le rapport du vicomte Ishii le passage suivant, qui doit être considéré comme une interprétation donnée par le rapporteur lui-même de la décision prise le même jour concernant la défense de la Ville libre :

« This decision states that it would be advisable to request the High Commissioner of the League of Nations at Danzig to consider what steps should be taken to establish a mooring station (**un port d'attache**) for Polish warships in the harbour of Danzig without thereby creating a naval base.... »

« **What steps should be taken** » : la formule est parfaitement claire. Il ne s'agit donc manifestement ici que de simples mesures d'exécution dont la mise au point est confiée au Haut-Commissaire. Le principe est considéré comme définitivement acquis.

C'est en se plaçant sur ce même terrain que le Conseil décide dans la même phrase que la même règle s'appliquera aux bâtiments affectés à la police maritime polonaise : « the same ruling should apply in regard to the vessels attached to the Polish Maritime Police ».

b) L'attitude adoptée par le Haut-Commissaire après la résolution du 22 juin 1921, ses démarches auprès des Gouvernements intéressés confirment de la manière la plus nette cette façon de voir.

Dès son premier rapport (10 sept. 1921), le général Haking se préoccupe non point de l'opportunité de la création d'un port d'attache — question qui pour lui est tranchée —, mais de distinguer cette notion de celle de base navale, afin, comme il l'explique, de mettre sur pied le régime institué par le point 7 de la résolution du 22 juin 1921 et dont l'organisation lui a été confiée. Les propositions qu'il formule n'ont pas d'autre objet, puisqu'il y reconnaît expressément : « La Pologne doit toutefois posséder pour ses navires de guerre certains privilèges de plus que d'autres Puissances étrangères. En fait, son principal avantage sera d'avoir toujours à sa disposition un ancrage ou l'usage d'un quai pour ses navires de guerre et le droit d'y laisser ses navires de guerre aussi longtemps qu'il lui plaira, à condition que le Haut-Commissaire n'exerce point le droit, qu'il propose qu'on lui confie, d'exiger le retrait de ses navires. »

C'est à l'occasion de ces propositions que le vicomte Ishii, si exactement informé de toute la marche de cette négociation, a caractérisé la situation dans les termes suivants : « Le Haut-Commissaire discutait la question de savoir sous quelles conditions les navires polonais peuvent rester indéfiniment dans le port de Dantzig sans que celui-ci soit une base navale. » (Rapport au Conseil du 16 sept. 1921.)

Non moins significatives sont les démarches faites par le Haut-Commissaire auprès des deux Gouvernements intéressés pour leur faire accepter les conclusions de son rapport définitif du 7 décembre 1921, ainsi que les suggestions qui, à cette occasion, lui ont été faites par le Secrétaire général de la Société des Nations.

Le rapport du 7 décembre 1921 du Haut-Commissaire débute par les remarques suivantes :

« I have pointed out to the Secretary-General of the League of Nations that the ordinary procedure in this case, as indicated in Article 103, para. 2, of the Versailles Treaty and in Article 39 of the Polish-Danzig Convention of 9th November 1920, has not been followed, and instead of giving a decision which can on appeal be upset or supported by the Council of the League, the High Commissioner has been directed to make a report to the Council who will themselves give a decision. In order to overcome this deviation from the usual procedure the Secretary-General has suggested to me that my report should be treated in the same manner as one of my decisions is treated, that it should be forwarded to each Government with the object of arriving at an agreement on the subject, and that if one or both are unable to do so that the matter should be laid before the Council of the League of Nations. »

Une conclusion très nette se dégage de ce passage du rapport du Haut-Commissaire. Le Secrétaire général de la Société des Nations considérerait certainement comme tranché en droit par la résolution du Conseil le principe de la création d'un port d'attache ; sans quoi, il n'aurait pas suggéré au Haut-Commissaire la procédure indiquée ci-dessus. Le Secrétaire général estimait évidemment que, la question de principe se trouvant décidée par le Conseil, le Haut-Commissaire avait reçu de celui-ci la mission de mettre sur pied une organisation adéquate, par conséquent celle de faire aux Parties des propositions concrètes et le pouvoir, à cette fin, de procéder par voie de décision sous réserve de la faculté des Parties d'en appeler au Conseil.

* * *

Au moment où il a adopté la résolution du 22 juin 1921, le Conseil de la Société des Nations avait évidemment présents à l'esprit tous les éléments de droit qui sont à la base du statut de la Ville libre de Dantzig : Traité de Versailles, Convention de Paris, ainsi que les relations particulières instituées par ces deux instruments tant entre la Société des Nations et la Ville libre qu'entre celle-ci et la Pologne. Tous les

aspects du problème lui étant désormais connus par une négociation qui avait successivement mis en lumière les divers points de vue, on doit admettre que sa résolution a été certainement prise dans les limites que lui fixait le droit en vigueur. Le texte même du point 7 de la résolution atteste le souci du Conseil de se conformer rigoureusement à cet état de droit. Voulant répondre, dans une certaine mesure, aux demandes du Gouvernement polonais, il s'est visiblement préoccupé de déterminer clairement le champ de sa liberté d'action. S'il rappelle, dans le texte de la résolution, l'interdiction de l'établissement d'une base navale, c'est parce qu'il estime ne pouvoir aller jusque là sans enfreindre l'état de droit institué à Dantzig. Mais, inversement, c'est évidemment parce qu'il la considère comme entièrement compatible avec ce droit qu'il accueille l'idée de la création d'un simple port d'attache avec les prérogatives que cette notion comporte.

Il serait impossible de concevoir que, préoccupé de n'enfreindre en rien les principes du droit en vigueur, il n'ait apporté ce souci que dans l'ordre de l'interdiction et non dans celui de l'autorisation.

Ainsi donc, quand bien même on donnerait à la disposition qui fait l'objet du point 7 de la résolution du 22 juin une interprétation différente de celle qui a été exposée ci-dessus ; quand bien même on se refuserait à y voir une décision définitive quant à la création d'un port d'attache pour ne la considérer que comme une décision de caractère administratif rendue par le Conseil dans l'exercice de sa mission de protection de la Ville libre, on est contraint de reconnaître que le Conseil a dû considérer les attributions inhérentes à la création d'un port d'attache comme n'excédant pas les droits que possède la Pologne en vertu du principe dominant du libre accès à la mer.

C'est qu'en effet l'accès et le stationnement que réclame la Pologne comportent toute une série d'activités qui n'ont aucun but militaire, qui sont d'ordre purement technique ou économique et qui, à ce titre, rentrent incontestablement dans les droits que confère à la Pologne l'article 104, 2°, du Traité de Versailles. Cette disposition assure à la Pologne « sans aucune restriction » le libre usage et le service des voies d'eau, des docks, bassins, quais et autres ouvrages sur le territoire de la Ville libre nécessaires aux importations et exportations de la Pologne.

Le Gouvernement polonais estime que cette stipulation, combinée avec celle des deux alinéas suivants (art. 104, 3° et 4°), l'autorise à faire usage, à des fins économiques et techniques, pour ses navires de guerre, du port et des voies d'eau, ainsi que de leurs installations. A ce titre, les droits qui lui appartiennent comportent : le droit pour tous les

navires de guerre du libre passage par le port et les voies d'eau dantzikoises aux voies d'eau et aux eaux territoriales polonaises et *vice-versa*; le droit de stationnement, surtout dans la saison d'hiver, dans le port de Dantzig; le droit de s'approvisionner en tous matériaux et produits nécessaires à l'entretien technique et économique des navires ainsi qu'à l'entretien de l'équipage; le droit de se servir des chantiers dantzikoises pour la réparation des navires.

En effet, les termes « sans aucune restriction » qui figurent à l'article 104, 2°, ne permettent pas d'enlever à la Pologne le bénéfice de cette disposition sous prétexte que les besoins d'ordre technique ou économique à satisfaire se rapportent à des navires de guerre. On ne saurait se prévaloir, pour faire admettre ce point de vue, des termes : « nécessaires aux importations et exportations de la Pologne ». Ces derniers termes n'ont pour objet que de définir le caractère technique de ceux des ouvrages (en dehors des voies d'eau, docks, bassins et quais) qu'il est permis à la Pologne d'utiliser « sans aucune restriction ». Vouloir les interpréter comme limitant le droit absolu d'utilisation économique reconnu à la Pologne en raison du but particulier auquel cette utilisation économique se rattache pourrait conduire à des conséquences manifestement absurdes. On pourrait, par exemple, arriver à en déduire que la Pologne n'a le droit d'utiliser le port, les voies d'eau et ouvrages que pour des fins d'importation et d'exportation et qu'il lui est interdit de s'en servir pour le transit.

En liaison avec l'article 104, 2°, du Traité de Versailles, l'article 26 de la Convention de Paris du 9 novembre 1920 impose au Conseil du Port l'obligation d'assurer à la Pologne le libre usage et le service du port et des moyens de communication sans aucune restriction et dans la mesure nécessaire pour assurer le trafic d'importation ou d'exportation à destination ou en provenance de la Pologne. Les mots « dans la mesure nécessaire pour assurer le trafic d'importation ou d'exportation à destination ou en provenance de la Pologne » déterminent le niveau technique auquel le port doit être maintenu, mais ne visent nullement des restrictions à introduire au principe de l'usage illimité.

(Signé) V. MODERÓW,
Agent du Gouvernement polonais.

Dantzig, le 2 novembre 1931.
