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[6] Permanent Court of International Justice.

<i>Present:</i>	Mm. Loder,		<i>President,</i>
	Weiss,		<i>Vice-President,</i>
	Lord Finlay, Mm. Nyholm, Moore, de Bustamante, Altamira, Oda, Anzilotti, Huber,		<i>Judges,</i>
	M Wang,		<i>Deputy-Judge.</i>

The Council of the League of Nations on February 3rd, 1923, adopted the following Resolution:

The Council of the League of Nations having been apprised of certain questions regarding the following facts:

(a) a number of colonists who were formerly German nationals, and who are now domiciled in Polish territory previously belonging to Germany, have acquired Polish nationality, particularly in virtue of Article 91 of the Treaty of Versailles. They are occupying their holdings under contracts (Rentengutsverträge) which although concluded with the German Colonization Commission prior to the Armistice of November 11th, 1918, did not receive an “Auflassung” before that date. The Polish Government regards itself as the legitimate owner of these holdings under Article 256 of the Treaty of Versailles, and considers itself entitled to cancel the above [7] contracts. In consequence, the Polish authorities have taken certain measures in regard to these colonists by which the latter will be expelled from the holdings which they occupy;

(b) the Polish authorities will not recognize leases conceded before November 11th, 1918, by the German Government to German nationals who have now become

Polish subjects. These are leases over German State properties which have subsequently been transferred to the Polish State in virtue of the Treaty of Versailles, in particular of Article 256,

Requests the Permanent Court of International Justice to give an advisory opinion on the following questions:

(1) Do the points referred to in (a) and (b) above involve international obligations of the kind contemplated by the Treaty between the United States of America, the British Empire, France, Italy, Japan and Poland, signed at Versailles on June 28th, 1919, and do these points come within the competence of the League of Nations as denned in that Treaty?

(2) Should the first question be answered in the affirmative, the Council requests the Court to give an advisory opinion on the question whether the position adopted by the Polish Government, and referred to in (a) and (b) above, is in conformity with its international obligations.

The Secretary-General is authorized to submit this request to the Court, together with all the relevant documents, to explain to the Court the action taken by the Council in this matter, to give all assistance necessary in the examination of the question, and, if required, to take steps to be represented before the Court.

On March 2nd, 1923, the Secretary-General of the League, by virtue of this Resolution, sent to the Permanent Court of International Justice the following request: [8]

The Secretary-General of the League of Nations,
In pursuance of the Resolution adopted by the Council on February 3rd, 1923, a certified copy of which is attached to this communication,

And in virtue of the authority conferred upon him by that Resolution,

Has the honour to submit to the Permanent Court of International Justice an

application from the Council requesting the Court in accordance with Article 14 of the Covenant, to give an advisory opinion on the questions which have been referred to it by the above-mentioned Resolution of February 3rd, 1923.

The Secretary-General is also instructed by the Council to attach to this communication a note explaining the action taken by the Council in the matter; together with copies of such documents relative to the points under discussion as have at present been communicated to the Members of the Council.

In accordance with the aforesaid Resolution of the Council, the Secretary-General will be prepared to furnish any assistance which the Court may require in the examination of the question, and he will, if necessary, arrange to be represented before the Court.

By a letter of April 26th, 1923, the Secretary-General of the League of Nations informed the Court that the Council of the League had, on April 18th, decided to transmit to the Court a report which had been submitted to it on the subject of the interpretation of paragraph (b) of the Resolution of February 3rd, and that the Council had approved this report, which is as follows:

By a Resolution dated February 3rd, 1923, the Council decided to ask the Permanent Court of International Justice for an advisory opinion concerning certain points in regard to the German Minorities question in Poland.

In a letter dated March 22nd, distributed to the Members of the Council (Doc. C. 272, 1923 V) the Polish Govern[9]ment expressed a desire that the sense and bearing of paragraph (b) in this resolution should be confirmed in order that this latter point might be stated with the absolute clearness prescribed by Article 72 of the Rules of the Court.

All that is required is a statement that paragraph (b) refers exclusively to the case of a special category of colonist farmers, namely those who occupy holdings in virtue of leases contracted before the Armistice and still unexpired, and who subsequently obtained after the Armistice amortization contracts (Rentengutsverträge) for these holdings.

As this was clearly the intention of the Council when it took its decision on February 3rd, I venture to propose that my colleagues should signify their agreement with

the Polish conclusions. If this proposal is accepted, the Secretary-General would then forward to the Polish Government and to the Permanent Court of International Justice copies of the present report, as confirmed by the Council. The text of the Polish letter dated March 22nd, 1923, would also be communicated to the Court.

In conformity with Article 73 of the Rules of Court, notice of the request for an advisory opinion was given to the Members of the League of Nations, through the Secretary-General of the League, and to the States mentioned in the Annex to the Covenant. Furthermore, the Registrar of the Court was directed to notify the German Government of the request.

Together with the request were transmitted a certain number of documents ⁽¹⁾. [10]

Further documents were obtained from the Secretariat of [11] the League of Nations at the request of the President of the Court ⁽¹⁾. [12]. Furthermore, the Court had before it a certain number of documents transmitted to it on behalf of the Polish and of the German Governments respectively ⁽¹⁾. [13] The Court also heard, at the request of the Polish Government, the statements of its representatives, Count Rostworowski, Professor at the University of Cracow, and Sir Ernest Pollock, formerly Attorney-General of Great Britain. It likewise heard M. Schiffer, former Minister of Justice of the Reich, appointed by the German Government as its representative for the purpose of giving explanations supplementary to those contained in the documents.

By the Treaty of Peace between the Allied and Associated Powers and Germany, which was signed at Versailles on June 28th, 1919, and which came into force on January 10th, 1920, Germany, in conformity with the action already taken by the Allied and Associated Powers, recognized the complete independence of Poland and renounced in her favour all right and title over certain territory which is described in Article 87 and which includes the territory in which the question now before the Court has arisen.

Article 256 of the Treaty contains the following provision.

Powers to which German territory is ceded shall acquire all property and possessions situated therein belonging to the German Empire or to the German States, and the value of such acquisitions shall be fixed by the Reparation Commission, and paid

by the State acquiring the territory to the Reparation Commission [14] for the credit of the German Government on account of the sums due for reparation.

“For the purposes of this Article the property and possessions of the German Empire and States shall be deemed to include all the property of the Crown, the Empire or the States, and the private property of the former German Emperor and other Royal personages.

On July 14th, 1920, a law was enacted in Poland, containing, among others, the following articles:

Article 1.

In all cases in which the Crown, the German Reich the German States, the institutions of the Reich or of the German States, the ex-Emperor of Germany or other members of the German reigning houses, are, or were, after November 11th, 1918, inscribed in the land registers of the former Prussian provinces as owners or possessors of real rights, the Polish Courts shall, in accordance with the terms of the Treaty of Versailles of June 28th, 1919, inscribe *ex officio* in such registers, the Treasury of the Polish State, in place of the persons or persons in law above mentioned.

Article 2.

Should one of the persons or persons in law referred to in Article 1, after November 11th, 1918, have alienated or encumbered the immovable property in question, or if, after November 11th, 1918, a real right standing in the name of the personalities enumerated in Article 1 has been at their request, or with their consent, transferred, suppressed, or has undergone any other change, the Courts shall restore the entry in the land register as it would have been had the persons enumerated in Article 1 not made such request or given the consent necessary to effect the changes made in the land register.

If the Registry of Mortgages receives a declaration of hypothec, or of a mortgage upon the estate or upon the rent, and, if, and as soon as, it appears from the [15] contents of the declaration that any one of the persons enumerated in Article 1 is the beneficiary

under the hypothec or mortgage, or was so after November 11th, 1918, the Court in that case shall *ex officio* inscribe the Treasury of the Polish State as such beneficiary under the hypothec or mortgage. The provisions of paragraph 1 of this Article with regard to the restoration of the previous entries in the land registers, shall be applied in a similar manner to the contents of these declarations.

Article 5.

The Treasury of the Polish State, inscribed in conformity with Article 1, as the owner of an immovable property, may demand the expulsion from that property of persons who, on the basis of an agreement concluded with one of the persons enumerated in Article 1, continue in possession of such property after the coming into force of this law.

In execution of this law, the Polish Government proceeded, through the Courts, to oust the occupants of the land in pursuance of notices served on them by the Polish authorities. The occupants resisted the attempt to oust them, on the ground that this attempt constituted a violation of acquired lights which they possessed under the law, and therefore an infraction of the Polish Minorities Treaty.

These occupants are to be divided into two classes: first, those holding under contracts known as *Rentengutsverträge*, entered into with the Prussian State acting through the Settlement Commission for West Prussia and Posen; and second, those holding under contracts known as *Pachtverträge* similarly entered into. Under the *Rentengutsverträge* the lands were made over to the settler in perpetuity against payment of a fixed rental, subject to a right of withdrawal and of repurchase on the part of the State on certain conditions stated in the contract; under the *Pachtverträge* the lands were leased to the settlers for a term of years. These contracts were made under certain laws passed by Prussia. The first [16] of these laws which is dated April 26th, 1886, is entitled “A Law concerning the Promotion of German Settlements in the Provinces of West Prussia and Posen”. Money was placed at the disposal of the Prussian Government “for the purpose of strengthening, by means of settling German peasants and workman, the German element in the provinces of West Prussia and Posen against efforts to Polonize the provinces”.

With the money thus appropriated lands were purchased by the Prussian State and delivered to the settlers.

Of the *Rentengutsverträge*, two examples have been brought by the representatives of Poland to the attention of the Court. One of these has been called the “Posen” form, and the other the “Rattai” form. The rights conveyed under these forms are in substance the same. Each form contains certain “general conditions” and certain “special conditions”. The *Pachtverträge* also contain general and special conditions.

Under the Council's Resolution, the case before the Court relates only to two classes of settlers; first, those holding under *Rentengutsverträge*, concluded prior to November 11th, 1918, where there was no *Auflassung* before that date; and secondly, those holding under leases (*Pachtverträge*) contracted before November 11th, 1918, for which *Rentengutsverträge* were substituted after that date.

By the documents filed with the Court the present subject of controversy appears to have been brought to the attention of the League of Nations by a telegram addressed to the Secretary-General on November 8th, 1921, by the German League for the Protection of the Rights of Minorities in Poland (*Deutschtumsbund zur Wahrung der Minderheitsrechte in Polen*) of Bydgoszcz (Bromberg), which stated that several thousand families of farmers of German origin had, in violation of the provisions of the Minorities Treaty, been called upon by the Polish Government to vacate their lands before December 1st. The telegram urgently requested that measures should immediately be taken for the protection of the persons in question.

The Secretary-General of the League, proceeding under a resolution of the Council of June 27th, 1921, relating to the protection of minorities, at once acquainted the representative of Poland near the Secretariat with the contents of the telegram, and also duly advised the Members of the Council.

Acting in conformity with a resolution of the Council of October 25th, 1920, the President of the Council, M. Hymans, representative of Belgium, invited the Marquis Imperiali, representative of Italy, and the Viscount Ishii, representative of Japan, to join him in the

examination of the question. The committee thus constituted, consisting of the representatives of three of the Powers represented in the Council, examined the subject on the basis of information furnished by the representative of Poland at Geneva as well as by the Germanic League, and on January 23rd, 1922, made a preliminary report advising that the Polish Government be asked to suspend all measures which might in any way affect the situation of the settlers, until the Council should have had the opportunity of considering the further observations of the Polish Government.

Various postponements of the execution of these measures were subsequently requested and promised, while the Council through committees appointed for the purpose continued its consideration of the subject. On May 17th, 1922, the Council, acting upon a report presented by the representatives of Belgium, Italy and Japan, adopted a resolution by which the Polish Government was requested, pending further consideration of the matter by the Council, to suspend all administrative or judicial measures which might prejudice the normal situation of the farmers of German race who had become Polish citizens or whose character as Polish citizens depended on the solution of questions which were raised in the report. A further suspension was accordingly promised, and discussions were immediately resumed between the Polish Delegation and the Secretariat of the League. At an extraordinary session of the Council in London in [18] July 1922 the subject was again considered, a representative of Poland being present. Further information was obtained from the Polish Government and its representative as well as from representatives of the settlers; and on September 9th, 1922, M. da Gama, representative of Brazil, made to the Council, then sitting at Geneva, a report recommending that the legal questions involved be submitted to a committee of jurists.

This recommendation was adopted by the Council, and a committee was accordingly appointed, consisting of M. Botella of Spain, M. Fromageot of France, Sir Cecil Hurst of Great Britain, and M. van Hamel, Director of the Legal Section of the Secretariat of the League of Nations.

The conclusions of the Committee, so far as concerns the questions now before the Court, were to the effect that, as regarded cases where *Rentengutsverträge* were entered into before November nth, 1918, but no *Auflassung* followed prior to that date, the expulsion of the settlers from their lands was not justified, the Committee holding that various circumstances, including the delay in the fixing of boundaries and the settlement of plans, and the profound disturbance

caused by the war, were such as to excuse (*justifier*) the non-completion (*defaut de regularisation*) of the transfer, and that such non-completion, not being imputable to the settlers, could not justly be invoked against them, if in other respects they had satisfied the obligations which their contract imposed. As to settlers who held their lands under leases which were concluded before November 11th, 1918, and which had not yet expired, the Committee held that they should be left in possession conformably to their leases.

The Polish Government questioned the soundness of the conclusions of the Committee of Jurists, and the Council subsequently decided to send the matter to the Court for an advisory opinion.

The questions that have been discussed before the Court fall under two general heads: First, that of the competency of the League of Nations to take cognizance of the matter; and [19] secondly, that of the right of the settlers to continue to hold and cultivate the lands which they occupy. If, as Poland has claimed, the subject matter of the controversy is not within the competency of the League, the Court would not be justified in rendering an opinion as to the rights of the settlers. The Court therefore will first consider the question of competency.

I.

The Council, in taking cognizance of the matter, has acted under what is known as a Minorities Treaty.

By Article 93 of the Treaty of Peace, signed at Versailles on June 28th, 1919, to which Poland is a party.

“Poland accepts and agrees to embody in a Treaty with the Principal Allied and Associated Powers such provisions as may be deemed necessary by the said Powers to protect the interests of inhabitants of Poland who differ from the majority of the population in race, language or religion.”

The Treaty which Poland thus agreed to make was signed on the same day, the signatories being the United States of America, the British Empire, France, Italy and Japan (the Principal Allied and Associated Powers) on the one hand, and Poland on the other. This is the Minorities Treaty now in question, on the provisions of which the interposition of the Council in the matter rests. The provisions of the treaty will be quoted only so far as they are pertinent to the matter before the Court.

The preamble of the Treaty, after reciting that the Allied and Associated Powers had by the success of their arms restored the Polish nation to the independence of which it had been unjustly deprived, declares that the Allied and Associated Powers on the one hand, are “anxious to ensure the execution of the provisions of Article 93” of the Peace Treaty, and that Poland, on the other hand, desires “to conform her institutions to the principles of liberty and justice and to give a sure [20] guarantee to the inhabitants of the territory” over which, she has assumed sovereignty. For this purpose, so the preamble declares, the Minorities Treaty was concluded.

By Article 1 of this Treaty, Poland undertakes that the stipulations contained in Articles 2 to 8 shall be recognized as “fundamental laws” and that no law, regulation or official action shall conflict or interfere with or prevail over them. By Article 2, Poland further “undertakes to assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language, race or religion”.

The first paragraph of Article 7 provides:

“All Polish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.”

The first sentence of Article 8 contains the following additional stipulation:

“Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals.”

Without quoting further stipulations the Court will proceed at once to the provisions of

Article 12 of the Treaty, which reads as follows:

“Poland agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy and Japan, hereby agree not [21] to withhold their assent from any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

“Poland agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

“Poland further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Polish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.”

It will be observed that by Article 12 the stipulations of the preceding articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute “obligations of international concern” and are placed “under the guarantee of the League of Nations”; that Poland then agrees that “any Member of the Council” of the League shall have the right to bring to the attention of the Council “any infraction, or any danger of infraction, of any of these obligations”.

When the matter now before the Court was first brought to the notice of the League of

Nations, it was dealt with by the Secretariat of the League and by the Council in accordance with the procedure established by the Council for such cases, and it was thus repeatedly brought to the attention of the [22] Council by at least three of its members, the representatives of their respective States. Paragraph 2 of Article 12 provides that any Member of the Council may bring to its attention any infraction or danger of infraction of any of the obligations mentioned, and that the Council may thereupon proceed to act on the subject. The Court does not think it material to inquire how or by whom the member or members may have been induced to bring the matter to the Council's attention. The Members of the Council are by the terms of the Covenant the representatives of the States by which they are appointed. States can act only by and through their agents and representatives. So far as concerns the procedure of the Council in minority matters, it is for the Council to regulate it. On the other hand, it is impossible to say that the present matter has not been brought to the attention of the Council by any of its members in accordance with the provisions of Article 12. The report of M. da Gama, opens with the statement that the matter had been brought to the attention of the Council by a report presented by three of its members, and it does not matter that these members were members of a committee formed under the Resolution of the Council of October 25th, 1920, to facilitate the performance by the Council of its duties in minorities matters.

Moreover, the matter having been brought to the attention of the Council, the Council, as has been seen, may at once proceed to "take such action and give such direction as it may deem proper and effective in the circumstances". This stipulation clearly makes it proper for the Council to exercise its power under Article 14 of the Covenant to request the advice of the Court on points of law, on the determination of which its action may depend.

In connection with the power of the Council, in the performance of its functions under § 2 of Article 12 of the Minorities Treaty, to refer the present matter to the Court for an advisory opinion, the Court does not deem it necessary to interpret paragraph 3 of Article 12, by which Poland consents that any difference of opinion as to questions of law or fact arising out of the preceding articles of the treaty may be [23] brought before the Court by any one of certain Powers for final decision as a dispute of an international character. Paragraph 3, by its very terms, supplements paragraph 2, but is not in any sense a substitute for it; and the fact that a question brought before the Court by the Council under Paragraph 2 might conceivably be

brought before the Court by a single Power as an international difference under Paragraph 3, cannot be accepted as a reason for preventing the Council from discharging its duties under Paragraph 2. The possible range of Paragraph 3, so far as concerns the nature of the questions embraced in it, may be as great as that of paragraph 2. If the Court should refuse to take cognizance of a question presented under either paragraph, on the ground that it conceivably might have been or might be presented in a different way under the other, the result might be to make both paragraphs practically ineffective.

It is not necessary, having regard to the facts of this case, to decide whether action by a Member of Council under § 2 is a condition precedent to action by the Council itself.

So far as concerns the question of competency, a further question remains to be considered, and that is whether there is in the present case any infraction or danger of infraction of any of the obligations included under Article 12. While under the terms of the Minorities Treaty it necessarily rests with the Council in the first instance to determine whether an infraction or danger of infraction exists, the Court is of opinion that upon the facts before it the existence of such a condition clearly appears.

As has been seen, Article 7 of the treaty provides that all Polish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion. The expression “civil rights” in the Treaty must include rights acquired under a contract for the possession or use of property, whether such property be immovable or moveable.

Article 8 of the Treaty guarantees to racial minorities the [24] same treatment and security “in law and in fact” as to other Polish nationals. The facts that no racial discrimination appears in the text of the law of July 14th, 1920, and that in a few instances the law applies to non-German Polish nationals who took as purchasers from original holders of German race, make no substantial difference. Article 8 is designed to meet precisely such complaints as are made in the present case. There must be equality in fact as well as ostensible legal equality in the sense of the absence of discrimination in the words of the law.

Article 5 of the law of July 14th, 1920, provides for the expulsion from the lands in question of any persons who may occupy them under an agreement with any of the proprietors

for whom the Polish Treasury has been substituted under Article 1 of the law, and by Article 1 it appears that those for whom the Polish Treasury has been substituted include the German States. The outstanding, fundamental point in the present case is the fact that the persons whose rights are now in question are as a class persons of the German race who settled on the lands in question under the Prussian law of 1886 and subsequent legislative acts, under contracts made with the Prussian State. Indeed, it is for this very reason that Poland contends that the contracts now under consideration are to be held invalid. Hence, although the law does not expressly declare that the persons who are to be ousted from the lands are persons of the German race, the inference that they are so is to be drawn even from the terms of the law. This is also clearly established as a fact by the proofs before the Court. It undoubtedly is true, as Poland has stated, that the persons whose rights are involved were settled upon the lands in pursuance of a policy of Germanization which appears upon the face of the legislation under which the contracts were made. The effect of the enforcement of the law of July 14th, 1920, would be to eradicate what had previously been done, so far as de-Germanization would result from requiring the settlers in question to abandon their homes. But, although such a measure may be comprehensible, it is precisely what the Minorities Treaty was intended to [25] prevent. The intention of this Treaty was no doubt to eliminate a dangerous source of oppression, recrimination and dispute, to prevent racial and religious hatreds from having free play and to protect the situations established upon its conclusion, by placing existing minorities under the impartial protection of the League of Nations.

There is yet another point which the Court will consider. Poland contends that her action as regards the settlers has been taken in the exercise of the rights conferred upon her by the Peace Treaty, and especially by Article 256, and that the interpretation of this treaty does not belong to the Council of the League of Nations when acting under the Minorities Treaty. The Court is unable to share this view. The main object of the Minorities Treaty is to assure respect for the rights of Minorities and to prevent discrimination against them by any act whatsoever of the Polish State. It does not matter whether the rights the infraction of which is alleged are derived from a legislative, judicial or administrative act, or from an international engagement. If the Council ceased to be competent whenever the subject before it involved the interpretation of such an international engagement, the Minorities Treaty would to a great extent be deprived of

value. The reasons urged by Poland for a restrictive interpretation of the Treaty do not justify the Court in thus construing it. By Article 93 of the Peace Treaty, Poland agrees to provide by a special treaty for the protection of the interests of her racial, linguistic and religious minorities. This pledge of protection would be altogether uncertain and conjectural if the Minorities Treaty should cease to be applicable whenever the act complained of involved the consideration, of a stipulation of the Peace Treaty not specifically relating to minorities. In order that the pledged protection may be certain and effective, it is essential that the Council, when acting under the Minorities Treaty, should be competent, incidentally, to consider and interpret the laws or treaties on which the rights claimed to be infringed are dependent. [26] Although this case has been presented by the Polish Government as one under Article 256 of the Treaty of Peace, the Court is of opinion that the interpretation of the various provisions of the Treaty of Peace and of the other international agreements connected with it is to be considered as incidental to the decision of questions under the Minorities Treaty.

II.

The Court, before entering upon the examination of the two points (a) and (b) contained in the second question submitted to it, considers it necessary to deal, in the first instance, with a question common to both points, namely, whether and to what extent the date of the Armistice, November 11th, 1918, affects the validity of the contracts now under consideration.

According to Articles 2, 3, 7, and 8 the Polish Law of July 14th, 1920, the validity of certain legal transactions relating to the property of the German Empire and the German States, lying within the territories ceded to Poland, depends on the fact whether these transactions took place before or after November 11th, 1918, and that date appears in the questions submitted to the Court. This question of date is raised upon a stipulation of the Armistice as supplemented by the Final Protocol signed at Spa on December 1st, 1918, and upon certain provisions of the Treaty of Versailles.

In the opinion of the Court, the date of November 11th, 1918, has not, so far as concerns the rights of the settlers, the decisive character attributed to it by the Polish Law of 1920.

Article XIX, paragraph 3, of the Armistice contains the following provision:

“While the Armistice lasts, no public securities shall be removed by the enemy which can serve as a pledge to the Allies to cover reparation for war losses”.

By the protocol concluded at Spa, December 1st, 1918, in relation to the execution of the third and following paragraphs of Articles XIX of the Armistice, it is provided that, [27] while the Armistice lasts, “the German Government shall take no measure that can diminish in any form whatsoever the value of its public or private domain as a common pledge to the Allies for the recovery of the reparation to which they are entitled”, and particularly that it shall not alienate, cede or hypothecate railways, canals, mines, woods or colonial, industrial or commercial enterprises which belong to it or in which it has an interest.

These stipulations are connected in the Polish argument with Article 256 of the Treaty of Versailles, which provides that the Powers to which German territory is ceded shall acquire all property and possessions situated therein, belonging to the German Empire or to the German States, and that the value of such acquisitions shall be fixed by the Reparation Commission and paid by the State acquiring the territory to the Reparation Commission for the credit of the German Government on account of the sums due for reparation. Article 92 of the Treaty provides that there shall be excluded from the share of financial liabilities of Germany and Prussia, assumed by Poland, that portion of the German or Prussian debt which, according to the finding of the Reparation Commission, “arises from measures adopted by the German and the Prussian Governments, with a view to German colonization in Poland”; and that in fixing under Article 256 the value of the property and possessions of Germany and the German States passing to Poland, the Reparation Commission shall exclude from the valuation buildings, forests and other State property, “which belonged to the former Kingdom of Poland”, which property Poland was to acquire “free of all costs and charges”.

With regard to the last clause it is only to be observed that no claim has been made that the lands now in question were the “property” of the former Kingdom of Poland.

The time at which territories formerly under German sovereignty passed under Polish sovereignty is clearly shown by the terms of the Armistice, together with those of the Minorities Treaty and the Treaty of Peace. [28]

By Article XII of the Armistice, which is found among the “Clauses relating to the Eastern Frontiers of Germany”, German troops then in territories which before the war formed part of Russia were required to return within the frontiers of Germany as they existed on August 1st, 1914. They therefore were not required to be withdrawn from German territories which later passed to Poland.

On the other hand, Paragraph 3 of the Preamble of the Minorities Treaty runs as follows:

“Whereas the Polish State, which now in fact exercises sovereignty over those portions of the former Russian Empire which are inhabited by a majority of Poles, has already been recognized as a sovereign and independent State by the Principal Allied and Associated Powers;”

and paragraph 4, as follows:

“Whereas under the Treaty of Peace concluded with Germany by the Allied and Associated Powers, a Treaty of which Poland is a signatory, certain portions of the former German Empire will be incorporated in the territory of Poland”.

This statement, which is in conformity with the historical events leading to the restoration of the independence of the Polish nation, merely denotes the fact, which is not disputed, that on June 28th, 1919, when the Treaty of Peace and the Minorities Treaty were signed, although Poland was recognized as exercising sovereignty over portions of the former Russian Empire, the cession and occupation of the German territories were left to be effected by the coming into force of the Treaty of Peace, and the German Government as well as the Prussian State is to be considered as having continued to be competent to undertake transactions falling within the normal administration of the country during that period. Earlier dated were applied in Alsace-Lorraine by virtue of special and specific provisions of the Treaty. [29]

The question whether and to what extent the provisions of the Armistice and of the Spa Protocol apply to dealings with the lands now in question, will be examined hereafter in connection with points (a) and (b) of question 2.

III.

The second question before the Court relates; to certain measures taken by Poland affecting certain contracts entered into by the settlers with the Prussian Government. Before proceeding to answer this question it should be observed that German law is still in force in the territories ceded by Germany to Poland, and that reference to German law is necessary in the examination of the nature and extent of the rights and obligations arising under these contracts. The Court, however, will not discuss distinctions and exceptions which are not necessary for the present case.

As regards the *Rentengutsverträge* mentioned in point (a) of the question, they are both in form and in substance a special kind of contract of sale. Specimens of such contracts are before the Court. The contract states that the holder acquires the land as owner; he is described throughout the instrument as a purchaser and he enters into possession of the land upon the conclusion of the contract and the payment of a fixed sum. The chief characteristics which distinguish these *Rentengutsverträge* from ordinary contracts of sale are:

(1) part of the purchase price is paid before taking possession of the land and the remainder is to be paid thereafter in the form of a fixed rent, which may be redeemed on conditions stated in the contract; and

(2) under the special and general conditions (*Bedingungen*), which form part of the contract, certain obligations are imposed upon the purchaser and certain rights are reserved to the Prussian State, including in certain specified cases the right of withdrawal and the right of re-purchase. But except as otherwise provided in these special and general conditions [30] the ordinary rules governing contracts of sale apply to the *Rentengutsverträge*.

Under German law the transfer of ownership of land is subject to specific provisions. A contract of sale, for instance, even followed by entry into possession on the part of the purchaser, is not sufficient in itself to vest the legal ownership (*Eigentum*) in the purchaser. To effect a transfer of such ownership, *Auflassung* and entry in the land registry are necessary. The *Auflassung* consists in declarations of transfer of ownership made at the same time by both

parties before the land Registry Office (Articles 873 and 925 of the German Civil Code). It follows that holders under *Rentengutsverträge* where there was no *Auflassung* before November 11th, 1918 — had not acquired legal ownership of the lands prior to such date. But it by no means follows that they had not acquired a right to the land.

It has been contended that, before *Auflassung*, the rights of the holders, if any, are only inchoate or imperfect rights which are not enforceable at law. The Court is unable to share this view.

An examination of the *Rentengutsvertrag* shows that it amounts to a valid and enforceable contract for the ownership of the land. The first clause is as follows:

“Der Landwirt erwirbt die im Teilungsplane des Ansiedlungsgutes Kreis, unter Z nachgewiesene Ansiedlerstelle in der Grösse von ungefähr.... ha., bestehend aus den Flurstücken nebst den zugeteilten Gebäuden — zu Eigentum gegen Rente unter den ihm bekannt gemachten, diesem Verträge als Anlage beigefügten, einen wesentlichen Bestandteil des Vertrages bildenden allgemeinen und den hierunter folgenden besonderen Bedingungen.”

“.... farmer, hereby acquires as owner, in return for payment of a rent, the settlement holding shown as on the allotment plan of the settlement estate of...., in the district of....This holding is of about....hectares and consists of the fields [31] and the buildings appertaining thereto. This contract is granted subject to the general conditions which have been made known to the transferee, and which are annexed to the contract and form an integral part thereof, and to the following special conditions”

This is a plain statement that the purchaser acquires the specified land as owner against rent (*erwirbt zu Eigentum gegen Rente*) subject to the Special and General Conditions.

The special conditions contain the following provisions: The purchaser is to make a cash payment on accounts The rent is specified. The piece of land is to be handed over on the payment on account being made. If the payment on account is not made, the State may withdraw from the contract. The rights of the purchaser may not be assigned except with the sanction of the State.

It is unnecessary to refer to the other special conditions.

It is obvious that there is nothing in any of the Special Conditions that prevents the purchaser from having a right to the land on the terms of the contract.

The General Conditions require examination.

In the form of contract furnished to the Court by the Secretary-General of the League of Nations paragraph I provides that the purchaser is, within a year, to make an “efficient economic settlement” (*Leistungsfähige wirtschaftliche Ansiedlung*) on the land, and adds “the State shall judge whether this duty has been carried out”.

Paragraph 2 gives the State the right to withdraw from the contract if the purchaser does not begin to cultivate within six months and complete the cultivation within two years; also in the event of certain specified breaches of contract by the purchaser, and further, if the right of the purchaser against the State is seized by a creditor (*Wenn der Anspruch des Käufers gegen den Staat auf Uebertragung des Eigentums an der Stelle von einem Gläubiger gepfändet wird*).

Under paragraph 3, the land is to be conveyed (*aufgelassen*)[32] after the purchaser has fulfilled to the satisfaction of the State his obligations under the preceding paragraphs, and the State has provided the necessary documents for the land register.

This clause cannot be read as giving the State an arbitrary right to refuse the *Auflassung* if the conditions of the contract have in fact been fulfilled by the purchaser. In such a case the *Auflassung* may be enforced by proceedings at law, and even if there were any difficulty about compelling the Government to execute the conveyance, there would be no right on the part of the Government to evict from the land the purchaser in possession who had complied with his contract.

It is obvious that in the ordinary course the State would execute the conveyance if the terms had been fulfilled by the purchaser, and that, as the State would not in such case have any right to evict, it would have nothing to gain by postponing the *Auflassung*.

Paragraph 6 makes provision against partial alienations of the land, and also against alienation of the whole except to persons approved by the State.

Paragraph 7 provides that the purchaser should himself reside on the property and conduct the husbandry. The third clause of this Condition provides that permission for a change of possession or ownership will be refused by the State after the expiration of twelve years from the handing over of the land only if it appears that the change may render doubtful the attainment

of the purpose of the Law of 1886.

Some argument was addressed to the Court on behalf of the Polish Government on the subject of Conditions 6 and 7, but these appear to have no material bearing upon the case, and the same observation must be made with regard to the right of repurchase reserved to the State in certain eventualities by paragraph 9 of the General Conditions.

Paragraph 11 contains the following condition:

Mit der Uebergabe erlangt der Käufer das Recht, die Stelle als Niessbraucher zu nutzen. [33]

“with the handing over the purchaser acquires the right of using the place as a usufructuary.” Under German law the usufructuary is protected in his possession and in the enjoyment of the fruits of the thing. Under other forms of contracts presented to the Court, in which the purchaser is not mentioned as a “usufructuary”, he acquires, as soon as the possession has been transferred to him, a right to hold the land as if it were his own (*Eigenbesitz*).

There is nothing else in the *Rentengutsvertrag* which calls for notice. It appears to the Court to be clear that the purchaser had rights to the land even before *Auflassung*. He gave valuable consideration in money and in cultivation for the acquisition of this interest, and it was an interest recognized by law and which might be safeguarded by legal proceedings. The purchaser acquired a *jus ad rem*, and after *Auflassung* had a *jus in re*.

The fact that there was a political purpose behind the colonization scheme cannot affect the private rights acquired under the law, and indeed it is self-evident that no scheme of colonization of this nature could possibly succeed unless the settlers had security in the property for which they had paid in money and in kind.

The acquirer of the *Rentengut*, as well before as after *Auflassung*, has not only a right to possession but is under an obligation to exercise that right. Paragraph 7 of the General Conditions requires the purchaser and his successors to live on the land and themselves to carry on the cultivation. They cannot, without permission of the State, let the property or permit it to be farmed by a deputy. Moreover, there are substantial limitations on the right of resale. These obligations impose a material burden upon the purchaser in addition to the payment of rent, while they deprive him of any opportunity for speculative profit. This fully explains the fixing of

a moderate rent.

As to the right of a purchaser to the transfer of ownership under a contract of sale, Article 433 of the Civil Code provides that “by a contract of sale the seller of a thing is bound to deliver the thing to the purchaser and to procure (for [34] the latter) ownership of the thing”. Under ordinary circumstances, therefore, a purchaser of a piece of land has an undoubted right, enforceable by legal proceedings, to demand of the seller the *Auflassung* which is necessary to complete the transfer of ownership. A final judgment obtained by the purchaser under a *Rentengutsvertrag* takes the place of the vendor's declaration of *Auflassung* (German Code of Civil Procedure, Article 894).

The fact that, in the present case, one of the contracting parties is the State does not affect the legal situation, because under German law, the State, in its relations under private law, is subject to the ordinary rules of private law and can sue and be sued before the Courts (Article 4 of the Introductory Act (*Einführungsgesetz*) to the German Code of Civil Procedure). The claim which the purchaser of a *Rentengut* has against the State for transfer of ownership is incidentally recognized by Clause 1, No. 5 of paragraph 2 of the General Conditions. Nor is the State, in the opinion of the Court, at liberty arbitrarily to deny this claim. Article 157 of the German Civil Code provides that “contracts shall be interpreted according to the requirements of good faith, ordinary usage being taken into consideration”. This provision is applicable to all kinds of contracts and resort to the Courts is always open unless expressly excluded.

IV.

Having examined the nature and extent of the rights arising under the *Rentengutsverträge*, and especially with regard to the time before *Auflassung*, the Court must next consider what, if any, are the effects upon these contracts of the change of sovereignty and of the ownership of State property in the territories concerned.

The representative of Poland made the following statement with regard to those *Rentengutsverträge* where *Auflassung* had taken place before November 11th, 1918;

“The category of colonists not liable to expulsion under the Law of July 14th, 1920, comprises 17, 240 colonists, [35] holding 262, 942 acres of land, under *Rentengutsverträge* completed by *Auflassung* and registration of title in the Land Registers, both having been granted by the Prussian Government before November 11th, 1918. These colonists are all of German race and language. The Law of July 14th, 1920, does not apply to these Colonists. Their title to the land is recognized as valid by the Polish Government subject to the terms of the *Rentengutsverträge*”.

This recognition of title implies the admission that, after *Auflassung*, legal ownership was vested in the holder of the *Rentengut*, so that the ownership of Prussia having ceased to exist, such ownership could not pass to Poland under Article 256 of the Peace Treaty.

In the case of *Rentengutsverträge*, where no *Auflassung* had taken place, and where the Prussian State appeared still in the land register as owner, Poland, under Article 1 of the Law of July 14th, 1920, proceeded to the substitution in the land register of the Polish Treasury for the Prussian State as owner.

It has been shown that under the *Rentengutsverträge* the purchaser has, even before *Auflassung*, vested rights enforceable as against the vendor. The principal question with which the Court is now confronted is the following: The sovereignty and the ownership of State property having changed, is the settler who had concluded a *Rentengutsvertrag* with the Prussian State entitled to claim from the Polish Government as the new owner the execution of the contract, including the completion of the transfer by *Auflassung*?

Three views have been suggested.

The first is that the contracts are of a “personal” nature and exist only as between the original parties, i. e. the Prussian State and the holder of the lands, so that the obligations of the former cannot be considered as having passed to Poland. The reasons why this hypothesis is not acceptable may be found both in what has been said as to the legal nature of the [36] rights of the holder under the *Rentengutsverträge* and in what is now to be said concerning the effect of a change of sovereignty on private rights.

Equally unacceptable is the second view, that the *Rentengutsverträge* have automatically fallen to the ground in consequence of the cession of territory. Private rights acquired under

existing law do not cease on a change of sovereignty. No one denies that the German Civil Law, both substantive and adjective, has continued without interruption to operate in the territory in question. It can hardly be maintained that, although the law survives, private rights acquired under it have perished. Such a contention is based on no principle and would be contrary to an almost universal opinion and practice.

There remains the third view that private rights are to be respected by the new territorial sovereign.

The general question whether and under what circumstances a State may modify or cancel private rights by its sovereign legislative power, requires no consideration here.

The Court is here dealing with private rights under specific provisions of law and of treaty, and it suffices for the purposes of the present opinion to say that even those who contest the existence in international law of a general principle of State succession do not go so far as to maintain that private rights including those acquired from the State as the owner of the property are invalid as against a successor in sovereignty.

By the Minorities Treaty Poland has agreed that all Polish nationals shall enjoy the same civil and political rights and the same treatment and security in law as well as in fact. The action taken by the Polish authorities under the Law of July 14th, 1920, and particularly under Article 5 is undoubtedly a virtual annulment of the rights which the settlers acquired under their contracts and therefore an infraction of the obligation concerning their civil rights. It is contrary to the [37] principle of equality in that it subjects the settlers to a discriminating and injurious treatment to which other citizens holding contracts of sale or lease are not subject.

It remains now for the Court to consider whether the protection assured by the Minorities Treaty in respect of civil rights is affected by any of the provisions of the Peace Treaty, or whether the continuous validity of the contracts is impaired by any of the contract clauses.

Poland has invoked Article 91, paragraph 2 of the Peace Treaty, which provides that German nationals or their descendants who became residents of the ceded territories after January 1st, 1908, will not acquire Polish nationality without a special authorisation from the

Polish State. Poland has further invoked Article 255, paragraph 2, of the same Treaty, which provides that Poland, in taking over a portion of the debts of the German Empire and the Prussian State, shall not be required to assume that portion of the debt which, in the opinion of the Reparation Commission, is attributable to the measures taken by the German and Prussian Governments for the German colonization of Poland. Poland contends that these stipulations indicate a purpose of de-Germanisation, and that consequently she should not be required to perform any of the obligations or to recognise any of the rights resulting from contracts into which the former sovereign, in carrying out his policy of Germanisation, entered with reference to the property which passed to the Polish State under Article 256 of the Treaty.

The stipulations in question are specific, and respectively relate only to a limited phase of the acquisition of nationality, and to the apportionment of public debts. They have no bearing upon the preservation of private rights; and an extension of them to that subject not only would be inconsistent with the provisions of the Minorities Treaty concluded the same day, but would also be inconsistent with other provisions of the Peace Treaty directly bearing on private rights.

Furthermore, Poland claims that she acquired the property [38] of the German States unburdened, because the Peace Treaty does not in terms require her to fulfil the obligations which those States had contracted with regard to such property. The Court, as has already been seen, is of opinion that no treaty provision is required for the preservation of the rights and obligations now in question. In the opinion of the Court, therefore, no conclusion can be drawn from the silence of the Treaty of Peace contrary to that resulting from the preceding statements. On the other hand, however, the position of the Court as regards the protection of the private rights now in question appears to be supported by the provisions of that Treaty.

It is true that the Treaty of Peace does not in terms formally announce the principle that, in the case of a change of sovereignty, private rights are to be respected; but this principle is clearly recognized by the Treaty. Under Article 75, contracts between the inhabitants of Alsace-Lorraine and the former German authorities are as a rule maintained, and if terminated by France in the general interest, equitable compensation must be accorded under certain conditions. If this rule prevails in Alsace-Lorraine, which under Article 51 was restored to French sovereignty as from the date of November 11th, 1918, it is hardly conceivable that it was intended by the Treaty to give discretionary powers as regards similar rights in territories the sovereignty of which was

acquired only by cession. Furthermore, by paragraph 2 of the Annex to Section V (Contracts, Prescriptions, Judgments) of Part X it is provided that, as between former enemies, the following contracts are to be maintained:

- (a) Contracts having for their object the transfer of estates or of real or personal property where the property therein had passed or the object had been delivered before the parties became enemies;
- (b) Leases and agreements for leases of land and houses;
- (c) Contracts of mortgage, pledge or lien;
- (d) Concessions concerning mines, quarries and deposits; [39]
- (e) Contracts between individuals or companies and States, provinces, municipalities, or other similar juridical persons charged with administrative functions, and concessions granted by States, provinces, municipalities, or other similar juridical persons charged with administrative functions.

If as between enemies such contracts are maintained, it seems impossible that the Treaty should have countenanced the annulment of contracts between a State and its newly acquired nationals.

Certain other considerations, relating to the conditions contained in the *Rentengutsverträge* have been invoked in order to justify the annulment of these contracts.

First, the attention of the Court has been drawn to their mixed private and public character. But the political motive originally connected with the *Rentengutsverträge* does not in any way deprive them of their character as contracts under civil law, and the few clauses which they contain of a distinctively political character become inoperative without interfering in the least with the normal execution of their essential clauses.

Secondly, no argument for the annulment of the contracts can be based upon the depreciation which has taken place since their conclusion in the value of the currency in which the stipulated rent is payable. The Court is not called upon to consider whether or how the disproportion between the value of the estate and the depreciation of the rent can be legally overcome. A similar disproportion has taken place in numerous other cases more or less similar, and it would be incompatible with the principle of equality to treat such disproportion as invalidating the contract only in the case of the *Rentengutsverträge*.

It remains to consider whether an *Auflassung* made after November 11th, 1918, was in violation of Clause XIX of the Armistice Conditions and Clause 1 of the Final Protocol signed at Spa, December 1st, 1918. Even assuming that from any point of view the date of the Armistice, November 11th, 1918, was the decisive date for determining the validity of the contracts under consideration, it may be observed that an *Auf[40]lassung*, which is but the fulfilment of a contract of alienation already entered into by the Prussian State, cannot be considered as a “removal” (*distraction*) of public securities within the meaning of the Armistice, nor as a “diminution” of the value of the public or private domain within the meaning of the Spa Protocol. The settlers were already in legal possession of the lands in which they had invested their money, and to which they had already acquired rights enforceable at law; and the Prussian State was not forbidden to perform the usual administrative acts under its pre-existing contracts with private individuals, especially where the delay in the performance of such acts had been due to the disturbed conditions arising from the war.

V.

Point (b) in question 2 relates to leases (*Pachtverträge*) concluded prior to November 11th, 1918. This point, according to the Resolution of the Council of April 18th, 1923, transmitted to the Court by the Secretary-General of the League of Nations on April 28th, “refers exclusively to the case of a special category of colonist farmers, namely those who occupy holdings in virtue of leases contracted before the Armistice and still unexpired, and who subsequently obtained after the Armistice amortization contracts (*Rentengutsverträge*) for these holdings.”

Under the *Pachtvertrag* the place is handed over to the occupant, at first without buildings, which so far as is necessary the State undertakes to provide; but the settler is obliged to make a cash deposit (1) for the security of the State, and (2) for the acquisition of an inventory, and he is also required to pay a percentage on the cost of the buildings as security for their upkeep. The rent is payable (1) for the land, and (2) for the use of the buildings. The settler's wife, when signing the lease jointly with him, is liable as an individual debtor. The lessee is required to keep a stock of cattle of a certain value. He is obliged to hand back any part of the land which may prove to be required “for [41] the fulfilment of the private law obligations of the

State”. On the termination of the lease he is entitled to a conditional compensation; and the fact is particularly to be noticed that, by an express clause in the lease, the event of his taking over the place under a “*Rentengutsvertrag*” either during or at the end of the lease, is dealt with, and the following conditions are provided: (1) the security for the lease and the security for upkeep of the buildings are credited as cash on the purchase-money for the buildings, (2) an allowance of two years' rent is credited as cash on account of the purchase of the buildings, and (3) an extension of time is given for the payment of the balance of the purchase-money of the buildings, for which balance a mortgage is also executed.

The right of the lessee is enforceable at law even against third parties. Article 571 of the German Civil Code provides that “where the land subject to a lease is, after delivery to the lessee, transferred by the lessor to a third party, the acquirer, during the period of his ownership, takes the place of the lessor in the rights and obligations arising under the lease”.

What has heretofore been said in refutation of the argument that the *Rentengutsverträge* need not be recognized by Poland because of the “personal” character of the rights, the “political” nature of the contracts and the disproportion of the rent to the value of the land, applies equally to the argument against the recognition of the *Pachtverträge* and need not be repeated.

It is evident that under the “*Pachtverträge*” a certain security of tenure is assured, subject necessarily to the performance of the conditions of the tenure. The holder becomes personally attached to the land, with a reasonable expectancy of permanent occupancy, and it becomes his home, for the preservation of which he gives his labour, as well as a part of what he produces. The State proprietor on the other hand finds its compensation in the cultivation, development and productivity of the land, which is thus made to contribute to the wealth and prosperity of the State. [42]

For the reasons stated, the Court is of opinion that the *Pachtverträge* were not affected by the transfer of sovereignty, and that they remain in force unless they have expired or have been legally superseded by *Rentengutsverträge*.

If the holder of a *Pachtvertrag* realised, by the fruits of his industry, enough to enable him to undertake the expenditure incumbent upon the holder of a *Rentengutsvertrag*, it was very

usual for him to exchange the *Pachtvertrag* for a *Rentengutsvertrag*, with its permanency of tenure. This possibility is contemplated by the terms of the *Pachtvertrag* itself. The question submitted to the Court relates to the rights of those holders of *Pachtverträge* who had given their *Pachtverträge* in exchange for *Rentengutsverträge*. The Polish Government has taken up the position that this put an end to the *Pachtvertrag*, but that the *Rentengutsvertrag*, in consideration of which the *Pachtvertrag* was surrendered, is void. It is impossible to support such a contention. If the *Rentengutsvertrag* were held to be void, in all fairness the purchaser would be entitled to have his *Pachtvertrag* restored to him. But, in the view of the Court, the *Rentengutsvertrag* was good. It is not obnoxious to any of the objections which have been urged as already stated in this opinion. The exchange of the *Pachtvertrag* for the *Rentengutsvertrag* was a reasonable and proper operation in the ordinary course of management of land.

Point (b) of the second question as explained by the Council inquires whether the position taken by Poland to the effect that *Rentengutsverträge* granted after November 18th, 1918, to holders of *Pachtverträge* are invalid, is in conformity with her obligations. The Court is of opinion that the position of the Polish Government is not justified. As the Prussian State retained and continued to exercise its administrative and proprietary rights in the ceded territory until this territory passed to Poland under the Treaty of Peace, the only ground on which the position of Poland could be justified is, in the opinion of the Court, the contention that the granting of the *Rentengutsvertrag* was prohibited by the provision in the Spa Protocol, by which the German Government [43] engaged, while the Armistice lasted, not to take any measure that could diminish the value of its domain, public or private, as a common pledge to the Allies for the recovery of reparations. The Court thinks that in view of the connection which has been shown to exist between the *Pachtverträge* and the *Rentengutsverträge*, it would be an unreasonable straining of the prohibition in the Protocol to hold that it precluded the Prussian State from granting, prior to the passing of the territory to Poland, a *Rentengutsvertrag* to the holder of a *Pachtvertrag* granted prior to the Armistice.

For these reasons,

The Court is of opinion,

That the points referred to in (a) and (b) of the Resolution of the Council of the League of

Nations of February 3rd, 1923, do involve international obligations of the kind contemplated by the Treaty between the United States of America, the British Empire, France, Italy, Japan and Poland, signed at Versailles on June 28th, 1919, and that these points come within the competence of the League of Nations as defined in that Treaty;

That the position adopted by the Polish Government, and referred to in (a) and (b) of the said Resolution was not in conformity with its international obligations.

Done in French and English, the English text being authoritative, at the Peace Palace, The Hague, this tenth day of September, nineteen hundred and twenty-three, in two copies, one of which is to be deposited in the archives of the Court and the other to be forwarded to the Council of the League of Nations.

(Signed) Loder,
President.

(Signed) Å. Hammarskjöld,
Registrar.

ENDNOTES (FOOTNOTES IN THE ORIGINAL).

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- (¹) 1. Account of the action taken by the Council of the League of Nations in the matter.
2. Note by the Secretary-General of the League of Nations to the Members of the Council, dated November 9th, 1921.
Appendix: Telegram from the “Deutschtumsbund” to the League of Nations, dated November 8th, 1921.
3. Note by the Secretary-General of the League of Nations to the Members of the Council, dated November 14th, 1921.
Appendix: Letter from the Polish Delegate to the League of Nations to the Secretary-General, dated November 13th, 1921.
Annex to this Appendix: Extract from the “*Berliner Tageblatt*” of November 8th, 1921.
4. Note by the Secretary-General of the League of Nations to the Members of the Council, dated November 15th, 1921.
Appendix: Memorandum from the “Deutschtumsbund” to the Council of the League of Nations, dated November 7th, 1921.
Annex to this Appendix: Law of July 14th, 1920 referring to property rights of German States.
5. Note by the Secretary-General of the League of Nations to the Members of the League, dated November 26th, 1921.
Appendix: Telegram from M. Askenazy to the Secretary-General, dated November 18th, 1921.
6. Note by the Secretary-General of the League of Nations to the Members of the Council, dated November 28th, 1921.
Appendix: Note sent by the “Deutschtumsbund” to the Council of the League of Nations, dated November 12th, 1921.
Annex to this Appendix: Petition from Germans domiciled in Poland to the Council of the League of Nations, dated November 12th, 1921.
7. Note by the Secretary-General of the League of Nations to the Members of the League, dated November 21st, 1921.
8. Note by the Secretary-General of the League of Nations to the Members of the League, dated January 23rd, 1922.
Appendix I: Report by MM. Hymans, Imperiali and Ishii, Members of a Committee of the Council formed to consider certain petitions from German Minorities in Poland.
Appendix II: Letter dated January 17th, 1922 from the Polish Delegate to the League of Nations to the Director of the Minorities Section.
9. Note by the Secretary-General of the League of Nations to the Members of the Council, dated February 13th, 1922.
Appendix: Letter from the Polish Delegate to the League of Nations to the Secretary-General, dated January 26th, 1922.
Annex I to this Appendix: Articles 113 and 115 of the Polish Constitution.
Annex II to this Appendix: Article 91 of the Treaty of Versailles.
10. Report to the Council by MM. Hymans, Imperiali and Ishii, dated March 3rd, 1922.
11. Extract from the Minutes of the 5th Sitting of the 17th Session of the Council, dated March 28th, 1922.
12. Report by MM. Hymans, Imperiali and Adatci, dated May 17th, 1922.
13. Extract from the Minutes of the 11th and 12th Sittings of the 18th Session of the Council, (May 17th, 1922).
14. Note by the Secretary-General of the League of Nations to the Members of the League, dated July 27th, 1922.
Appendix: Letter from the Polish Foreign Minister to the President of the Council of the League of Nations, dated July 3rd, 1922.
15. Extract from the Minutes of the 7th Sitting of the 19th Session of the Council, (July 20th, 1922).
16. Note by the Secretary-General of the League of Nations to the Members of the League, dated August 29th, 1922.
Appendix: Letter from M. Askenazy, to the Secretary General of the League of Nations, dated July 5th, 1922.
Annex to this Appendix: Information regarding the questions mentioned in the Resolution of the Council of the League of Nations, of May 17th, 1922.
17. Note by the Secretary-General of the League of Nations to the Members of the League, dated September 2nd, 1922.
Appendix: Letter from the Polish Delegate to the League of Nations to the Secretary-General, dated August 30th, 1922.
18. Note by the Secretary-General of the League of Nations to the Members of the Council, dated September 2nd,

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- 1922.
- Appendix:* Memorandum from the “Deutschtumsbund” to the Council of the League, dated August 1st, 1922.
- Annexes to this Appendix:*
1. Legal position of settlers under the Minorities Treaty of June 28th, 1919.
 2. Question put by Deputies Spiekermann, etc. to the Polish Prime Minister.
 3. Reply by the Minister, M. Dunikowski to No. 2.
 4. Question put to the Polish Government by Deputy Daczko with regard to the refusal of the Auflassung for certain properties.
 5. Question put by Deputy Daczko and others with regard to the violation of parental rights.
 6. Decree regarding the revision of permission granted for conducting private schools.
19. Note by the Secretary-General of the League of Nations to the Members of the Council, dated September 6th, 1922.
- Appendix:* Letter from M. Askenazy to the Director of the Minorities Section, dated September 4th, 1922.
20. Report by M. da Gama and Resolution adopted by the Council on September 9th, 1922.
21. Extract from the Minutes of the 6th Sitting of the 21st Session of the Council of the League of Nations, September 9th, 1922.
22. Report by M. da Gama and Resolution adopted by the Council of the League of Nations, September 30th, 1922.
23. Extract from the Minutes of the 16th Sitting of the 21st Session of the Council of the League of Nations, September 30th, 1922.
24. Note by the Secretary General of the League of Nations to the Members of the League, dated September 28th, 1922.
- Appendix I:* Note from the Polish Minister for Foreign Affairs to the President of the Council of the League of Nations, dated December 7th, 1922.
- Annex to this Appendix:* Memorandum concerning the questions dealt with in the report of H. E. M. da Gama, of September 30th, 1922.
- Appendix II:* Telegram from the “Deutschtumsbund” to the League of Nations, dated September 30th, 1922.
- Appendix III:* Letter from the “Deutschtumsbund” to the Council of the League of Nations, dated November 13th, 1922.
- Annexes to this Appendix:*
- (a) Notice from the District Land Office in Posen to M. Ernst Milke.
 - (b) List of 30 colonists evicted by the Land Commissioner.
- Appendix IV:* Letter from the Polish Delegate to the League of Nations to the Director of the Minorities Section, dated December 13th, 1922.
- Appendix V:* Report by M. da Gama.
- Appendix VI:* Opinion of the Jurists Committee, September 26th, 1922.
25. Note by the Secretary-General of the League of Nations to the Members of the League, dated January 31st, 1923.
- Appendix:* Letter from the Polish Delegate to the League of Nations to the Secretary General, dated January 23rd, 1923.
26. Report by M. da Gama and Resolution adopted by the Council on February 3rd, 1923.
27. Extract from the Minutes of the 10th Sitting of the 21st Session of the Council, February 2nd, 1923.
28. Extract from the Minutes of the 13th Sitting of the 23rd Session of the Council, February 3rd, 1923.

Further documents supplied at the request of the President of the Court

1. Specimen of a *Rentengutsvertrag*.
2. Specimen of a *Pachtvertrag*.
3. Letters sent by the President of the Conference of Ambassadors to the diplomatic representatives of Germany and Poland at Paris.
 - (a) To the Polish Minister; November 29th, 1921;
 - (b) To the Polish Minister; December 16th, 1921;
 - (c) To the German Ambassador; December 16th, 1921;
 - (d) To the German Ambassador, February 18th, 1922.
4. Judgment of the Supreme Court of Warsaw, given on June 9th, 1922.

5. Note by the Secretary-General of the League of Nations to the Members of the Council, transmitting a Note addressed by the Reparations Commission to the League of Nations, dated August 24th, 1921.
6. Note by the Secretary-General of the League of Nations to the Members of the League transmitting a petition from the Union of German Farmers on the State domains in Poland, dated May 26th, 1921.
7. Petition sent by the Union of German Farmers on the State domains in Poland to the “Conseil Supérieur” at Paris.
Annex I: Proclamation addressed to Germans in Poland by the Committee of the Supreme Council of Poland, June 30th, 1919.
Annex II: Letters from the Union of Tenants on the State domains, to the Voivodats of Posen and Thorn, dated February 22nd and March 12th, 1921.
Annex III: Letter from the same Union to the same Voivodats, April 10th, 1921.
Annex IV: Extract from the Article “Domain Lands in the Voivodat of Posen”.
Annex V: A list of 23 farmers related to or otherwise connected with officials of the Domain lands.
Annex VI: Instructions of the Department for Polish Domain Lands to Assessors and Directors.
Annex VII: The Polish-German Treaty of October 17th, 1919.
Annex VIII: Judgment of the Court of the District of Torun, given on June 18th, 1921.
Annex IX: Judgment of the Court of the District of Ostrowo, given on September 10th, 1921.
Annex X: Judgment of the Court of the District of Ostrowo given on September 23rd, 1921.

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- (¹) 1. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated May 2nd, 1923, concerning the document entitled “account of the action taken by the Council of the League of Nations regarding certain questions concerning the protection of persons belonging to the German Minority in Poland.”
 2. (a) Letter from the Polish Minister at the Hague to the Registrar of the Court, dated May 24th, 1923 (1 annex). Annex: Article by M. Kierski entitled “The protection of Minorities”.
 - (b) Letter from the Polish Minister at the Hague to the Registrar of the Court, dated June 1st, 1923 (1 annex). Annex: Continuation of article by M. Kierski.
 3. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated May 28th, 1923 (1 annex). Annex: Article by M. Winiarski, entitled “The aims of the two Treaties of Versailles”.
 4. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated June 19th, 1923 (1 annex). Annex: Opinion by Professor Bellot in the matter of the German Colonists in Poland.
 5. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated June 27th, 1923 (1 annex). Annex: Observations by Professor Zoll with regard to the opinion of Professor Kaufmann.
 6. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated June 6th, 1923 (1 annex). Annex: Observations by Professor Zoll regarding the opinion of Professor Kipp.
 7. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated June 30th, 1923 (18 annexes). Annexes: 18 documents relating to the Prussian colonization of that part of Poland formerly belonging to Prussia.
 8. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated July 1st, 1923 (1 annex). Annex: Opinion by M. Bronislas Stelmachowski regarding the German Colonists.
 9. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated July 4th, 1923 (1 annex). Annex: Opinion by M. Waclaw Komarnicki regarding the question of a certain category of German Colonists in Poland.
 10. Letter from the Polish Minister at the Hague to the Registrar of the Court dated July 5th 1923 (1 annex). Annex: Opinion regarding the competence of the League of Nations by M. Kierski published in the “Kuryer Poznanski”.
 11. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated July 7th, 1923 (1 annex). Annex: “The political and administrative regime in Prussian Poland” (Fribourg, Lausanne 1918).
 12. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated July 5th, 1923 (1 annex). Annex: Memorandum by Dr. Wojtkowski entitled “The Policy of extermination adopted by the Prussian Government with regard to the Poles (1740—1922).”
 13. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated July 11th, 1923 (1 annex). Annex: Observations by Professor Stanislas Kutrzeba in reply to the memorandum by Professor Erich Kaufmann.
 14. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated July 13th, 1923 (annexes). Annexes: a certified true extract taken from the Legal Gazette of the Polish Republic, No. 62, July 27th, 1920, giving the text of the law of July 14th, 1920, together with a French translation of Articles 1, 2 and 5 of the said law.
 15. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated July 21st, 1923 (1 annex).

Annex: legal opinion by M. Limburg on the question of the German Minority in Poland.

16. Letter from the Polish Minister at the Hague to the Registrar of the Court, dated August 2nd, 1923 (1 annex, 4 sub-annexes).

Annex — Observations of the “Prokuratorja Generalna” of the Polish Republic with regard to the question of certain German Colonists in Poland.

Sub-annex (a) “Gesetze und Ausführungsbestimmungen für die Ansiedlungs Kommission”.

(b) Typical “Rentengutsvertrag.”

(c) “Pachtverträge.”

(d) Typical anti-Polish clauses.

17. Map of the provinces of Posen and West Prussia showing the settlement lands and settlements, and the State domains and forests.

18. Instructions from the Prussian Minister of Agriculture to the President of the Settlements Commission regarding the acceleration of the “Auflassung” for Settlement Holdings.

19. Instructions from the Minister of Finance to the Government of Posen relating to the same subject.

20. Report of the Transvaal Concessions Commission, April 19th, 1901.

21. (a) Letter from the German Legation at the Hague to the Registrar, dated June 28th, 1923 (2 annexes).

Annex 1 — Memorandum by the German Government concerning the question of the German Colonists and farmers in Poland (in German).

Annex 2 — Treatises on the doctrine of State Succession — Three opinions by Sir Thomas Barclay, Dr. A. Struycken, and Dr. E. Kaufmann (in German).

(b) Letter from the German Legation at the Hague to the Registrar, dated July 21st, 1923 (annexes).

Annex 1 — French translation of the memorandum of the German Government mentioned above.

Annex 2 — French translation of the opinions mentioned under 21 (a) annex 2 and of an opinion by Dr. T. Kipp.

Annex 3 — “The policy of the Kingdom of Prussia with respect to the Polish inhabitants” (in German) by Dr. L. Bernhard.

Annex 4 — “Internal Colonization in Prussia, etc” (in German) by Dr. F. Toennies.