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Type: Advisory Opinion
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Requested by: Council of the League of Nations
Party(ies): Poland and Czechoslovakia
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¹ date when the request for an advisory opinion or application was filed with the court Registry

[6] The Permanent Court of International Justice

<i>Present:</i>	MM. Loder,	<i>President,</i>
	Weiss,	<i>Vice-President,</i>
Lord	Finlay,	
MM.	Nyholm,	
	Oda,	<i>Judges,</i>
	Anzilotti,	
	Huber,	
	Yovanovitch,	
	Beichmann,	<i>Deputy-Judges</i>
	Wang,	

On September 27th, 1923, the Council of the League of Nations adopted the following Resolution:

"The Council of the League of Nations, having been given cognizance by the Conference of Ambassadors, in virtue of Article II, paragraph 2, of the Covenant of the League of Nations, of the question, of the delimitation of the frontier between Poland and Czechoslovakia in the region known as "the Spisz district", and having undertaken, at the request of the Conference, to propose a solution as regards the tracing of the frontier line in this region, has requested the two Governments concerned to make an exact statement of their cases, the conflict between which has led the Conference of Ambassadors to place the matter before the Council. The Governments themselves have put their cases in the following terms: [7]

I. Case of the Polish Government.

The Polish case, to the effect that the question of the determination of the Polish-Czechoslovak frontier in the region of Spisz (Jaworzina) still remains an open one, is based, in the first instance and with the reservation that further arguments may be adduced, on the following considerations:

Modifications of the provisional frontier line in the Jaworzina district may be regarded either as a modification in the sector extending from Rysy to a point about 500 metres east of the village of Brzegi (Sector I) or as a modification of the sector

extending from a point about 500 metres east of Brzegi to Hill 1011 (Sector II).

Taking the first hypothesis it is contended that the Decision of the Conference of Ambassadors, dated July 28th, 1920, does not mention Sector I, which thus remains undetermined. In this case three solutions would be possible:

(a) The adoption of a supplementary decision by the Conference of Ambassadors;

(b) A direct agreement between Poland and Czechoslovakia;

(c) The proposal of modifications by the Delimitation Commission established in virtue of Article II of the Decision of July 28th, 1920, in case it should be concluded that the determination of Sector I was in fact "implied" in the said Decision.

An authoritative explanation as to the frontier line in Sector I has been given by the Conference of Ambassadors in its Note of November 13th, 1922. The Conference, which must be considered competent to interpret its own decisions, recognises that it will have to take a supplementary decision as regards Sector I [solution (a) mentioned above].

Taking the second hypothesis, it is contended that, in virtue of Article II of the Decision of July 28th, 1920, the Delimitation Commission could propose modifications of the frontier line in Sector II. It could not be deprived of this right by the decision which the Conference of Ambassadors adopted on December 6th, 1921. This decision, the exact meaning of which only becomes clear in the light of the authentic interpretation given in the Note of November 13th, cannot, in any case, apply to Sector II, in view of the fact that it was not preceded by a vote of the Delimitation Commission. The right of the Delimitation Commission remained unimpaired after December 6th, 1921.

The vote taken by the Delimitation Commission on September 25th, 1922, was perfectly valid; the Czechoslovak Commissioner took part in it, and the Czechoslovak Government has no ground for contesting the validity of the vote.

By his action in accepting, on April 23rd, 1921, the Polish Declaration relating to the whole Czechoslovak frontier line, the Czechoslovak Delegate on the Delimitation Commission bound his Government:

(a) as to the possibility of making territorial changes in favour of Poland in the Jaworzina district.

(b) as to the fact that the final tracing of the frontier line in the Teschen and Orava districts of Silesia depends on the settlement of the question of the Spisz (Jaworzina) frontier line.

In signing the agreement with Poland dated November 6th, 1921 (Annex B),⁽¹⁾, the Czechoslovak Government undertook to settle amicably the Jaworzina question; the exact meaning of this agreement, in conjunction with subsequent documents, clearly shows that it was a question of a division of that territory.

II. *Case of the Czechoslovak Government.*

(1) In view of the claims made by Poland and Czechoslovakia with regard to the territory known as the district of Spisz, the Supreme Council at Paris stated, in its decision dated September 27th, 1919, that the said territory, as defined in that decision, was to be considered a plebiscite area.

(2) By the terms of the declaration made at the Spa Conference on July 10th, 1920, the Polish and Czechoslovak Delegates agreed, on behalf of their respective Governments, that the Spisz plebiscite should be suspended and that the Allied Powers should take the necessary measures for the final settlement of the dispute.

(3) By the resolution dated July 10th, 1920, the Principal Allied Powers instructed the Conference of Ambassadors to divide the district of Spisz between Poland and Czechoslovakia, in such a manner as to leave to Poland the northwest portion of Spisz.

(4) By its Decision dated July 28th, 1920, the Conference of Ambassadors carried out this division by tracing the frontier line described in Article 1, paragraph 3, of the Decision.

(5) By the terms of Article 2 of the Decision, the Conference of Ambassadors reserved the right to effect slight modifications of the frontier line, in accordance with proposals to be submitted by the Delimitation Commission instituted under that Article. The power of effecting modifications only applies to the middle portion of the

line as described in the Decision dated July 28th, 1920.

(6) In the early days of July 1921, the President of the Delimitation Commission transmitted to the Conference of Ambassadors the final proposals made by the Polish and Czechoslovak Commissioners, together with the opinion of the Allied Commissioners.

(7) By the terms of the annex to the political agreement between Poland and Czechoslovakia, dated November 6th, 1921, the two Governments undertook to settle [10] by direct agreement, within a time limit of six months, the question of the Jaworzina district of the Spisz territory south of the frontier line defined in the Decision of July 28th, 1920. This agreement in no way changed the legal position created by the Decision of July 28th, 1920.

(8) On December 2nd, 1921, the Conference of Ambassadors decided to proceed to mark out the frontier line defined in the Decision of July 28th, 1920, if the agreement referred to in paragraph 7 was not arrived at within a prescribed time. The agreement was not arrived at, although the time limit was prolonged on two occasions. By the terms of the said decision, the Conference of Ambassadors rejected the proposals of the Delimitation Commission mentioned in paragraph 6 and exhausted its right to modify the frontier line in virtue of Article 2 of the Decision dated July 28th, 1920.

(9) The Conference of Ambassadors has no power to revoke a previous decision.

In view of the conclusions formulated in the two cases stated above, the Council of the League of Nations has the honour to request the Permanent Court of International Justice to give an advisory opinion on the following question:

Is the question of the delimitation of the frontier between Poland and Czechoslovakia still open, and, if so, to what extent; or should it be considered as already settled by a definitive decision (subject to the customary procedure

¹ Not reproduced here.

of marking boundaries locally, with any modifications of detail which that procedure may entail)?

The Council has requested the two Governments concerned to be prepared to assist the Court by furnishing it with all relevant documents or explanations. It has the honour to transmit to the Court the *dossier* communicated to it by the Conference of Ambassadors. [11] This *dossier* may be subsequently supplemented if considered necessary.

The Secretary-General is authorised 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 the 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 September 29th, 1923, the Secretary-General of the League of Nations submitted to the Permanent Court of International Justice the following Request:

"The Secretary-General of the League of Nations, in pursuance of the Council Resolution of September 27th, 1923, and in virtue of the authorisation given by the Council, has the honour to submit to the Permanent Court of International Justice an application requesting the Court, in accordance with Article 14 of the Covenant, to give an advisory opinion to the questions, which have been referred to the Court by the Resolution of September 27th, 1923, (cf. attached text).

The Secretary-General will be prepared to furnish any assistance which the Court may require in the examination of the question, and will, if necessary, arrange to be represented before the Court."

In accordance with Article 73 of the Rules of Court, notice of the request for an Advisory Opinion was given to Members of the League of Nations through the Secretary-General, and to the States mentioned in the Annex to the Covenant.

A number of documents were attached to the Request ⁽¹⁾.

⁽¹⁾ I. Note from the President of the Conference of Ambassadors to the Secretary-General of the League of Nations, dated August 18th, 1923.

II. Documents transmitted by the Conference of Ambassadors (with maps).

1. Decision of the Supreme Council of the Principal Allied and Associated Powers dated September 27th, 1919, in regard to the Duchy of Teschen and the territories of Spisz and Orava.

[12] At the request of the Permanent Secretariat of the League of Nations the Conference of Ambassadors transmitted to the Court, through the Permanent Secretariat, a number of supplementary documents ⁽¹⁾. [13]

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2. Declaration by the Polish and Czechoslovak Governments, dated at Spa, July 10th, 1920.
 3. Decision of the Supreme Council of the Principal Allied and Associated Powers, dated at Spa, July 11th, 1920, with a Note of the same date to the Representatives of the Polish and Czechoslovak Governments.
 4. Decision of the Conference of Ambassadors, dated July 28th, 1920.
 5. Treaty between the Principal Allied and Associated Powers and Poland, Roumania, the Serb-Croat-Slovene State and Czechoslovakia, in regard to certain frontiers of these States, signed at Sèvres on August 10th, 1920.
 6. Decision of the Conference of Ambassadors, dated December 2nd, 1921.
 7. Note from the President of the Conference of Ambassadors to the Polish and Czechoslovak Ministers at Paris, dated December 6th, 1921.
 8. Note from the Czechoslovak Minister at Paris, to the President of the Conference of ambassadors, dated December 16th, 1921.
 9. Note from the Polish Minister at Paris to the President of the Conference of Ambassadors, dated December 17th, 1921.
 10. Note from the President of the Conference of Ambassadors to the Polish and Czechoslovak Ministers at Paris, dated December 29th, 1921.
 11. Note from the President of the Conference of Ambassadors to the Polish Minister at Paris, dated April 7th, 1922.
 12. Note from the Polish Minister at Paris to the President of the Conference of Ambassadors, dated April 11th, 1922.
 13. Note from the Czechoslovak Minister at Paris to the President of the Conference of Ambassadors, dated April 12th, 1922.
 14. Decision of the Conference of Ambassadors, dated April 28th, 1922.
 15. Note from the President of the Conference of Ambassadors to the Polish and Czechoslovak Ministers at Paris, dated May 6th, 1922.
 16. Note from the Polish Minister at Paris to the President of the Conference of Ambassadors, dated May 9th, 1922.
 17. Note from the President of the Polish-Czechoslovak Delimitation Commission to the Conference of Ambassadors, dated September 12th, 1922.
 18. Note from the President of the Polish-Czechoslovak Delimitation Commission to the Conference of Ambassadors, dated September 26th, 1922, with a detailed description of the proposed line.
 19. Note from the Drafting Committee of the Conference of Ambassadors, dated October 21st, 1922.
 20. Note from the President of the Conference of Ambassadors to the Polish and Czechoslovak Ministers at Paris, dated November 13th, 1922.
 21. Note from the Czechoslovak Minister at Paris to the President of the Conference of Ambassadors, dated November 23rd, 1922.
 22. Note from the Polish Minister at Paris to the President of the Conference of Ambassadors, dated November 29th, 1922.
 23. Note from the Polish Minister at Paris to the President of the Conference of Ambassadors, dated March 29th, 1923.
 24. Note from the Polish Minister at Paris to the President of the Conference of Ambassadors, dated April 26th, 1923.
- III. Note from the Secretary-General of the League of Nations to the Members of the Council, dated September 7th, 1923, transmitting:
1. A note from M. Skirmunt, Polish Delegate to the League of Nations, addressed to the Secretary-General of the League of Nations, dated September 3rd, 1923.
 2. Letter from the Polish Minister at Paris to the President of the Conference of Ambassadors, dated August 21st, 1923.
- IV. Note from the Secretary-General of the League of Nations to the Members of the Council, dated September 13th, 1923, transmitting a letter from M. Benes, President of the Czechoslovak Council of Ministers to the Secretary-General of the League of Nations, dated September 11th, 1923.
- V. Note from the Polish Minister for Foreign Affairs to the Secretary-General of the League of Nations, dated September 12th, 1923, transmitting:
1. A memorandum upon the legal aspect of the question and stating the case of the Polish Government.
 2. A memorandum setting out the economic reasons in favour of the allocation of Jaworzina to Poland.
- VI. Note from the Secretary-General of the League of Nations to the Members of the Council transmitting a letter from the Polish Minister for Foreign Affairs to the Secretary-General of the League of Nations, dated September 21st, 1923, transmitting the text of Annex B of the Polish-Czechoslovak agreement signed at Prague on November 6th, 1921.
- VII. Report of the Spanish Representative on the Council of the League of Nations, dated September 26th, 1923.
- ⁽¹⁾ 1. Note from the General Secretariat of the Conference of Ambassadors to the President of the Polish-Czechoslovak Frontier Delimitation Commission, dated November 9th, 1920.
2. Note from the General Secretariat of the Conference of Ambassadors to the President of the Polish-Czechoslovak Frontier Delimitation Commission, dated July 28th, 1921.
 3. Note from the President of the Polish-Czechoslovak Frontier Delimitation Commission to the Conference of Ambassadors, dated September 12th, 1922.
 4. Note from the Czechoslovak Commissioner to the President of the Polish-Czechoslovak Frontier Delimitation Commission, dated September 20th, 1922.
 5. Note, dated July 5th, 1921, from the President of the Polish-Czechoslovak Frontier Delimitation Commission to the Conference of Ambassadors, and annexed thereto a table giving a summary of the Polish and Czechoslovak proposals in regard to the line of the frontier in the territory of Spisz.
 6. Note from the Italian Commissioner to the President of the Polish-Czechoslovak Delimitation Commission, dated July 6th, 1921.
 7. Letter from the President of the Polish-Czechoslovak Frontier Delimitation Commission to the Conference of Ambassadors, dated July 12th, 1921.
 8. Letter from the President of the Inter-Allied Government and Plebiscite Commission of Upper Silesia to the President of the Polish-Czechoslovak Frontier Delimitation Commission, dated November 5th, 1920.
- The Permanent Secretariat had further requested the Conference of Ambassadors to furnish, for communication to the Court, a copy of the letter dated February 7th, 1923, addressed by the Conference to the President of the Polish-Czechoslovak Frontier Delimitation Commission. The Conference however informed the Court, upon receipt of a communication from the Polish Delegation at Geneva, that the latter no longer desired to submit this document.

The Polish Government supplied the Court with a printed volume entitled "Collection of Diplomatic Documents concerning the Jaworzyna Question; December 1918 — August 1923" ⁽¹⁾. [14]

The Czechoslovak Government, for its part, submitted to the Court a "Legal Memorandum concerning the determination of the frontier in the Territory of Spisz (Javorina)" and annexed thereto a collection of documents ⁽¹⁾; it also [15] handed in to the

⁽¹⁾ In addition to a certain number of documents transmitted to the Court by the Secretariat of the League of Nations, this Collection contains the following documents:

1. Agreement between the Polish Plenipotentiaries and the Czechoslovak Delegates, signed at Poprad on December 24th, 1918.
2. Memorandum presented to the Secretariat of the Peace Conference at Paris by the Polish Commission for the work preparatory to the Peace Congress, concerning the elimination of the frontiers between the Polish and Czechoslovak States in Teschen-in-Silesia, Orava and Spisz (March, 1919).
3. Note from the Delegate of the Polish Republic at the Peace Conference to the President of the Supreme Council, dated September 15th, 1919 (with annex).
4. Note from the President of the Council of the Polish Republic and Delegate of the Republic at the Peace Conference to the President of the Conference, dated October 7th, 1919.
5. Note from M. Paderewski to M. Millerand, President of the Peace Conference, dated July 30th, 1921.
6. Note from the President of the Polish-Czechoslovak Frontier Delimitation Commission to the Polish Commissioner on that Commission, dated March 2nd, 1921.
7. Proposal for the modification of the frontier line in the districts of Orawa and Spisz, presented by the Polish Delegation on March 8th, 1921.
8. Minutes of the 15th Meeting of the Polish-Czechoslovak Frontier Delimitation Commission, held on April 23rd, 1921.
9. Note from the President of the Polish-Czechoslovak Frontier Delimitation Commission to the Polish and Czechoslovak Commissioners on that Commission, dated June 3rd, 1921.
10. Note from the Polish Commissioner on the Polish-Czechoslovak Frontier Delimitation Commission to the President of that Commission, dated July 21st, 1921.
11. Note from the Polish Minister at Prague to the President of the Council and Minister for Foreign Affairs of Czechoslovakia, dated December 12th, 1921.
12. Note from the Polish Minister at Prague to the President of the Council and Minister for Foreign Affairs of Czechoslovakia, dated December 19th, 1921.
13. Note from the Minister for Foreign Affairs of the Czechoslovak Republic to the Legation of the Polish Republic at Prague, dated December 27th, 1921.
14. Note from the Minister for Foreign Affairs of the Czechoslovak Republic to the Polish Legation at Prague, dated February 23rd, 1922.
15. Note from the Polish Minister at Prague to the President of the Council and Minister for Foreign Affairs of Czechoslovakia, dated March 7th, 1922.
16. Statement by the Polish Scientific Commission of Experts appointed for the Jaworzina question, dated April 1st, 1922.
17. Memorandum from the Polish Legation at Prague to the Czechoslovak Minister for Foreign Affairs, dated April 2nd, 1922.
18. Note from the Polish Minister at Prague to the President of the Council and Minister for Foreign Affairs of Czechoslovakia, dated April 3rd, 1922. (This Note was published in the Czechoslovak Collection under date, March 29th.).
19. Resolution of the Polish Scientific Commission of Experts for the Jaworzina question, dated July 21st, 1922.
20. Statement of the Polish Scientific Commission of Experts for the Jaworzina question, dated Aug. 6th, 1922.
21. Note from the Polish Minister at Prague to the President of the Council and Minister for Foreign Affairs of Czechoslovakia, dated August 7th, 1922.
22. Note from the President of the Polish-Czechoslovak Frontiers Delimitation Commission to the Polish and Czechoslovak Commissioners on that Commission, dated August 7th, 1922.
23. Note from the Polish Commissioner on the Polish-Czechoslovak Delimitation "Commission to the President of that Commission, dated September 22nd, 1922.
24. Note from the Polish Commissioner on the Polish Czechoslovak Delimitation Commission to the President of that Commission, dated September 25th, 1922.
26. Minutes of the 19th meeting of the Polish-Czechoslovak Frontier Delimitation Commission held on September 25th, 1922, at 10 a. m.
27. Minutes of the 20th Meeting of the Polish-Czechoslovak Frontier Delimitation Commission, held on September 25th, 1922, at 1.30 p.m.
28. Note from the President of the Polish-Czechoslovak Delimitation Commission to the Conference of Ambassadors, dated December 18th, 1922.
29. Note from the Polish Minister at Paris to the President of the Conference of Ambassadors, dated March 28th, 1923.
30. Note dated May 5th, 1923, from the General Secretariat of the Conference of Ambassadors to the Polish Legation at Paris, transmitting the Resolution of the Conference in regard to the imposition of taxes by the Czechoslovak Government in the Jaworzina district.
31. Note from the President of the Conference of Ambassadors to the Polish Minister at Paris, dated May 23rd, 1923.
32. Note from the Polish Minister at Paris to the President of the Conference of Ambassadors, dated July 20th, 1923.
33. Note from the President of the Conference of Ambassadors to the Polish Minister at Paris, dated July 28th, 1923.
34. Note from the Polish Minister at Paris to the President of the Conference of Ambassadors, dated August 17th, 1923.

⁽¹⁾ In addition to the documents previously transmitted by the Permanent Secretariat of the League of Nations or by the Polish Government, the Collection contains the following documents:

1. Instructions from the Conference of Ambassadors to the Delimitation Commissions (approved by the Conference on July 22nd, 1920).
2. Note from the President of the Conference of Ambassadors to the President of the Czechoslovak Delegation, dated July 28th, 1920.
3. Decree by the International Sub-Commission for Orava and Spisz, dated August 7th, 1920.
4. Note from the President of the Delimitation Commission to the Polish and Czechoslovak Commissioners on that Commission, dated June

Court a number of supplementary documents ⁽¹⁾.

In the last place, the Court received a certain number of maps, from the Conference of Ambassadors, from the Polish Government through the permanent Secretariat of the League of Nations, and from the Czechoslovak Government ⁽²⁾.

At the request of the Polish and Czechoslovak Governments respectively, the Court heard, in the course of public sittings held on November 13th and 14th, oral statements made, on behalf of the Polish Government, by M. Jean Mrozowski, President of the Supreme Court of the Polish Republic, and, on behalf of the Czechoslovak Government, by Dr. Jan [16] Krcmar, Professor at the University of Prague, and Dr. Ivan Krno, Counsellor of Legation.

In anticipation of that which follows, it may be well to indicate forthwith in what circumstances the Court has been asked for an advisory opinion upon the question stated in the Request reproduced above, and what is the exact scope of that question.

From the time of the establishment of the Polish and Czechoslovak Republics, disputes have arisen between these two States with regard to three districts situated on the boundaries between them, namely Teschen, Orava and Spisz. The Supreme Council decided (September 27th, 1919) that the allocation of these districts should be decided by a plebiscite.

15th, 1921.

5. Note from the President of the Delimitation Commission to the Polish and Czechoslovak Commissioners on that Commission, dated July 12th, 1921.

6. Memorandum presented in August, 1921, by the Polish Legation at Prague to the Minister for Foreign Affairs of Czechoslovakia.

7. Note from the President of the Conference of Ambassadors to the President of the Polish-Czechoslovak Delimitation Commission, dated December 10th, 1921.

8. Memorandum presented by the Polish Legation at Prague to the Minister for Foreign Affairs of Czechoslovakia, dated January 13th, 1922.

9. Note from the Polish Minister at Prague to the Minister for Foreign Affairs of Czechoslovakia, dated March 29th, 1922. (See remarks under No. 18 of note p. 14.)

10. Memorandum presented by the Polish Legation at Prague to the Minister for Foreign Affairs of Czechoslovakia, dated August 3rd, 1922.

⁽¹⁾ 1. Instructions concerning Delimitation Commissions, approved by the Conference of Ambassadors at its meeting on July 22nd, 1920. (The first document of the Collection of Instructions is identical with that referred to in No. 1 of the previous Note.

2. Decisions of the Conference of Ambassadors determining various questions in regard to the work of Delimitation Commissions. (Collection of Documents).

3. The Minutes of meetings Nos. 1 to 18 of the Polish-Czechoslovak Frontier Delimitation Commission. (The Minutes of meetings Nos. 19 and 20 are to be found amongst others in the documents transmitted by the Polish Government; see note on p. 14 §§ 25 and 26.

⁽²⁾ 1. General map (scale 1/1,000,000) of the territories of Teschen, Spisz and Orava, transmitted to the Court with the request (See Document II of Note on p. 11.)

2. Map (Scale 1/200,000) of the territory of Spisz, also transmitted to the Court with the Request. (See document II of note on p. 11.)

3. Map of Czechoslovakia annexed to the Frontiers Treaty of August 10th, 1920, transmitted by the Conference of Ambassadors.

4. General map of the territories of Teschen, Orava and Spisz annexed to the Decision of the Conference of Ambassadors of July 28th, 1920, transmitted to the Court by the Conference of Ambassadors.

5. Detailed map of the territory of Spisz annexed to the Decision of the Conference of Ambassadors of July 28th, 1920, transmitted to the Court by the Conference of Ambassadors.

6. Map of the Polish-Czechoslovak frontier in the territory of Spisz, transmitted to the Court by the Secretary-General of the League of Nations at the request of the Polish Delegate to the League of Nations.

7. The maps annexed to the Decision of the Conference of Ambassadors of July 28th, 1920, have also been transmitted to the Court by the Czechoslovak Government.

8. Map (scale 1/100,000) of the territory of Spisz transmitted by the Czechoslovak Government.

9. General map of the Polish Czechoslovak frontier at Teschen, Orava and Spisz, transmitted by the Czechoslovak Government.

10. Map showing the frontiers in the territory of Spisz, annexed to the letter addressed by the President of the Polish-Czechoslovak Frontier Delimitation Commission to the Conference of Ambassadors, dated September 26th, 1922, transmitted to the Court by the Conference of Ambassadors.

This plebiscite however did not take place. The Polish and Czechoslovak Governments agreed (July 10th, 1920) to accept a settlement of the dispute by the Principal Allied and Associated Powers. The Supreme Council then instructed (July nth, 1920) the Conference of Ambassadors to divide the three territories. The Conference took (July 28th, 1920) a decision on this subject and set up a Delimitation Commission, the powers of which it denned.

Poland, however, considered that the line indicated by this decision as regards the district of Spisz was contrary to the principles of justice and equity, and formulated proposals for its modification. These proposals were transmitted (July 5th, 1921) to the Conference by the President of the Polish-Czechoslovak Frontier Delimitation Commission. Whereupon the Conference took a decision (December 2nd, 1921) which, in the opinion of the Czechoslovak Government, finally confirmed the frontier indicated in the previous decision, whereas, in the opinion of the Polish Government, this decision did not close the door to the possibility of modifying the frontier line as desired by Poland. Attempts to fix a line acceptable to both parties, by means of an agreement between them, failed (August 7th, 1922), and the question once more came before the Conference of Ambassadors (September 26th, 1922).

A letter from the Conference (November 13th, 1922) did not succeed in removing the obstacles to the final deli[17]mitation of the Polish-Czechoslovak frontier in the region of Spisz, nor in calming public opinion. Whereupon on July 27th, 1923, the following Resolution was adopted by the Conference:

"I. Whereas the Conference of Ambassadors, acting on behalf of the Governments of France, Great Britain, Italy and Japan, being co-signatories with the United States of America, as the Principal Allied and Associated Powers, of the Peace Treaties of St. Germain with Austria and Trianon with Hungary, has the duty of fixing the frontier between Czechoslovakia and Poland in the region known as "The Spisz territory", by virtue of a declaration by the Czechoslovak and Polish Governments, dated from Spa, July 10th, 1920;

"And whereas certain difficulties have arisen between the Czechoslovak Government and the Polish Government, in the course of the work of the Delimitation Commission, as to the fixing of the frontier in the Jaworzina district, and especially with regard to the legal question whether this frontier is or is not already determined by the following resolutions: — Decision of the Supreme Council of September 27th, 1919, declaration of the Czechoslovak and Polish Governments of July 10th, 1920,

Decision of the Conference of Ambassadors of July 28th, 1920, the so-called Frontier Treaty (unratified) of August 10th, 1920, Decision of the Conference of Ambassadors of December 6th, 1921 (¹); [18]

"The said Governments have decided, by application of Article II, paragraph 2 of the Covenant of the League of Nations, to lay these difficulties before the Council of the League and to request it to be good enough to inform the Conference of the solution which it recommends as regards the delimitation of the frontier line in question.

"The Council of the League of Nations shall be requested to consider this matter as of great urgency.

"The said Governments would have no objection should the Council see fit to ask the opinion of the Court of International Justice on the legal question already mentioned which is raised by these difficulties.

"II. The foregoing decision shall be communicated to the Polish and Czechoslovak Governments".

In accordance with the wish expressed in the letter of the President of the Conference of Ambassadors, dated August 18th, 1923, transmitting this Resolution to the Secretary-General of the League of Nations, the question of the delimitation of the Polish-Czechoslovak frontier in the region of Spisz (Jaworzina) was placed on the agenda of the 26th Session of the Council of the League of Nations.

At the Council meeting (¹), the representatives of the two countries concerned both agreed that the question at issue was one upon which an impartial legal opinion based on justice and equity should be obtained, and they laid stress upon the necessity of regarding the matter as one of extreme urgency. In accordance with the Council's decision of September 20th, 1923, the Spanish representative got into touch with them and, with their assistance,

¹ With regard to the dates (December 6th, 1921) it may be well to reproduce a note communicated to the Court by the Permanent Secretariat of the League of Nations:

"The Decision of the Ambassadors' Conference dated December 2nd, 1921, (No. 6 of the dossier transmitted to the Council of the League of Nations by the Conference of Ambassadors) is sometimes described in Polish and Czechoslovakian documents as "the decision of December 6th, 1921". This date (December 6th) is that of the letter in which the Decision was communicated to the Governments concerned (No. 7 of the dossier). In the letter of the Delimitation Commission to the Conference of Ambassadors, dated September 26th, 1922 (No. 18 of the dossier), the same Decision is referred to as "the Decision of December 10th, 1921", this date being no doubt that of the notification of the decision in question to the Commission.

The proposal of the Delimitation Commission communicated to the Conference of Ambassadors by the letter of September 26th, 1922 (No. 18 of the dossier) is often referred to as "the Decision (or vote) of September 25th, 1922".

In document No. 21 of the same dossier (letter from M. Osusky to the President of the Ambassadors' Conference dated November 23rd, 1922) the decision of the Supreme Council of the Allied Powers of July 28th, 1920, is referred to as "the decision of July 29th, 1920".

¹ Provisional Minutes of the 26th Session of the Council, 15th and 19th meetings.

prepared the report recommending to the Council the adoption of the Resolution reproduced at the beginning of the present Opinion, which requests the Court to give an advisory opinion upon the question under consideration.

During the discussion in the Council upon this Report, M. Benes, the Czechoslovak representative, felt obliged to ask [19] whether it was clearly understood that the Court, on receipt of the request for an advisory opinion on the Jaworzina question, would have to give its opinion upon the respective cases of the two Governments concerned which are reproduced in the Request. The Spanish representative fully reassured him upon this point.

The report to the Council on the Jaworzina question records, amongst other things, that the representatives of the two Governments concerned agreed that the Council should ask the Court for an advisory opinion, requesting the President of the Court, if possible, to be so good as to convoke an extraordinary session of the Court, under Article 23 of the Statute, in order to enable the Council to consider the advisory opinion at its next session, which is to commence on December 10th, next.

For the purpose of informing the President of the Court of the Council's desire that an extraordinary session should be convoked, the Secretary-General of the League of Nations sent him a copy of this Report on September 29th, 1923.

Having regard to the circumstances, the President of the Court complied with the wish thus expressed and, in virtue of his powers under Article 23 of the Statute of the Court, summoned an extraordinary session of the Court, commencing on November 12th, 1923.

The Members of the Council of the League of Nations, as composed when the above-mentioned Resolution of September 27th was adopted, were duly notified that the Court had been so convoked.

It follows from the foregoing that the object of the convocation of this extraordinary session was to enable the Court, on the basis of the information indicated above, to give without delay its opinion upon the cases submitted by the two Governments concerned, as reproduced in the Request, regarding the question whether the delimitation of the frontier between Poland and Czechoslovakia is still open and, if so, to what extent, or whether it should be considered as already settled by a definitive decision. [20]

I.

When, as a result of the European War and the dissolution of the Austro-Hungarian Monarchy, Poland and Czechoslovakia were reestablished as independent States, their

frontiers were, generally speaking, indicated by the same historical and ethnological factors which had led to their reconstitution.

The necessity remained, however, either for a formal pronouncement with regard to the extent of the territories respectively allocated to two States above-mentioned or for a settlement of territorial questions in regions where, owing to special circumstances, the historical or ethnological frontier remained uncertain or met with difficulties which prevented the parties concerned from voluntarily accepting it.

The task of ensuring the recognition of the frontiers of the new States and of settling disputes which might arise between them was undertaken by the Principal Allied and Associated Powers represented in the Supreme Council then sitting at Paris. Thus, in the Peace Treaties, side by side with clauses regarding the frontiers of Germany, Austria and Hungary, are to be found clauses by which the Principal Allied and Associated Powers reserve the right subsequently to fix the frontiers of the new States, having obtained in advance the consent of the States enumerated above, to the frontiers thus to be determined. As regards Poland and Czechoslovakia, clauses of this kind are to be found in Articles 81 and 87 of the Treaty of Versailles, Article 91 of the Treaty of St. Germain-en-Laye and Article 75 of the Treaty of Trianon.

Historical and ethnological circumstances pointed naturally to the former frontier between Galicia and Hungary as the frontier between the new Polish and Czechoslovak Republics. With the exception of certain disputed sectors which will be mentioned later, this frontier seems, indeed, to have been adopted by the two States from the very outset as being the natural outcome of these circumstances. Although — seeing that the Treaty of Sevres of August 10th, 1920, of which mention will be made later, has not yet been concluded — there [21] is no express provision recognising this frontier, the Court has no doubt upon the matter. The very fact that disputes have arisen between the two States with regard to certain points on this frontier seems hardly explicable except on the assumption that everywhere else the frontier between Galicia and Hungary has been adopted as the frontier between Poland and Czechoslovakia. This conclusion appears to be in conformity with the state of affairs which had existed even before the termination of hostilities. Moreover it also appears from the letter sent on May 9th, 1922, by the Polish Minister to the Conference of Ambassadors that the delimitation of the "Polish-Czechoslovak frontier denned by Article I of the Treaty of Sevres", i. e. practically the whole of the frontier, was accepted by Poland except as regards

the territories of Orava and Spisz.

Nevertheless, the adoption of the frontier in question gave rise to serious difficulties in three sectors, namely the former Duchy of Teschen and the regions of Spisz and Orava. Both Poland and Czechoslovakia laid claim to these territories for historical, ethnological or economic reasons with which the Court is not concerned.

Confronted with these claims and with the disturbances which did not fail to occur in the above-mentioned territories, the Supreme Council, in execution of the duties which it had assumed with regard to the frontiers of the new States, adopted in the first place the Decision of September 27th, 1919.

By this decision the Principal Allied and Associated Powers, being desirous of placing the Duchy of Teschen and the territories of Orava and Spisz under a sovereignty conforming to the wishes of the inhabitants, determined "to hold a plebiscite in these territories under conditions calculated to ensure a loyal and sincere expression of opinion", and took the necessary steps for this purpose.

An analysis of the contents of this decision is not of importance for the purposes of the present opinion, since the plebiscite was subsequently abandoned. But the following point should be brought out. [22]

Amongst the measures taken with a view to the holding of a plebiscite in the three territories, the delimitation of the territories themselves took the first place. This delimitation formed the subject of the first Article of the decision, which runs as follows:

"In the territory which on April 1st, 1914, constituted the Duchy of Teschen and in the territories of Spisz and Orava as hereinafter defined, the inhabitants will be called upon to record by vote whether they desire to be attached to Poland or to Czechoslovakia.

(1) *District of Spisz.*

(a) All the communes of the political district of Starawies (Szepesofalu, or Altendorf).

(b) The communes of the portion of the district of Kesmark (Kiezmark) situated to the northwest of the watershed between the basins of the Dunajec and the Popfad, including those communes which are traversed by this watershed.

(2) *District of Orava.*

All the communes of the political districts of Trsztena (Trzciana) and Nameszto (Namiestow)".

The boundaries resulting from this delimitation are formed, on the one, hand, by the former frontier between Galicia and Hungary and on the other hand by a line proceeding from one point on this frontier to another point on the same frontier.

It has been contended by Poland that this delimitation, having been adopted in a decision in which arrangements were made for a plebiscite and with a view to the holding of this plebiscite, lost all value once it had been decided to abandon the plebiscite. The Court cannot share this view.

The territorial delimitation contained in Article 1 of the Decision of September 27th, 1919, was clearly adopted having regard to the disputes which had arisen between Poland and Czechoslovakia as concerned Teschen, Orava and Spisz. It therefore coincides with the extent of the territories in regard to which the Principal Allied and Associated Powers recognised the existence of a serious dispute [23] and declared themselves prepared to find a solution. The question has not changed. Its subject remains the same, in spite of the fact that a different procedure for the settlement of the dispute was subsequently adopted. In these circumstances the Court is of opinion that the Decision of September 27th, 1919, determined once and for all the territories in dispute and that the successive decisions taken with a view to the settlement of this very dispute must be considered as relating to the territories thus determined. Above all, this applies to the Decision of the Supreme Council of July nth, 1920, which replaces that of September 27th, 1919, as regards the manner in which the allocation of the disputed territories is to be carried out. Since the Decision of July nth, 1920, contained no other provision for the delimitation of the territories to be divided, the natural inference is that it maintained the previous delimitation, which it was obviously unnecessary to repeat.

Numerous difficulties arose which showed that a satisfactory solution of the dispute would not be obtained by means of a plebiscite.

On July 10th, 1920, the Polish and Czechoslovak Delegates at the Conference of Spa signed a declaration by which, after taking cognizance of the decision of the Allies once more to take in hand the Czechoslovak-Polish dispute, they decided to accept the final settlement of the dispute by the Allied Powers. On behalf of their respective Governments, therefore, they agreed that the plebiscite in Teschen, Orava and Spisz should be suspended and that the Allied Powers, after hearing both parties, should take the necessary steps for the final settlement of the dispute.

On the very next day the Supreme Council — it was then in session at Spa — adopted a resolution as a result of which the settlement of the question of Teschen, Orava and Spisz, entered upon a new phase.

The resolution of July 11th, 1920, is composed of two parts. The first contains the approval of a draft resolution and certain provisions regarding communications to be made following upon the adoption of the Resolution. The second begins by recapitulating the abnormal conditions prevailing [24] in the territories of Teschen, Spisz and Orava, declares the necessity for a speedy settlement of the dispute and recognizes that it has been shown to be impossible to obtain the desired result, either by means of a plebiscite or by recourse to arbitration. It continues to the effect that in these circumstances the representatives of the French, British, Italian and Japanese Governments, at Spa assembled, consider that it is now for the Supreme Council to take upon itself the responsibility of making a definitive settlement as regards the disposal of the territories in dispute. It goes on to say that such a decision appears all the more opportune as the Polish and Czechoslovak Ministers for Foreign Affairs have, by a declaration made on the preceding day, notified that they are ready to accept any definitive settlement of the dispute which the Allied Powers might decide upon. It is accordingly resolved that the said Ministers shall be immediately informed of the decision taken by the representatives of the four Powers, with an intimation that the Delegates of the Allied Powers in the Ambassadors Conference will forthwith be authorised, after hearing the two parties interested, to elaborate with the least possible delay a decision in accordance with the instructions of the Supreme Council.

These indications, which are contained in the last part of the Resolution, were to be communicated confidentially by each of the Allied Powers to its delegate in the Ambassadors' Conference. As regards the territories of Spisz and Orava, the instructions stated that these territories would be divided so as to leave to Poland the north-eastern part of Orava and the north-western part of Spisz, according to the lines approximately shown on a map annexed to the instructions. This map was not communicated to the Court.

No doubt has been raised with regard to the right of the Supreme Council to go back upon its previous decision. Moreover, the Resolution was adopted after the declaration above-mentioned of the two States interested had been made.

On the other hand, there has been some discussion as to the nature and scope of this resolution of the Supreme Council. The Czechoslovak Government, in the legal memorandum [25] submitted to the Court, has seen fit to define the legal nature of the instructions as a special mandate, conferred upon the Conference of Ambassadors by the

Supreme Council, to act on behalf of the Allied Powers. The Polish delegate, in his oral statement in Court, criticized this conception of a mandate, and described the resolution of the Supreme Council as a delegation of powers. The two Governments appear, however, to agree in recognising that the decision which is effective as between the parties is that of the Ambassadors' Conference, and that any question as to the extent of the duties and powers of the Ambassadors' Conference is a matter *d'ordre intérieur* and only concerns the Supreme Council and the Ambassadors' Conference.

The Court does not consider that it should discuss points of law which are not necessarily connected with the reply to be given to the question put, and therefore confines itself to the following considerations:

The resolution of July 11th, 1920, is a declaration of the intention of the Allied Powers to settle the dispute with regard to the territories of Teschen, Orava and Spisz by their direct division between the parties concerned. With this object the Allied Powers appointed the body by which they intended to carry out their task, and fixed certain rules governing the proceedings of the body thus selected, that is to say, the Ambassadors' Conference. Since the division of the territories was thus committed to the Conference of Ambassadors, it is certain that only a decision of that Conference could effect this division between Poland and Czechoslovakia. It would, on the other hand, be going too far to say that the resolution of the Supreme Council, as such, is ineffective between the parties. It would seem rather that in this respect a distinction should be drawn between the various provisions of the second part of the resolution.

Paragraphs 1 to 4, which contain a declaration of the intention of the Allied Powers directly to undertake the division of the disputed territories without holding any plebiscite, which take note of the declaration of the Polish and Czechoslovak delegates of the previous day, which appoint the Ambassadors' Conference as the body by which the division [26] should be effected, and adopt certain rules of procedure with regard to the relations between the Conference of Ambassadors and the two States concerned, undoubtedly have certain legal consequences as regards those States, consequences which, moreover, neither Poland nor Czechoslovakia have thought of disputing. It was certainly in view of these consequences that the first four paragraphs of the resolution were officially communicated to the delegates of the two Governments, in accordance with the instructions of the Supreme Council itself.

The last paragraph of the resolution of the Supreme Council may be considered as a mutual undertaking on the part of the Principal Allied Powers to send to their delegates in the Ambassadors' Conference confidential instructions to the same effect, the tenour of which is

fixed in the resolution itself. By its nature this part of the resolution therefore only concerns relations between the Principal Allied Powers. Each of the delegates at the Ambassadors' Conference, therefore, had to act according to instructions directly received from his Government. It would therefore be for the Governments of the Allied Powers, if necessary, to examine the manner in which their representatives have carried out the task entrusted to them. Neither Poland nor Czechoslovakia have anything to say in this purely internal matter.

Having established the foregoing, it should be added that since the instructions in question have been communicated to the Court, there is nothing to prevent the latter from using them as it may see fit for, the purpose of interpreting the principal document in the question, namely the Decision of the Conference of Ambassadors of July 28th, 1920, adopted in consequence of the decision of the Supreme Council and the instructions above-mentioned.

II.

In conformity with the Resolution of the Supreme Council dated July nth, 1920, the Conference of Ambassadors, on the 28th of that month, took a decision by which the three dis[27]puted districts of Teschen, Orawa and Spisz were divided between Poland and Czechoslovakia.

Before indicating the legal significance of this decision as regards the question submitted to the Court, a brief analysis must be made of its contents.

The decision signed by the four representatives of the British Empire, France, Italy and Japan consists of a preamble, which contains a statement of the preceding events and documents, and further, of nine sections, I — IX, hereafter called articles. Article I lays down "the limits of the sovereignty of Poland and Czechoslovakia respectively over the former duchy of Teschen and the territories of Orawa and Spisz", fixing for each of these districts a dividing line, which begins and ends in each case at a given point on a "former frontier" (the expression actually used), namely, in the case of Teschen the former frontier between Germany and Austria and between Hungary and Silesia, and in the case of the two other districts the former frontier between Galicia and Hungary. These new lines joining portions of former frontiers are described topographically in the decision either by means of defined points or approximate descriptions.

The last paragraph of this Article I contains a clause which must be considered as the

recognition of the sovereign rights of Poland and Czechoslovakia over the territories respectively allotted to them; it runs as follows:

"The United States of America, the British Empire, France, Italy and Japan hereby decide and declare that from this date the sovereignty of Poland and Czechoslovakia respectively shall extend to the territories situated on either side of the frontier line laid down above".

Article II provides for a Delimitation Commission and for effecting, in certain circumstances, modifications in the frontier line traced.

Articles III and IV deal with the population of the territories divided (acquisition of nationality, right of option, amnesty) whilst Articles V to VII, regulate financial and economic questions (proportionate division of the financial burdens of the former Austro-Hungarian Monarchy; recognition of vested rights and interests in the three districts; conventions to be concluded between the two countries for reciprocal supply of coal and oil and with regard to certain railway communications).

Finally, Article IX provides that all other financial, legal or administrative questions will form the subject of special agreements between the two States, the right of intervention, if need be, for the purpose of facilitating a settlement, being reserved to the Principal Allied and Associated Powers.

The preamble of the decision of July 28th, 1920, clearly shows that this decision is intended to carry into execution the terms of the Resolution of the Supreme Council of July 17th, 1920. A comparison of the two documents proves that it was intended to carry out these terms completely and definitively. In view of the reservations made and doubts raised on this subject, it is, however, necessary to consider very closely three questions:

1. What is the nature and effect of the decision of July 28th, 1920;
2. What is the frontier line as defined by this decision in the Spisz district;
3. Is this frontier line wholly or partly subject to modifications, and in what circumstances.

A further question, namely, whether the delimitation effected in the Teschen and Orava districts might, as the Polish Government maintained, depend upon the solution adopted as regards the Spisz territory, will be considered separately, after the various aspects

of the special problem of Spisz have been analysed.

As regards the first question, — the nature and effect of the decision of July 28th, 1920, — it is necessary in the first place to ascertain the legal basis of that decision.

This basis is twofold. [29]

The Principal Allied and Associated Powers, by virtue of the powers which they claimed in regard to the determination of the frontiers of the new States, declared in their resolution of July nth their willingness to assume responsibility for the settlement of the dispute. This resolution appeared to them all the more opportune as it was in conformity with the agreement of July 10th, 1920, between the two States concerned which agreement was, according to its very terms, concluded by Poland and Czechoslovakia on being apprised of the desires, of the Principal Allied Powers.

The decision taken on July 28th is therefore the fulfilment at once of a resolution of the Principal Allied Powers and of an agreement between the interested parties. It was taken in accordance with a common desire on the part of all concerned to arrive at a final settlement of the dispute between Poland and Czechoslovakia. In this respect it has much in common with arbitration. The two States placed themselves in the hands of the Supreme Council which "guided by sentiments of justice and equity will have due regard to the true interests of the two kindred nations". Such are the terms used in the declaration of July 10th.

This general conclusion is confirmed by the circumstances surrounding the decision of July 28th, 1920. The Powers were confronted with a serious dispute, which in their opinion necessitated a speedy solution. Only by a settlement emanating from a duly authorised body could the whole dispute be disposed of without leaving any important point for subsequent decision, and the task with which the Conference of Ambassadors was entrusted be fulfilled. And in fact the decision constitutes the carrying out in full of the instructions contained in the Resolution of the Supreme Council.

The very terms of the decision of July 28th, prove that not only a final solution was intended, but one which would have immediate effect. The Powers represented on the Conference of Ambassadors recognise, through their plenipotentiaries, the sovereignty of the two States over the territories respectively allotted to them, from the date of the decision. The period of one year granted to persons who, being above the age of 18 years, had acquired either Polish or Czecho[30]slovak nationality, to opt in favour of the other nationality began likewise, under the terms of Article III, to run on July 28th, 1920, and the economic conventions mentioned above had to be concluded within two months from that date.

The final character of the decision referred to above is also shown, with special clearness, by the declaration appended to the decision, which is signed by the plenipotentiaries of Poland and Czechoslovakia. It runs as follows:

"The undersigned duly authorised representatives of the Polish and Czechoslovak Governments, in accordance with their Declaration of July 10th, 1920, hereby accept, on behalf of their respective Governments, the provisions set out above.

Done at Paris this 28th day of July, 1920.

(signed) J. J. Paderewski.

Dr. Edvard Benes".

It is true that on July 30th, 1920, M. Paderewski addressed a letter to the President of the Conference of Ambassadors in which he regretted the solution arrived at; but, whatever historical value this letter may possess, it cannot be given any weight when compared with the joint declaration reproduced above. This declaration concludes the series of documents which begins with the agreement signed at Spa on July 10th, 1920, by the same Polish and Czechoslovak plenipotentiaries. The two agreements give to the decision arrived at — over and above the authority possessed by a decision of the Principal Allied and Associated Powers in this case — the force of a contractual obligation entered into by the parties. The question of the revision of the decision has not been directly raised, and could not, indeed, be raised.

In the letter of July 28th, 1920, by which the President of the Conference of Ambassadors communicated to M. Benes the decision of that day, the Czechoslovak Government was called upon to take steps to occupy the territory allotted to it, upon receiving notice to that effect, the Principal Allied and Associated Powers being desirous of withdrawing their [31] troops of occupation as soon as possible from the districts in question. No doubt a similar request was sent to Poland. It is evident that the Conference of Ambassadors was under the impression that, by its decision of July 28th, 1920, a final settlement in the three disputed districts was assured in the near future. In fact, the occupation referred to appears to have taken place a short time afterwards. By a decree of August 7th, 1920, the International Sub-Commission for Orava and Spisz, as a result of orders received, declared that its duties were terminated, and handed over its powers to the Czechoslovak and

Polish Commissioners. Not only was the task entrusted to the Conference of Ambassadors by the Supreme Council fulfilled by the decision of the Conference, but this decision itself was put into execution.

The second question to be considered relates to the frontier fixed by the decision of July 28th, 1920, in the Spisz district. According to the Polish contention, the decision referred to determined only one part of this frontier, that which is topographically described, whereas as regards the other parts of the Spisz region in which the territories of Poland and Czechoslovakia were conterminous, nothing was yet decided; the delimitation question was therefore still open.

This contention cannot be accepted, for the following reasons:

The conference of Ambassadors was called upon to divide the Spisz territory. This territory had, since the Resolution of the Supreme Council of September 27th, 1919, constituted a clearly-defined district, the western northern and northwestern boundaries of which were formed by the old Hungarian-Galician frontier, whilst on the south-east a new boundary following the limits of certain communes had been traced by the Supreme Council.

This territory is connected on the west with that of Orava by a portion of the former frontier between Galicia and Hungary, and this same frontier also continues to the east of Spisz. The Conference of Ambassadors, in effecting the division prescribed, traced a line which quitted the former frontier between Hungary and Galicia at a point on the river [32] Bialka, about 500 metres east of the village of Brzegi, and rejoined the same frontier near Hill 487 on the road from Czorstyn to Szepesofalu. By this line, in conformity with the instructions given by the Supreme Council, the north-west part of the territory is allotted to Poland and the rest to Czechoslovakia.

By virtue of this division, the frontier line between the two States was necessarily determined by means of the line described above and the two parts of the former frontier between Hungary and Galicia which prolong it to the west and east. That is the frontier between Poland and Czechoslovakia in the Spisz district. It is true that the decision only gives a topographical description of the new line of division. But this is in no way surprising. The division involved only one new frontier line, and the other portions had not merely been determined since September 27th, 1919, but were identical with the former Hungarian-Galician frontier, which was perfectly well known and probably marked out in detail.

If the delimitation of the frontier between the two States had related only to the line

described in the decision, the Conference would not have been acting in accordance with the instructions of the Supreme Council, which were to divide the districts in dispute "with the least possible delay". If it had merely taken one step towards effecting a division, reserving the right to determine the other portions subsequently, it would have remained impossible to carry out almost all the provisions of the decision of July 28th, 1920; and this fact makes such a view untenable. The clauses relating to the immediate recognition of the sovereignty of the States concerned over the territories, and to the time limits, which began to run as from July 28th both as regards the right of option and the conclusion of subsequent conventions, as well as all the provisions of Articles III to VIII, presuppose the existence of a territory denned and delimited in all respects, especially in relation to the other State.

Several important facts may be mentioned in support of the above statements. The special map of the Spisz district [33] (1/75.000) annexed to the decision of July 28th, and dated the same day, marks with a continuous red line the frontier where it coincides with the former Hungarian-Galician frontier, and with a dotted red line the line described in the decision. The explanation of signs shown on the map indicates a continuous red line followed by a dotted red line as "frontier denned in the present decision". In another map, which includes the three divided territories (1/200.000) and which is also attached to the decision of July 28th, one unbroken red line, which is described as "frontier denned in the present decision", includes both the three portions of frontier described topographically for Teschen, Orava and Spisz, and also the portions of the former Hungarian-Galician frontier in these territories and connecting them with each other. It thus appears that the authors of the maps, who are undoubtedly also responsible for the topographical descriptions in the decision, realised that the line denned in the decision embraces much more than the frontier described in detail.

Another fact confirms the foregoing. The map (1/75.000) which the Delimitation Commission submitted to the Conference of Ambassadors in September 1922, with the proposal for a new line, shows with a red line, called "the frontier line defined by the decision of July 28th, 1920", the whole frontier line in the Spisz territory. It therefore appears from this map that the frontier in question coincides with the former frontier between Galicia and Hungary, except as regards the line described in the decision.

It is true that the maps and their tables of explanatory signs cannot be regarded as conclusive proof, independently of the text of the treaties and decisions; but in the present case they confirm in a singularly convincing manner the conclusions drawn from the documents and from a legal analysis of them; and they are certainly not contradicted by any

document.

The so-called "Frontiers" Treaty of Sevres, dated August 10th, 1920, although it has not yet taken effect, nevertheless is of interest as a document contemporary with the decision of July 28th, and emanating from the same Powers as compose the Supreme Council and the Conference of Ambassadors. [34] Now, the frontier between Poland and Czechoslovakia in the districts of Orava and Spisz is, according to this Treaty (Article I), to be formed by the old frontier between Hungary and Galicia, except at those points where the decision of July 28th has departed from that frontier and has traced new lines. This line is therefore in conformity with that found on the large map (1/200.000) annexed to the said decision, and representing the three disputed districts.

Another argument, pointing to the same conclusion, is to be found in the decree referred to above of the International 1920. Sub-Commission of Spisz and Orava, dated August 7th, This decree, which was issued with a view to the handing over to each State of the territories allotted to it, mentions the communes which are separated by the new frontier — Jaworzina, Stara Ves and Kolembark being named — it is evident that the Commissioners who were directly responsible for the carrying out of the decision of July 28th, 1920, did not doubt that the whole territory of Spisz had been divided by the decision. Moreover no protests appear to have been raised on this subject.

According to the contention of the Polish Government, with which for the reasons given above the Court cannot agree, the Conference of Ambassadors by its decision of July 28th, 1920, did not carry out in its entirety the task entrusted to it by the Supreme Council's Resolution adopted at Spa on the nth of the same month. According to the Polish Government, the frontier between Poland and Czechoslovakia in the territory of Spisz, including the region of Jaworzina, was not fixed by that decision, and consequently, the Principal Allied Powers still have full powers to fix this frontier, quite apart from and over and above any proposed modification submitted to them by the Delimitation Commission under Article II, paragraph 3, of that decision. The question, therefore, is alleged to be still open.

In support of this standpoint, various documents have been quoted. In the first place, a note of the Drafting Committee formed by the Conference of Ambassadors, dated October 21st, 1922, and in the second place, two letters with [35] the same contents, addressed on November 13th, 1922 by the President of the Conference to the Polish and Czechoslovak Ministers at Paris.

The note from the Drafting Committee contains the following passage:

"By virtue of a declaration made at Spa on July 10th, 1920, the Polish and Czechoslovak Governments agreed that their respective frontiers in the territories of Teschen, Orava and Spisz should be fixed by the Principal Allied and Associated Powers.

"In accordance with this declaration, the Principal Allied Powers, by their decision of July 28th, 1920, fixed these frontiers in the territories of Teschen and Orava, and also in the territory of Spisz with the exception of the portion, including the region of Jaworzina.

On August 10th, 1920, the frontiers of the Central European States, and amongst them those of Poland and Czechoslovakia, were confirmed or determined by the so-called Frontiers Treaty, which also filled in the gap left by the decision of July 28th, as regards the region of Jaworzina.

The Treaty of August 10th has not come into force, and though in certain respects its provisions have been applied in anticipation, this has only been done subject to the express consent of the parties affected.

Since the Treaty of August 10th, 1920, the only one which deals with the region of Jaworzina is not in force, and since the decision of July 29th, 1920, leaves this frontier undetermined, it follows that the Principal Allied Powers have, at the present time, only to consider the declaration of Spa of July 10th, 1920, which provides them with full powers for the determination of this frontier.

The Principal Allied Powers therefore have the fullest possible rights to undertake the determination of this frontier."

Furthermore, the President of the Conference of Ambassadors defines as follows the legal situation as it appears in the question of the Jaworzina frontier, in letters to the representatives of the Polish and Czechoslovak Republics:

"The Jaworzina sector of the Polish-Czechoslovak frontier was not defined in the decision of July 28th, 1920. It is only defined in the so-called Frontiers Treaty of August 10th, 1920, which is not yet in force. The Polish Government, when, on May 9th, 1922, it agreed that the work of demarcation should forthwith be commenced on

that part of the Polish-Czechoslovak frontier denned by that Treaty, reserved all its rights with regard to the territories of Orava and Spisz, and the Conference is bound to admit that the Treaty of August 10th, cannot be adduced as against the Polish Government in regard to the question in dispute. Again, on July 10th 1920, Poland and Czechoslovakia concluded an arrangement at Spa, agreeing that their respective frontiers in the territories of Teschen, Orava and Spisz should be fixed by the Principal Allied and Associated Powers. As the frontier in the region of Jaworzina was not fixed by the decision of July 28th, and as the Treaty of August 10th, 1920, is not yet in force, it follows that the Principal Allied Powers have retained all the rights which they derived from the agreement between the Polish and Czechoslovak Governments with regard to the determination of this part of the frontier. Accordingly, the Conference observes that in the work of the Delimitation Commission, allusion has been made to the decision of July 28th, 1920, but there has been no mention of the Treaty of August 10th."

The Court considers that notwithstanding the high authority of the opinion expressed on behalf of the Conference of Ambassadors and its Drafting Committee, such opinion cannot outweigh the perfectly clear language of the decision of July 28th, 1920. It has nothing to add to the reasoning already advanced to demonstrate that there is no gap in the [37] Polish-Czechoslovak frontier line indicated by the decision of July 28th, and that except for the reserve contained in paragraph 3 of Article 2, the decision under consideration left no question open for subsequent discussion in the region of Jaworzina.

Without success it has been maintained against this reasoning that the letter of November 13th, 1922, from the Conference of Ambassadors, which had already taken the decision of July 28th, is the most authoritative and most reliable interpretation of the intention expressed at that time, and that such an interpretation, being drawn from the most reliable source, must be respected by all, in accordance with the traditional principle: *ejus est interpretare legem cujus condere*.

Even if it were possible to accept the assimilation between this decision and internal legislation (an assimilation on which this contention is based) to be well-founded, it will suffice, in order to reduce this objection to its true value, to observe that it is an established principle that the right of giving an authoritative interpretation of a legal rule belongs solely to the person or body who has power to modify or suppress it. Now as has been stated above, the Conference of Ambassadors did not retain this power after the decision of July 28th,

1920, by which it fulfilled the task entrusted to it. The Conference itself recognised this in the letters sent by its President to the Ministers of Poland and Czechoslovakia on December 6th, 1921, in which it makes the following declaration:

"Being unable to revoke a previous decision, it has decided that no modification can be made in the frontier line as denned by the Decision of July 28th, failing the conclusion of a friendly agreement between the interested parties".

The same attitude is also found to be adopted in the letter of November 13th, 1922, where it is said:

"It (i.e., the relevant passage of the letter of December 6th, 1921) 'means that.... the Delimitation Commission could not compensate Czechoslovakia by allotting to her territories situated in a sector defined by the Decision [38] of July 28th, 1920, and awarded by that Decision to Poland."

The duties of the Conference, as has already been pointed out by the Court, had some points in common with those of an Arbitrator entrusted by two States with the settlement of a frontier dispute between them. But in the absence of an express agreement between the parties, the Arbitrator is not competent to interpret, still less modify his award by revising it. The decision of July 28th, which was accepted by the Polish and Czechoslovak Governments, contains no mention of an agreement of this kind. And even leaving out of the question the principles governing the authoritative interpretation of legal documents, it is obvious that the opinion of the authors of a document cannot be endowed with a decisive value when that opinion has been formulated after the drafting of that document and conflicts with the opinion which they expressed at that time. There are still stronger grounds for refusing to recognise the authority of such an opinion when, as in the present case, a period of more than two years has elapsed between the day on which it was expressed and the day on which the decision to be interpreted was itself adopted. How much more reliable is an interpretation of the decision of July 28th, 1920, based upon the comparison already made with the so-called Frontiers Treaty of August 10th, 1920, which was concluded only a few days after and was signed by the same persons as the decision under consideration, and which, by reason of the uninterrupted line which it gives for the Polish-Czechoslovak frontier, absolutely confirms the conclusions at which the Court has arrived!

It appears from the foregoing that the frontier was, directly, or indirectly, fixed in a definitive manner throughout the whole region of Spisz by the decision of July 28th, 1920.

Nevertheless, provision is made in the second Article of the decision itself for the possibility of certain modifications. This Article is worded as follows:

"A Delimitation Commission composed of one representative of each of the Principal Allied and Associated [39] Powers and of Poland and Czechoslovakia shall be formed within one month from the date of the present decision in order to mark out locally the frontier line described above.

The decisions of this Commission shall be binding on the parties concerned and shall be taken by a majority of votes; in the event of an equal division, the President shall have a casting vote.

The Commission shall be empowered to propose to the Conference of Ambassadors any modifications which it may consider justified by reason of the interests of individuals or of communities in the neighbourhood of the frontier line and having regard to special local circumstances.

The expenses of the Commission shall be shared equally by Poland and Czechoslovakia."

According to the terms of this clause the Commission's first duty, mentioned in Article II quoted above, is "to mark out locally" the line topographically described in paragraph 3 of Article I. Since only the general direction of this line was indicated, and that on a relatively small scale map, it was necessary that the Delimitation Commission, in order to mark out the line locally should have a certain degree of liberty, so that between the fixed points it might select, in the direction laid down, the line most suitable, having regard to topographical features. These are the "modifications of detail" alluded to in the reservation made in the question submitted to the Court.

The powers of the Delimitation Commission are not limited to modifications of this kind. It has, in addition under Article II, paragraph 3, the power to propose to the Conference of Ambassadors more important modifications in the frontier line.

From one point of view this power is fairly wide; for it is not subject to any definite limitation ("The Commission shall be empowered to propose any modifications"); nothing is said as regards the time at which such proposals may be made and there appears to be nothing

to prevent their being [40] made more than once. Since the object of this clause is one of equity, it must not be interpreted in too rigid a manner.

On the other hand, the Commission can only make proposals; and every decision resulting in a modification of the line in accordance with the third paragraph of Article II, must be taken by the Conference of Ambassadors, that is to say, with the unanimous consent of the Powers represented therein. This circumstance constitutes an important guarantee for the States to whom territories were allocated by the decision of July 28th, 1920. All decisions of the Commission, which is composed of one representative of each of the Principal Allied and Associated Powers and of the two Powers concerned, all on an equal footing, are taken by a majority of votes and must keep within the limits of the powers conferred by Article II. The consent of the parties concerned is not therefore in any way essential; however important the fact of such consent may be when the Conference of Ambassadors is considering whether to adopt or discard a proposal, from the legal point of view the vote of the majority of the Commission alone enters into consideration.

Again, the power of the Commission to propose modifications is materially limited by the fact that any proposal must be justified by the interests of individuals or communities in the neighbourhood of the frontier line, and must have regard to special local circumstances. According to the terms of the decision itself, both of these requirements must be satisfied in every case.

Though the Commission and the Conference must have a considerable amount of discretion under paragraph 3 of Article II, if that clause is to be of any utility in practice, it follows from an analysis of that provision that any diversion of the frontier line must be of the nature of a "modification" and cannot involve a complete or almost complete abandonment of the line fixed, by the decision of July 28th, 1920.

A word must be said here with regard to the "General Instructions" drawn up by the Conference of Ambassadors on July 22nd, 1920, for the Delimitation Commissions, which Instructions were subsequently supplemented and amended. [41] The first chapter of these Instructions (entitled "General Provisions") contains, amongst others, the following provisions which require examination in connection with the decision of July 28th, 1920:

"They shall be fully empowered not only to fix those portions of the frontier where the line has to be fixed locally, but also, should one of the States concerned make a request to that effect and should the Commission consider it expedient, to revise portions indicated by administrative boundaries, with the exception of

international frontiers existing in August 1914; in the case of such frontiers the duties of the Commission will be confined to the replacing of frontier posts and signs.

They may also — over and above cases where they acquire the right to do so under special provisions of the Treaty — modify the manner in which a locality mentioned by name in the Treaty is allocated, provided that the modification is of small importance and that it obtains the unanimous consent of the Commission.

They shall endeavour in every case to follow as closely as possible the definitions given in the Treaties, having regard wherever possible to administrative boundaries and local economic interests, to the exclusion of national, linguistic or religious considerations".

The Commission formed by the decision of July 28th, 1920, being a Delimitation Commission responsible to the Conference of Ambassadors, would no doubt be bound by the General Instructions. But the latter can only have a subsidiary value and can neither extend nor reduce the powers denned by Article II of that decision. This Article forms an integral part of the decision itself.

The sovereignty of Poland and Czechoslovakia was extended by the decision of July 28th, 1920, to the territories respectively allocated to them and, except as a result of a further agreement, cannot be made subject to limitations other than those arising out of the actual document which established and recognised such sovereignty. That this is the position is clearly shown by the fact that, as will be explained [42] hereafter, the Conference of Ambassadors, by its decision of December 2nd, 1921, suspended the execution of the decision of July 28th, 1920, in order to enable Poland and Czechoslovakia to conclude by direct negotiation an agreement with regard to modifications of the frontier going beyond the terms of Article II.

One more point remains. May the modifications of the frontier permitted under Article II, paragraph 3, apply to the whole of the frontier between the two States in the Spisz district, including the two portions formed by the former frontier between Hungary and Galicia, or only to the new dividing line described in the decision itself?

The Court is of opinion that Article II only refers to this latter portion, and that for the following reasons:

By Article II, as has already been stated, the Commission is, in the first instance, constituted to mark out locally the line described. The latter is the only line to be marked out; for it did not exist before July 28th, 1920, whereas the two other portions are frontiers which

have long been in existence.

It seems natural to construe Article II in the light of the idea governing its first paragraph, which contains the essential and necessary provisions. It follows that the whole Article only relates to this new line. The modifications contemplated in paragraph 3 can only be necessary as regards this portion of the frontier line, because this line, which is only indicated by certain principal points and traced on a small scale map, may seriously compromise existing reciprocal relations and may perhaps require rectifications which cannot be described as simple modifications of detail.

The situation is entirely different with regard to the two other portions. There we have not merely an administrative boundary but an international frontier which separated two States. In the opinion of the Court, which differs from that adopted by the Delimitation Commission on September 25th, 1922, the frontier between Hungary and Galicia was in August 1914 an international frontier, Galicia being then part of the Austrian Monarchy. This is proved, e. g. by the Arbitration Award of September 13th, 1902, with regard to the "Meerauge" [43] question. Although Austria and Hungary had common institutions based on analogous laws passed by their legislatures, they were none the less distinct international units.

In the absence of an express provision, the rule laid down by the "General Instructions" above-mentioned with regard to international frontiers, applies to the portions of the frontier in the region of Spisz formed by the former Hungarian-Galician frontier and retains its full force in this respect. The duties of the Delimitation Commission will therefore be confined as regards these portions to the replacing of posts or signs where necessary.

Nevertheless the Court feels obliged to point out that the Czechoslovak Government, whilst maintaining its standpoint that the right to make modifications under paragraph 3 of Article II of the Decision of July 28th, 1920, only extends to the dividing line described in the decision, has admitted in its legal memorandum that a modification of those portions of the frontier line formed by the old frontier between Galicia and Hungary might take place as a result of a modification of the line topographically described in the decision of July 28th, 1920, that is to say as a result of a modification affecting the points where this line begins or ends.

III.

It has been established that the Ambassadors' Conference by its decision of July 28th, 1920, had, by virtue of the powers conferred upon it by the Supreme Council, described and determined the frontier between the Polish and Czechoslovak Republics in the territory of Spisz, whilst reserving, under Article II, paragraph 3, of that decision, the right to introduce in the general line thus indicated any modification proposed by the Delimitation, Commission which appeared "justified by reason of the interests of individuals or of communities in the neighbourhood of the frontier line and having regard to special local circumstances".

The Delimitation Commission commenced its work in 1921 and was soon confronted with widely different proposals, submitted by the Polish and Czechoslovak representatives, [44] for the modification of the frontier adopted in the decision of July 28th. Several meetings between these two commissioners, at which first the French representative and later the British representative presided, failed to reduce the divergence between the opposing views, and the President of the Commission was obliged to confine himself to transmitting to the Ambassadors' Conference the latest Polish and Czechoslovak proposals with regard to the frontier line in the territory of Spisz. His letter, written in the name of the Allied Commissioners on July 5th, 1921, announces that disagreement still persists and indicates the considerable extent of the claims advanced; it also contains the following statements, which leave no room for doubt as to the views of the majority of the Commission:

"The Allied Commissioners are unanimously of the following opinion:

From a purely economic point of view the Polish proposals would be justified on certain grounds and would be of advantage for the villages which they affect most directly, namely: Osturnia/Ostornya, Velky Frankova/Nogy-frankvagasa/, Jurgov/Szepesgyorka/, Rzepisko/Vojtiekovei/, Lapsianko, Kislapos/, Nedecz, Kacwin/Szentmindszent/, Ober-Lischna.

But the Allied Commissioners consider that it is their duty also to inform the Conference of Ambassadors that considerations of a military and political nature seem to be regarded by the parties concerned as of greater interest than the economic considerations put forward by either side, and that the true object of the dispute is in reality the possession of the Northern slope of the Eastern part of the Tatra, which was given to the Czechoslovak State by the decision of the Conference of Ambassadors of July 28th, 1920.

On the other hand, in spite of frequently repeated attempts on the part of the

Allied Commissioners to reconcile the views of the interested parties, it has proved impossible to effect an agreement even upon a compromise between the two opposing proposals for the frontier line. [45]

In these circumstances, having regard in the first place to the considerable nature of the modifications proposed by Poland, and in the second place to the relative importance of the economic arguments adduced, which have to be considered in conjunction with the military and political interests involved, the Allied Commissioners consider that the modifications claimed are outside the scope of the discretion left them under Article II of the decision of July 28th and Chapter I of the Instructions for Delimitation Commissioners".

Confronted with this declaration of incompetence made to their delegates by the Allied Commissioners, the two neighbour States did not give up the attempt to discover some common ground on which to base a compromise between their respective claims, and some months later they found an opportunity of expressing their good will by means of a political agreement signed at Prague between the Polish and Czechoslovak Governments on November 6th, 1921. In an annex to this agreement, the High Contracting Parties undertook to settle the question of the commune of Jaworzina within a period of six months, by direct and friendly agreement.

At this stage, on December 2nd, 1921, a fresh decision of the Ambassadors' Conference with regard to the settlement of the dispute supervened. This decision runs as follows:

"It is decided:

(1) to invite the Polish and Czechoslovak Governments to continue their negotiations with regard to the frontier in the district of Spisz, with a view to arriving at an agreement in the near future;

(2) to inform these two Governments that they should conclude an agreement by January 15th, 1922, at latest; should they fail to do so, the Frontier Delimitation Commission will proceed without further delay to mark out the frontier of Spisz as defined by the decision of the Conference of Ambassadors, dated July 28th, 1920".
[46]

It is desirable to ascertain what is the exact significance of this resolution, which the

President of the Conference did not fail to communicate (December 6th) to the Polish and Czechoslovak Ministers in Paris and some days later (December 10th) to the Delimitation Commission itself.

It has been maintained by Czechoslovakia that this Resolution should be regarded purely and simply as the putting into execution of the previous decision of July 28th, 1920, in that it considered and discarded the proposed modifications of the frontier line submitted by the Delimitation Commission under Article II, paragraph 3, of that decision. It was maintained that the provisions in that Article were fulfilled in July 1921, and that the right to make proposals granted to the Commission in respect of the territory of Spisz had been exercised; and further that failing a friendly agreement between the two States concerned, the mandate of this Commission was henceforth confined to the duty of marking out the frontier, without making any modification in the line indicated by the Conference, other than the modifications of detail entailed by the marking out. It was contended, therefore, that the frontier was completely and definitively fixed in the district of Spisz, as well as in those of Teschen and Orawa, since the anticipated agreement between the Polish and Czechoslovak Governments had not been realised within the period provided, as extended on two successive occasions.

The Court is unable to accept such an uncompromising point of view. It cannot regard the divergent proposals made by the Polish and Czechoslovak representatives on the Delimitation Commission, or the declaration made by the President of the Commission in his letter to the Conference of Ambassadors of July 5th, 1921, by which declaration the Allied Commissioners refused to identify themselves with these proposals, as real proposals of the nature provided for in Article II, paragraph 3, of the decision of July 28th. All are mere opinions which the Commission itself has neither approved nor confirmed by vote nor adopted as its own proposals, and which its President only communi[47]cated to the Conference for its information. The Delimitation Commission therefore had not exhausted the right to make proposals conferred upon it; and the Conference, no doubt, could not withdraw the mandate, which it had itself conferred upon the Commission in the interest of the parties, without going back on its decision, of July 28th, 1920.

The Czechoslovak Government again relies on the fact that the Resolution of December 2nd, 1921, instructs the Delimitation Commission to proceed without delay to mark out the frontier of Spisz, as defined by the decision of July 28th, immediately after the expiration of the time allowed for the conclusion of a friendly agreement between the two

States concerned?

This contention, is not well-founded. First of all, the word *abornement* (marking out) used by the Conference of Ambassadors has not always, in fact, nor necessarily, the narrow technical meaning which the Czechoslovak Government desires to give it. The process of marking out does not merely consist of the actual placing of posts and stones which are to indicate the line separating two neighbouring countries; the expression must be held to include all operations on the ground. Moreover, this expression cannot, in the decision of December 2nd, 1921, have the meaning attributed to it by the Czechoslovak Government. For marking out must always be preceded by the fixing of the line. Now, the letter of December 6th, which notifies the decision above-mentioned, states that the line remains to be fixed in the region of Spisz. In these circumstances, it is not possible immediately to commence the marking out.

When, therefore, the Conference of Ambassadors took its decision of December 2nd, 1921, it merely maintained and confirmed that of July 28th, 1920, both as regards the duties which it had entrusted to the Delimitation Commission and as regards the general definition of the Polish-Czechoslovak frontier. Being desirous, however, of facilitating and encouraging the friendly settlement contemplated by the two States concerned in their agreement of November 6th of the same year, it reminds those States that it is time that their negotiations should lead to some result and [48] peremptorily warns them that if an agreement is not arrived at within the short time-limit fixed by the Conference, the strict fulfilment of the decision of July 28th, 1920, can no-longer be delayed; the Delimitation Commission will once more set to work to mark out the frontier of Spisz as defined by that decision. The covering letter of the President of the Conference to the Polish and Czechoslovak Ministers at Paris, dated December 6th, 1921, is in no way contrary to this interpretation. Whilst pointing out that

"In the districts of Teschen and Orawa, minor modifications made with the unanimous consent of the members of the Commission and approved by the Conference, have been introduced in the frontier line as defined in the Resolution,"
it states that

"*Up to the present* the members of the Commission have not arrived at a similar agreement with regard to the frontier in the district of Spisz."

Far from making any reference to the Delimitation Commission having been deprived

of its powers in the district referred to, this letter implies that its activities will continue; and this is brought out the more clearly by the fact that the Conference, in its examination of the Spisz dispute, does not appear to have considered local circumstances or interests of individuals or communities in the neighbourhood of the frontier, with which the right of proposal granted to the Delimitation Commission under Article II, paragraph 3, of the decision of July 28th, 1920, is intended to deal. The Conference seems to have been solely concerned with maintaining and justifying, in the light of the political, economic and military interests at stake, the irrevocable nature of that decision as regards the delimitation properly so-called of the frontier, in the event of the wished-for agreement between the two States concerned not materialising:

"The Conference, of Ambassadors", the above letter continues, "has most carefully considered the economic arguments presented in support of the opposing views, and has also given its attention to the military aspect [49] which may attach to this question. It is, however, unable to revoke a previous decision, and has decided that] no modification can be made in the frontier line as defined by the decision of July 28th, failing the conclusion of a friendly agreement between the interested parties."

It results from this letter that the *ratio decidendi* of the decision expressed therein was the refusal of the Conference to go back upon the decision of July 28th. In these circumstances, it follows that Article II still remains in, force, for, by abrogating it, the Conference would be going back upon the decision of July 28th — it would thus be doing what it in terms disclaims in this very letter of December 6th.

As the agreement laid down as a condition in this letter of December 6th was not realised within the period fixed, the decision of July 28th must be strictly applied in its entirety, not only as regards the line indicated therein for the general direction of the frontier in the region of Spisz, but also as regards the right of the Delimitation Commission to propose modifications which the work on the ground may show to be necessary, within the scope of Article II, paragraph 3.

In the last place, the Court observes that the provision to the effect that, on the proposal of the Delimitation Commission, modifications may be made under the terms of paragraph 3 of Article II of the Decision of July 28th, 1920, may assume considerable

importance for the States concerned; and, having regard to the contractual nature with which the provisions of that decision are endowed, as a result of its formal acceptance by the States concerned, very conclusive reasons would be required to lead to the presumption that the Conference intended henceforward to eliminate this possibility. Moreover, it is, to say the least, somewhat strange that the Conference, if it intended to abolish the right of the Delimitation Commission to propose modifications, did not say so unequivocally in its letter of December 10th, 1921, to the Delimitation Commission. It is however impossible to find there any indication of such an intention. [50]

IV.

There remains one question to be considered, which Poland, in the case submitted to the Council of the League of Nations, expressed in the following terms:

"By his action in accepting on April 23rd, 1921, the Polish Declaration relating to the whole Polish-Czechoslovak frontier line, the Czechoslovak delegate on the Delimitation Commission bound his Government:

(a) As to the possibility of making territorial changes in favour of Poland in the Jaworzina district;

(b) As to the fact that the final tracing of the frontier line in the Teschen and Orava districts of Silesia depends on the settlement of the question of the Spisz (Jaworzina) frontier line.

In signing the agreement with Poland, dated November 6th, 1921 (Annex B), the Czechoslovak Government undertook to settle amicably the Jaworzina question; the exact meaning of this agreement, in conjunction with subsequent documents, clearly shows that it was a question of a division of that territory".

In his oral statement in Court on November 13th, 1923, the representative of the Polish Government developed this standpoint.

According to the actual language of the preamble of the request, the question upon which the Court is asked for an advisory opinion principally concerns the frontier in the region of Spisz, and the written and oral information supplied bears almost entirely on this

point. Nevertheless the Court feels obliged to express an opinion upon the Polish case, and consequently upon the frontiers in the Duchy of Teschen and the territory of Orava, in so far as the delimitation, of the frontier in those regions and in the territory of Spisz may be interdependent. In drafting the Request, the Council made a point of referring expressly to the conclusions of the respective cases submitted by the two parties, and the discussion [51] which took place in the Council of the League of Nations, as well as the general terms in which the question itself is stated, appear to indicate that the opinion should embrace the whole range of the cases submitted.

The history of the case shows that the delimitation of the frontier in the three regions has been dealt with by the Supreme Council and the Ambassadors' Conference as a problem having an element of unity in the fact that the same parties are concerned and that the frontier is continuous. Nevertheless, both for the purposes of the plebiscite proposed in 1919 and of the division carried out in 1920, each of the three regions has been considered separately; in each case an effort has been made to arrive at an equitable and definitive solution. Until 1921 no trace is to be found in the documents of the idea that the frontiers fixed in this region might form the subject of reciprocal compensation.

The work of delimitation did not go forward with equal speed in the three regions. The lines indicated in the decision of July 28th, 1920, for Teschen and Orava were fixed in detail by the Commission at its meeting on April 23rd, 1921, and approved by the Conference of Ambassadors on May 25th following. Moreover the President of the Conference observes, in his letter of December 6th, 1921, that:

"At the present time, in the territories of Teschen and Orava the delimitation of the Polish-Czechoslovak frontier is completed and the marking out of this frontier on the ground is almost terminated. On the other hand, in the territory of Spisz the frontier has still to be fixed".

At the meeting of April 23rd, 1921, above-mentioned, the Polish Commissioner, after the unanimous adoption of the two proposals with regard to the frontier line in Teschen and Orava, read the following declaration:

"The Polish Delegation is glad to be able to observe that it has proved possible to introduce certain modifications in the frontier line by friendly arrangement; it recognises the utility of these modifications, from the point of view of protecting the

local economic interests [52] of the populations near the frontier. In order to safeguard these interests, Poland has not hesitated to make considerable sacrifices. The Polish Delegation has voted in favour of the Commission's proposal on condition that the same conciliatory spirit will prevail in discussions upon the third sector of the frontier, where Poland confidently hopes to obtain by means of an exchange her natural frontier at Jaworzina, a commune upon which depends the economic existence of five communes of Spisz allocated to Poland".

The President of the Commission replied as follows:

"Gentlemen, the Allied Commissioners also hope that this conciliatory spirit will prevail when we come to deal with the question of Spisz. This question of Spisz cannot come up for discussion until it is possible to go over the ground. The Allied Commissioners desire to study on the spot the local economic conditions, before submitting the results of their investigations for the decision of the Conference of Ambassadors. It is, of course, understood that in accordance with the conditions laid down in the decision of July 28th, Article II, the modifications which have just been adopted will be submitted to the Conference of Ambassadors for its decision, as also other minor modifications which the work conducted on the spot may show to be desirable."

The Czechoslovak Commissioner made no statement, and the discussion which took place only related to the "minor modifications" alluded to at the end of the President's speech.

What is the value of the Polish declaration from the juridical point of view? The Polish Government regards it as a condition subsequent upon which the consent expressed by means of the affirmative vote of the Polish Commissioner was dependent. The Court cannot accept this view.

The declaration seems rather to be in the nature of an expression of a mere expectation and not a condition in the proper sense of the term. But even supposing that the declaration was made with the intention indicated subsequently by the Polish Government, and that it could have been understood as such by the Commission, it does not appear that such a condition, expressed after the vote had been taken, could have been validly made, or could have been accepted as such by the Commission, the members of which were not in a position to take it into consideration when recording their vote. It is perfectly clear

both from the reply of the President and from the Polish declaration that the Commission had before it proposals concerning the frontiers of Teschen and Orava, within the meaning of Article II of the decision of July 29th, 1920, and that the modifications were recognised as desirable "from the point of view of protecting the local economic interests of the populations near the frontier". The Commission appears to have been dealing with a matter in regard to which it was competent to decide, by a majority of votes, to make proposals which, when adopted by the Conference would; be "binding upon the parties concerned". It was not therefore possible for the interested parties to make conditions.

The Court is not in a position to give an opinion in regard to the importance of the modifications adopted on April 23rd, 1921, by the Commission, nor upon the question whether those modifications were extensively or mainly in favour of Czechoslovakia. There is, however, nothing to indicate that they were considered as a cession of territory, which could only have been made with the consent of the Governments concerned. On the contrary, it appears that the proposals adopted on April 23rd were transmitted as they stood to the Conference of Ambassadors, and the telegram by which the Conference communicated its decision of May 25th, 1921, runs as follows:

"At its meeting of May 25th, the Conference of Ambassadors took the following decisions:

(1) The modifications of the frontier proposed by the Polish-Czechoslovak Commission in the territories of Teschen and Orava are approved.

(2) With regard to the further minor rectifications necessitated by the fixing on the ground of this new line, the Delimitation Commission should apply the provisions of the instructions in force." [54]

It should be observed that in this telegram the Conference uses precisely the expression "modifications".

The Conference therefore approved the proposals unconditionally. This is altogether natural. What value would a decision have had which was dependent upon another decision which the Conference would have had to take at a later date? Of a totally different nature is the question of the moral value of the Polish declaration, in this sense that afterwards, when the question of the delimitation of Spisz came up, the Polish concessions in Orawa should be borne in mind.

The definitive character of the decision of May 25th, 1921, is shown by the fact that the marking out of the lines thus fixed was then undertaken and almost entirely completed in

the course of that year. The fact that the territories allocated in this manner have not yet been evacuated by Poland can be explained by other reasons, and at all events does not affect the legal point involved.

V.

Was the situation resulting from the decision of May 25th, 1921, modified in consequence of new factors which intervened at the end of 1921, i.e. the annex to the political agreement concluded between Poland and Czechoslovakia on November 6th, and the decision of the Conference of Ambassadors of December 2nd, 1921, together with the letter relating thereto, dated December 6th?

By the annex to the political agreement of November 6th, 1921, Poland and Czechoslovakia mutually undertook to settle "the question of the commune of Jaworzina within a period of six months by means of a direct and friendly agreement between the two Governments."

It has been pointed out above that Poland, which had already asked that the Spisz plebiscite zone should be extended, had expressed in a letter from M. Paderewski, dated July 30th, 1920, its grave anxiety with regard to the frontier denned in that region by the Conference of Ambassadors. It also appears from the letter of the President of the Delimitation Commission written on July 5th, 1921, to the Conference of Ambassadors that [55]

"in the minds of the interested parties, military and political reasons appear to take precedence of the economic considerations advanced on both sides, and that the true subject of the dispute is in reality the possession of the northern slope of the eastern part of the Tatra, which was given to Czechoslovakia by the decision of the Ambassadors' Conference of July 28th, 1920".

These facts, among others, show that the political arrangement in question contemplated modifications of another kind, and probably more considerable than those falling within the scope of Article 2 of the decision of July 28th, 1920. At the meeting of April 23rd, 1921, the Polish Commissioner had already said that Poland hoped to obtain its natural frontier at Jaworzina by means of exchange of territories. Further more, the Polish proposals transmitted on July 5th, 1921, to the Conference of Ambassadors in the name of the Allied Commissioners contemplated the giving in compensation of considerable territories

allotted to Poland in 1920, namely, the communes of Nedecz and Kacwin (Spisz) and Ober-Lichna (Teschen).

The fact that the annex to the political agreement mentions the question of Jaworzina cannot be considered as a recognition on the part of the Czechoslovak Government of the fact that the frontier in the region of Spisz was not settled. The nature of such an agreement implies that the parties enter upon negotiations with a free hand; but without giving up their respective legal standpoints.

Neither the oral nor the written Polish arguments contain anything to invalidate this view of the Annex to the political agreement.

The Principal Allied and Associated Powers' motive in intervening in the question of Teschen, Orava and Spisz was from the outset to ensure the final settlement of the dispute which had arisen between Poland and Czechoslovakia. It is true that as regards the Principal Powers the political agreement of November 6th, 1921, was *res inter alios acta* and could not affect the legal situations created by the decision of July 28th, 1920, nor the frontiers fixed under that [56] decision. Being anxious, however, to facilitate a friendly and direct agreement between the parties regarding the points in dispute, a form of settlement always preferable to the intervention of a third party, the Conference of Ambassadors in the letters which it sent on December 6th, 1921, to the Polish and Czechoslovak Ministers at Paris (confirmed by the letter of December 10th, to the Delimitation Commission) postponed, in the first place, the execution of the decision of May 25th, 1921, concerning the regions of Teschen and Orava, and secondly, the execution of the decision of December 2nd as regards the territory of Spisz. The parties were therefore not hindered in their negotiations by any of the decisions of the Conference. The postponement granted on December 6th, 1921, until January 15th, 1922, was, as has already been said, twice extended subsequently, in the last place to August 6th, 1922.

Furthermore, the decision of December 2nd and the letters of December 6th and 10th, 1921, establish quite clearly that, failing a friendly and direct agreement between the two Governments — that is to say, an agreement outside the Delimitation Commission — before the expiration of the time limit granted not only the decision of December 2nd, 1921, regarding the marking out of the frontier in the region of Spisz, but also the decision of May 25th, 1921, with regard to the delimitation of the frontier in the regions of Teschen and Orava would become immediately operative. The object aimed at by the Conference of Ambassadors, namely the fixing of the frontier between Poland and Czechoslovakia, could be effected either by means of direct agreement between the parties or by a decision of the

Conference, binding upon the parties under Article II of the decision of July 28th, 1920. It is therefore difficult to suppose that the Conference intended by its letter of December 6th, 1921, in the event of the failure of direct negotiations, to reopen discussion as regards any of the decisions taken with a view to the final settlement of the questions of Teschen, Orava and Spisz. On the contrary, the above-mentioned letter on December 10th, makes it clear that the separate treatment of the questions of the delimitation of the frontier in the three regions was only abandoned conditionally, that is to say, with a view to negotiations to be entered into between the two Governments, and that the Conference expressly maintained its original standpoint regarding the reservations made by Poland as to the evacuations and occupations stipulated by the Commission in the regions of Teschen and Orava. It follows therefore that the delimitation of the frontier in Teschen and Orava is final, both from the point of view of the decision of July 28th, 1920, and from that of the decision of December 2nd — 6th, 1921, and the documents relating thereto.

FOR THESE REASONS

THE COURT IS OF OPINION

that the question of the delimitation of the frontier between Poland and Czechoslovakia has been settled by the decision of the Conference of Ambassadors of July 28th, 1920, which is definitive,

but that this decision must be applied in its entirety, and that consequently that portion of the frontier in the region of Spisz topographically described therein remains subject (apart from the modifications of detail which the customary procedure of marking boundaries locally may entail) to the modifications provided for under paragraph 3 of Article II of the same decision.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this sixth day of December, 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*) A. Hammarskjöld,
Registrar.