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 Type: Advisory Opinion  
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 Party(ies): Free City of Danzig and Poland and High Commissioner of the League of Nations at Danzig  
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<sup>1</sup> date when the request for an advisory opinion or application was filed with the court Registry.

## Permanent Court of International Justice

<i>Present:</i> Mm. Anzilotti,	<i>President,</i>
Huber,	<i>Former President,</i>
Weiss,	<i>Vice-President,</i>
Loder, Nyholm, Altamira, Oda,	<i>Judges,</i>
Yovanovitch, Beichmann, Negulesco, Wang,	<i>Deputy-Judges,</i>
Ehrlich, Bruns,	<i>Judges ad hoc.</i>

On September 22nd, 1927, the Council of the League of Nations adopted the following Resolution:

"The Council of the League of Nations, having received from the Government of the Free City of Danzig an appeal against a Decision given on April 8th, 1927, by the High Commissioner of the League of Nations at Danzig as to the jurisdiction of the Danzig Courts in [5] actions brought against the Polish Railways Administration by Danzig railway officials who have passed into the Polish service, decides to ask the Permanent Court of International Justice to give it an advisory opinion on the following question:

Whereas the Government of the Free City of Danzig requested the High Commissioner on January 12th, 1927, to give the following decision:

(a) that railway employees who had passed from the service of the Free City into Polish service, were entitled to bring actions in respect of pecuniary claims, even if these claims were based on the Danzig-Polish Agreement of October 22nd, 1921 (Agreement concerning officials, *Beamtenabkommen*) or on the declaration made under Article 1 of this Agreement, which was accepted by the Polish Railways Administration;

(b) that Danzig Courts were entitled to hear the actions referred to in (a);

(c) that, consequently, the Polish Railways Administration was bound to accept the jurisdiction of the Danzig Courts in disputes such as those mentioned in (a), and to enforce the judgments given by those Courts;

Whereas the High Commissioner on April 8th, 1927, on the above request of the Senate of Danzig, gave the annexed Decision;

Whereas the Government of Danzig has appealed to the Council of the League of Nations against this Decision in a Note dated May 12th, 1927;

Is the Court of opinion that the High Commissioner's Decision of April 8th, 1927, given as a result of the requests made by the Danzig Government on January 12th, 1927 — in so far as his Decision does not comply with those requests — is legally well founded?

The Secretary-General is authorized to submit this application to the Court with all the documents relating to the question; to explain to the Court the action the Council has taken in the matter; to give all the necessary assistance for the examination of the case, and, if necessary, to take steps to be represented before the Court."

In pursuance of this Resolution, the Secretary-General of the League of Nations, on September 24th, 1927, submitted [6] to the Court a Request for an advisory opinion in the following terms:

"The Secretary-General of the League of Nations, in pursuance of the Council Resolution of September 22nd, 1927, and in virtue of the authorization 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 Council on the question which is referred to the Court by the Resolution of September 22nd, 1927;

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

According to the terms of the letter under cover of which the Secretary-General of the League of Nations transmitted to the Court the Request reproduced above, the Decision of the High Commissioner of the League of Nations at Danzig, dated April 8th, 1927, to which the Council's Resolution of September 22nd refers, is to be regarded as annexed to that Resolution. The complete text of the Decision in question as transmitted to the Registry is attached to the present opinion, only the operative portion thereof being reproduced below:

"Pecuniary claims of any kind, based on one of the provisions which constitute the contract of service for Danzig employees of the Polish Railways who have passed into the service of the Polish Administration under the Danzig-Polish Agreement of

"October 22nd, 1921, and in particular claims in connection with salaries, pensions, half-pay, and other grants under the contract, may form the subject of an action in the Danzig Courts (except for the reservation mentioned on pages 5-6 <sup>1</sup>); the clauses of the Agreement itself, and the declarations referred to in Article 1 of the Agreement, are not to be regarded as provisions which constitute the contract of service of the above-mentioned employees, and therefore they cannot give ground for a personal action to be brought in the courts;

under these circumstances, I do not think that the question set out in (c) arises."

[7]

In conformity with Article 73, paragraph 1, of the Rules of Court, the Request for an opinion was communicated to Members of the League of Nations and to States entitled to appear before the Court. At the same time, the Registrar sent to the Governments of Poland and of the Free City of Danzig, being regarded as likely to be able to furnish information on the question upon which the Court's opinion was asked, a special and direct communication to the effect that the Court was prepared to receive from them written statements and, if necessary, to hear oral statements made on their behalf at a public hearing to be held for the purpose.

The time for the submission of any written statements, which was at first fixed to expire on November 4th, 1927, was afterwards, at the request of the representative of the Free City of Danzig, extended until December 5th, 1927. On the latter date Memorials had been filed on behalf both of the Polish Government and of the Government of the Free City of Danzig. Subsequently, the representative of the Free City before the Court, having asked whether the Court intended to request the Governments in question to present a Counter-Memorial, the Registrar informed them that the Court would not ask them for any further document, but that, should either or both of them wish to submit Counter-Memorials, the time-limit for the filing of such documents would be fixed to expire on January 15th, 1928.

No Counter-Memorials having been filed on that date, the representatives of the interested Governments were informed that the Court wished to hear their oral statements.

Accordingly, the Court, in the course of public sittings held on February 7th and 8th, 1928, heard oral arguments presented by M. G. Gidel, Professor at the Faculty of Law of Paris, on behalf of the Free City of Danzig, and by M. J. Limburg, Counsellor of State and former leader of the Bar at The Hague, on behalf of Poland.

In addition to the documents submitted by the interested Governments, the Court has had

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<sup>1</sup> See page 30.

before it documents communicated by the Secretary-General of the League of Nations with the Council's request for an opinion, certain additional documents and information collected by the Registry (see annexed list), and also the replies furnished by the representatives of the [8] interested Governments to questions put to them on behalf of the Court.

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Before undertaking the examination of the question set out in the Resolution of the Council of the League of Nations of September 22nd, 1927, the Court considers that it should recall the circumstances in which the Council was led to ask for an advisory opinion on this question.

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Under Article 104 of the Treaty of Versailles, "the Principal Allied and Associated Powers undertake to negotiate a treaty between the Polish Government and the Free City of Danzig, which shall come into force at the same time as the establishment of the said Free City, with the following objects", amongst others: "to ensure to Poland the control and administration of the .... whole railway system within the Free City, except such street and other railways as serve primarily the needs of the Free City . . . .". This Convention was concluded in Paris between Poland and the Free , City on November 9th, 1920, and is called hereafter the Convention of Paris. It contains, in Articles 20 and 21, provisions to the effect that the Danzig railways — apart from those already excepted by the Treaty of Versailles and those specially serving the port — ". ... shall be controlled and administered by Poland, which shall receive the profits and defray the expenditure". Article 22 of the Convention is as follows:

"Subsequent agreements to be concluded between Poland and the Free City within four months after the coming into force of the present Treaty shall settle any questions which may arise from the execution of Article 21, especially questions relating to the retention of officials, employees and workmen at present employed on the railways and to the maintenance of rights acquired by them, and questions relating to the guarantees to be accorded reciprocally for the use of the Danzig and Polish languages and currencies, and for the interests of the local population, in all matters concerning the [9] administration, exploitation and services referred to in Article 21.

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

Article 39 reads as follows:

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

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

This article was based on Article 103 of the Treaty of Versailles, which runs as follows:

"A constitution for the Free City of Danzig shall be drawn up by the duly appointed representatives of the Free City in agreement with a High Commissioner to be appointed by the League of Nations. This constitution shall be placed under the guarantee of the League of Nations.

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

The High Commissioner shall reside at Danzig."

In pursuance of Article 22 of the Convention were signed first of all, on July 20th, 1921, a "Provisional Agreement in regard to officials" (*provisorisches Beamtenabkommen*), and subsequently, on October 22nd, 1921, a "Definitive Agreement in regard to officials" (*endgültiges Beamtenabkommen*), the authoritative German text of which is reproduced in the annex, together with the French translation — in regard to the accuracy of which some reservations should however be made — of this text, which was attached to the Request for the opinion.

The Definitive Agreement of October 22nd, 1921, was to a large extent based on two Decisions of General Haking, the High Commissioner of the League of Nations at Danzig, [10] given on August 15th and September 5th of the same year in accordance with the last paragraph of Article 22 of the Convention of Paris, and in pursuance of the jurisdictional clause contained in Article 39 of the same Convention.

The Decisions in question, against which the two Governments, by an "arrangement" made at Geneva on September 23rd, 1921, undertook not to appeal, were recognized in a memorandum (*Niederschrift*) signed on December 1st, 1921, by the representatives of the Free City

and of the Polish State Railways Administration, as entering into full effect on that date, together with the Arrangement of September 23rd, 1921, and the Agreement of October 22nd of that year.

Subsequently, from the year 1925 onwards, Danzig railway officials who had passed into the service of the Polish Administration in accordance with the Agreement of October 22nd, 1921, brought actions before the Courts of the Free City against the said Administration for pecuniary claims which they considered that they had against the latter. A certain number of examples of these suits have come to the knowledge of the Court (*Flander v. the Polish Treasury*; *Holz v. the Polish Treasury*; *Menge v. the Polish Treasury*) as the result of the communication of the text of the judgments given, or of the transmission of copies of records concerning the different stages of the proceedings. It appears from these documents as well as from the information given to the Court by the interested Governments, that the claimants based their actions on the provisions of the Agreement of October 22nd, 1921, that the Polish Treasury raised objection in all these cases on the ground that the Danzig Courts had no jurisdiction to entertain such actions, and that, on the other hand, the courts in question declared themselves, both in first instance and on appeal, to have jurisdiction.

On January nth, 1926, the Commissioner-General of the Polish Republic at Danzig sent to the High Commissioner of the League of Nations in the Free City a letter containing the following passage:

"In the future, the Polish Government will not take cognizance of actions brought by railway officials and based on the provisions of the Agreement of October 22nd, 1921. It will not comply [11/2] with any judgment given by Danzig Courts in such cases. It rests with the Senate of the Free City to inform its nationals as to the means of which they may avail themselves for the protection of their interests and to compel the courts of the Free City to respect the provisions of the treaties in force and the decisions of the High Commissioner.

I am sending a copy of this note to the Senate of the Free City <sup>1</sup>."

In its reply, dated May 27th, 1926, the Senate of the Free City, whilst declaring itself prepared to ask the High Commissioner for a decision in accordance with Article 39 of the Convention of Paris, sought the intervention of the High Commissioner and requested him to endeavour to induce the Polish Government to withdraw the declaration set out above.

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<sup>1</sup> Translation by the Registry of the French original.

According to the High Commissioner, prolonged conferences followed with a view to reaching a settlement. On January 12th, 1927, however, the Danzig Senate asked him, in accordance with the terms of Article 39 of the Convention of Paris, for a decision on the requests which were set out as follows in the original German text <sup>2</sup>:

"dass .... a) die aus dem Eisenbahndienst der Freien Stadt Danzig in den Polnischen Eisenbahndienst übernommenen Eisenbahnbeamten befugt sind, vermögensrechtliche Ansprüche aus ihrem Dienstverhältnis im Wege der Klage geltend zu machen, auch wenn die Klagen auf das Danzig-polnische Abkommen vom 22. Oktober 1921 (sogen. Beamtenabkommen) oder auf die gemäss Artikel 1 dieses Abkommens abgegebene und von der polnischen Eisenbahnverwaltung angenommene Erklärung gestützt werden, b) für Klagen der zu a) bezeichneten Art die Danziger Gerichte zuständig sind, und daher, c) die polnische Eisenbahnverwaltung verpflichtet ist, in Rechtsstreitigkeiten der zu a) bezeichneten Art vor Danziger Gerichten Recht zu nehmen und die Urteile der Danziger Gerichte auszuführen."

Following upon proceedings consisting in the exchange of a reply, dated February 28th, 1927, presented by the Free City, and a rejoinder, dated March 23rd, 1927, presented by Poland, the High Commissioner gave the Decision the operative part of which is reproduced at the beginning of this opinion. [12]

On May 12th, 1927, the Government of the Free City of Danzig, again relying on Article 39 of the Convention of Paris, lodged an appeal with the Council of the League of Nations against this Decision, asking that the said Decision "should be annulled" and that "it should be decided that"

"the former Danzig railway officials taken over by the Polish Railway service are authorized to recover pecuniary claims, arising out of their conditions of service, in the Danzig Civil Courts, from the Polish Railways Administration, even when these claims, are based on the Danzig-Polish Agreement of October 22nd, 1921 (the so-called *Beamtenabkommen*), or on the declaration made under Article 1 of that Agreement, and accepted by the, Polish Railways Administration <sup>1</sup>".

On receipt of this appeal and of two other documents emanating from Danzig, as well as of three documents of procedure filed by Poland and four legal opinions respectively signed by

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<sup>2</sup> See English and French translations on page 12.

<sup>1</sup> English translation communicated by the Secretariat of the League of Nations.

Professors Kaufmann, Schücking, Cavaglieri and Le Fur, the Council at its forty-eighth session, on the report of M. Villegas, adopted the resolution reproduced at the beginning of this advisory opinion.

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## I.

The Court has to consider, in the first place, the exact scope of the question submitted to it for an advisory opinion. The Resolution of the Council of the League of Nations, adopted on September 22nd, 1927, states the question in the following terms:

"Is the Court of opinion that the High Commissioner's Decision of April 8th, 1927, given as a result of the requests made by the Danzig Government on January 12th, 1927 — in so far as his Decision does not comply with those requests — is legally well founded?" [13]

It may be recalled that the requests made by the Danzig Government, referred to in the above-mentioned question, are in the following terms (according to the text of the High Commissioner's Decision annexed to the Council's Resolution):

"(a) that railway employees who had passed from the service of the Free City into Polish service, were entitled to bring actions in respect of pecuniary claims, even if these claims were based on the Danzig-Polish Agreement of October 22nd, 1921 (Agreement concerning officials, *Beamtenabkommen*) or on the declaration made under Article 1 of this Agreement, which was accepted by the Polish Railways Administration;

(b) that Danzig Courts were entitled to hear the actions referred to in (a);

(c) that, consequently, the Polish Railways Administration was bound to accept the jurisdiction of the Danzig Courts in disputes such as those mentioned in (a), and to enforce the judgments given by those Courts".

The operative portion of the High Commissioner's Decision of April 8th, 1927, is as follows:

"Pecuniary claims of any kind, based on one of the provisions which constitute the contract of service for Danzig employees of the Polish Railways who have passed into the service of the Polish Administration under the Danzig-Polish Agreement of

October 22nd, 1921, and in particular claims in connection with salaries, pensions, half-pay, and other grants under the contract, may form the subject of an action in the Danzig Courts (except, for the reservation mentioned on pages 5-6 <sup>1</sup>); the clauses of the Agreement itself, and the declarations referred to in Article 1 of the Agreement, are not to be regarded as provisions which constitute the contract of service of the above-mentioned employees, and therefore they cannot give ground for a personal action to be brought in the courts;

under these circumstances, I do not think that the question set out in (c) arises."

An examination of the documents submitted to the Court and Of the oral statements made by the representatives of the Parties before the Court at its public sittings, establishes the fact that neither Party has contested that part of the [14] High Commissioner's Decision according to which "pecuniary claims of any kind based on one of the provisions which constitute the contract of service for Danzig employees of the Polish Railways who have passed into the service of the Polish Administration under the Danzig-Polish Agreement of October 22nd, 1921, and in particular claims in connection with salaries, pensions, half-pay, and other grants under the contract, may form the subject of an action in the Danzig Courts". This part of the Decision, hereafter called "the first part", may be considered as complying to this extent with Danzig's requests; and by the terms of the Resolution, the Court is not asked for an opinion as to whether it is legally well founded or not.

The Decision further lays down that "the clauses of the Agreement itself, and the declarations referred to in Article 1 of the Agreement, are not to be regarded as provisions which constitute the contract of service of the above-mentioned employees, and therefore they cannot give ground for a personal action to be brought in the courts; under these circumstances, I do not think that the question set out in (c) arises". This part of the Decision, hereafter called "the second part", does not comply with Danzig's requests. It is, therefore, on this part that the Court is asked to give its opinion as to whether it is legally well founded or not.

Before entering upon the examination of the question before it, as defined above, the Court deems it necessary to consider, as a preliminary question, whether its opinion should contemplate the Danzig railway "officials" only, or whether it should include in its purview Danzig railway "employees" who are not "officials". It should be noted in this connection that in some of the articles of the Agreement of October 22nd, 1921, hereafter called

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<sup>1</sup> See page 30.

*Beamtenabkommen*, the word *Beamte* (officials, e.g. Article 4, No. 2), or the word *Arbeiter* (workmen, e.g. Article 2), is used; other articles speak of *Beamte* und *Arbeiter* (officials and workmen, e.g. Article 3), or *Bedienstete* (employees, e.g. Article 6, [c]). This difference in terminology is evidently intended to fix the scope of application of the several provisions [15] concerned. Turning now to the Decision of the High Commissioner, we find that the word "employees" is used in its operative portion. However, in view of the fact that the original requests made by Danzig in its letter of January 12th, 1927, which led to the said Decision as well as to the appeal made by Danzig against the Decision, refer only to *Beamte* (officials), the Court is of opinion that the question before it should be construed as referring to "officials" only. This interpretation is borne out by the first paragraph of the Council's Resolution, which says: "The Council of the League of Nations, having received from the Government of the Free City of Danzig an appeal against a Decision given on April 8th, 1927, by the High Commissioner of the League of Nations at Danzig as to the jurisdiction of the Danzig Courts in actions brought against the Polish Railways Administration by Danzig railway officials who have passed into the Polish service, decides to ask the Permanent Court of International Justice to give an advisory opinion on the following question".

## II.

The appeal made by Danzig, on May 12th, 1927, against the High Commissioner's Decision of April 8th, 1927, requests the Council to quash (*aufheben*) the said Decision, and to decide that:

"the former Danzig railway officials taken over by the Polish Railway service are authorized to recover pecuniary claims, arising out of their conditions of service, in the Danzig Civil Courts from the Polish Railways Administration, even when these claims are based on the Danzig-Polish Agreement of October 22nd, 1921 (the so-called *Beamtenabkommen*), or on the declaration made under Article 1 of that Agreement, and accepted by the Polish Railways Administration <sup>1</sup>". [16]

At first sight, it would seem that the first part of the "Decision of April 8th, 1927, was also included in Danzig's appeal. But, as has just been said, and in view of the statement of

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<sup>1</sup> Translation communicated by the Secretariat of the League of Nations.

reasons for the appeal, this part of the Decision should not be considered as having been contested by Danzig. Indeed, the very words used in the statement of the appeal quoted above, namely, "even when (*auch wenn*) these claims are based on the Danzig-Polish, Agreement of October 22nd, 1921" (the so-called *Beamtenabkommen*), etc., necessarily imply the existence of the jurisdiction of the Danzig Courts with regard to certain other pecuniary claims, i.e. those which are not based on the *Beamtenabkommen*.

In examining the second part of the High Commissioner's Decision, the Court deems it necessary to take its first part as a starting point, and to consider what is laid down therein as finally settled. This does not imply that the Court accepts the reasons given by the High Commissioner for this part of his Decision.

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The second part of the High Commissioner's Decision lays down that "the clauses of the Agreement itself, and the declarations referred to in Article 1 of the Agreement, are not to be regarded as provisions which constitute the contract of service of the above-mentioned employees, and therefore they cannot give ground for a personal action to be brought in the courts".

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The Court will first deal with the question relating to actions brought for the recovery of pecuniary claims based upon the Agreement of October 22nd, 1921 (*Beamtenabkommen*), [17] and will then pass to the question of the declarations.

The contentions of the two Parties, resulting from their discussion before the Court, may be briefly summarized as follows:

Poland contends: (1) that the *Beamtenabkommen*, being an international agreement, creates rights and obligations between the contracting Parties only; (2) that the *Beamtenabkommen*, as such, and failing its incorporation into Polish national legislation, cannot create direct rights or obligations for the individuals concerned; and (3) that if, in any respect, Poland has not carried out her international obligations arising under the *Beamtenabkommen*, she is responsible only to the Free City of Danzig. In other words, Poland contends that the legal

relations between the Polish Railways Administration and the former Danzig officials, who have become Polish officials, are governed solely by Polish national law, which should be in conformity with the *Beamtenabkommen*.

On the other hand, Danzig contends that the *Beamtenabkommen*, though an international agreement in form, was intended by the contracting Parties to constitute part of the "series of provisions which establish the legal relationship between the Railways Administration and its employees" ("contract of service") and that it is the substance rather than the form of the instrument that determines its juridical character.

The point in dispute amounts therefore to this: Does the *Beamtenabkommen*, as it stands, form part of the series of provisions governing the legal relationship between the Polish Railways Administration and the Danzig officials who have passed into its service (contract of service)? The answer to this question depends upon the intention of the contracting Parties. It may be readily admitted that, according to a well established principle of international law, the *Beamtenabkommen*, being an international agreement, cannot, as such, create direct rights and obligations for private individuals. But it cannot be disputed that the very object of an international agreement, according to the intention of the contracting Parties, may be the adoption by the Parties of some [18] definite rules creating individual rights and obligations and enforceable by the national courts. That there is such an intention in the present case can be established by reference to the terms of the *Beamtenabkommen*. The fact that the various provisions were put in the form of an *Abkommen* is corroborative, but not conclusive evidence as to the character and legal effects of the instrument. The intention of the Parties, which is to be ascertained from the contents of the Agreement, taking into consideration the manner in which the Agreement has been applied, is decisive. This principle of interpretation should be applied by the Court in the present case.

The wording and general tenor of the *Beamtenabkommen* show that its provisions are directly applicable as between the officials and the Administration. This is particularly the case in regard to Articles 6, *litt. (a) and (b)*, 7, 11 and 12, which are of such a nature as to lead possibly to pecuniary claims. According to its contents, the object of the *Beamtenabkommen* is to create a special legal regime governing the relations between the Polish Railways Administration and the Danzig officials, workmen and employees who have passed into the permanent service

of the Polish Administration. That this special regime, according to the intention of the contracting Parties, is to be governed by the very provisions of the *Beamtenabkommen*, may be seen for instance from an analysis of Article 4 of the *Beamtenabkommen*. This article (No. 2) stipulates that the Danzig officials are subject to the disciplinary laws of Poland. Further on, No. 5 gives Poland the right to frame her disciplinary laws differently from the corresponding provisions of the *Beamtenabkommen* (subject, however, to the reservations concerning the composition of the disciplinary chambers and the use of the German language). Now, if Poland's contention were justified, such laws, once enacted, would be immediately applicable to the Danzig officials. But No. 5 expressly stipulates that in such a case, "these provisions" (i.e. the provisions of the *Beamtenabkommen* concerning discipline) "shall be amended and brought into harmony with the Polish disciplinary law" (*so werden diese Bestimmungen in Anlehnung an das polnische Disziplinalgesetz geändert werden*). The necessity of resorting to [19/3] this additional procedure of amending the *Beamtenabkommen* shows (1) that the Polish disciplinary law, in so far as it differs from the provisions of the *Beamtenabkommen*, does not *de plano* regulate the legal relations between the Polish Railways Administration and the Danzig officials, and this, in spite of the fact that, according to the intention of the Parties, Poland has the right to pass such laws; and (2) that in so far as the matters regulated by its provisions are concerned, the *Beamtenabkommen* constitutes a legal document governing the relations between the Polish Railways Administration and the Danzig officials; hence the necessity, e.g. in the matter of discipline, of amending the provisions of the *Beamtenabkommen* in order to make the provisions of the Polish law binding on the Danzig officials.

It is true that Article 9 of the *Beamtenabkommen* has been invoked by Poland in order to show that the *Abkommen* itself makes Polish national legislation applicable. The article reads:

*"Sämtliche Angelegenheiten der im polnischen Dienst übergetretenen Beamten und Arbeiter regelt die polnische Staatsbahnverwaltung <sup>1</sup>."*

In Poland's opinion, this article is a proof that the intention of the Parties was to leave it to Poland to make all the regulations concerning the Danzig Railway officials including regulations based on the *Beamtenabkommen*, for which regulations she would be responsible

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<sup>1</sup> Translation by the Registry: "All matters affecting officials and workmen transferred to the Polish service shall be dealt with by the Polish State Railways Administration."

only to the Free City of Danzig.

In the opinion of the Court, the scope of application of Article 9 is not so wide. The meaning of this article, read in the light of the general tenor of the *Beamtenabkommen*, and especially of General Haking's Decision of September 5th, 19,21, becomes apparent. This Decision (No. 12 a) lays down that:

"Within these limits [i.e. the maintenance of the rights of the Danzig officials, employees and workmen engaged in the railway service and the safeguarding of the [20] interests of the local population], the passing of the bye-laws for this railway system is a matter entirely for the Polish Railway Administration."

It follows that Article 9 of the *Beamtenabkommen* should not be construed in a manner which would make the applicability of the provisions of the *Beamtenabkommen* depend on their incorporation into a Polish Regulation.

The argument drawn by Poland from Article 9 of the *Beamtenabkommen* cannot therefore affect the conclusion reached by the Court, namely, that the *Beamtenabkommen* constitutes part of the special regulations which govern the relations between the Polish Railways Administration and the officials concerned.

This conclusion is corroborated by the following circumstance attending the actual execution of the *Beamtenabkommen*.

Neither Party has disputed the fact that the *Beamtenabkommen* has been actually put into effect in accordance with the intention of the contracting Parties. On December 1st, 1921, the date of the taking over of the Danzig railways by Poland, a memorandum (*Niederschrift*) was signed by the Polish Railways Administration and the Free City of Danzig, the relevant passages of which read as follows:

"Niederschrift betreffend den Uebergang Danziger Bahnen an die Polnische Eisenbahnverwaltung am 1. Dezember 1921.

.....  
Beide Parteien erkennen an, dass mit Wirksamkeit vom 1. Dezember 1921 die Entscheidungen des Oberkommissars vom 15. August 1921 und vom 5. September 1921, ferner die Bestimmungen des Genfer Vertrages vom 23. September 1921 und schliesslich die nachstehend aufgezählten Abkommen zur vollen Geltung gelangen und zwar:

(a) .....

(b) Ausführungsbestimmungen zur Entscheidung des Oberkommissars vom 15. August 1921 und 5. September 1921 betreffend Uebernahme der Danziger Eisenbahnbeamten und Eisenbahnarbeiter in den dauernden Dienst der polnischen Staatseisenbahnverwaltung, vereinbart zwischen der Polnischen und der Danziger Regierung am 22. Oktober 1921 <sup>1</sup>." [21]

The *Ausführungsbestimmungen* (provisions of execution) mentioned in (b) above are the provisions of the *Beamtenabkommen*.

This document leaves little room for doubt that the *Beamtenabkommen* has been recognized by the Parties as having come into full force and effect from December 1st, 1921, the date of the taking over by Poland of the Danzig railways.

The Court therefore arrives at the conclusion that, in the intention of the contracting Parties, the relations between the Polish Railways Administration and the Danzig officials should be governed by the *Beamtenabkommen*, the provisions of which constitute part of what the High Commissioner calls the "contract of service", and that, consequently, the Danzig officials have, in accordance with the first part of the Decision, a right of action against the Polish Railways Administration for the recovery of pecuniary claims based on the *Beamtenabkommen*.

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\* \*

The Court, having arrived at the above conclusion, deems it unnecessary to consider at length the legal significance and effects of the declarations referred to in the second part of the High Commissioner's Decision of April 8th, 1927. It is appropriate in this connection to state briefly the main facts relating to these declarations.

Article 1 of the *Beamtenabkommen* stipulates (1) that all the railway officials concerned shall state with regard to their passing into the Polish Railway service whether they desire to be maintained in the service; (2) that the statement shall be in the form of a declaration (*Erklärung*), which must correspond with the tenor of the article, and must have [22] reference to these

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<sup>1</sup> Translation by the Registry: "Memorandum in regard to the transfer of the Danzig railways to the Polish Railways Administration on December 1st, 1921.

.....  
Both Parties recognize that, as from December 1st, 1921, the High Commissioner's Decisions of August 15th and September 5th, 1921, as also the provisions of the Convention of Geneva of September 23rd, 1921, and, finally, the agreements enumerated below, shall enter into full effect.

(a) .....

(b) The provisions for the execution of the High Commissioner's Decisions of August 15th and September 5th, 1921, in regard to the transfer of Danzig railway officials and workmen to the permanent service of the Polish State Railways Administration, agreed upon between the Polish and Danzig Governments on October 22nd, 1921."

regulations (*Verordnung*); (3) that the declaration must not contain any supplementary additions or conditions; and (4) that all the declarations shall, within eight weeks from the taking over of the Danzig railways by Poland, be transmitted to the Directorate of the Polish State Railways of Danzig through the intermediary of the Danzig delegate. (See the High Commissioner's Decision of August 15th, 1921.) The wording of the declaration is as follows:

"Erklärung\*. — Ich erkläre mich bereit, vom 1. April 1922 angefangen, im polnischen Eisenbahndienst im Gebiete der Freien Stadt Danzig unter den in der am 22. Oktober 1921 zwischen der Danziger und der Polnischen Regierung abgeschlossenen Vereinbarung festgesetzten Bedingungen zu verbleiben.

[Unterschrift.]

\* Weitere Zusätze und Bedingungen machen diese Erklärung ungültig<sup>1</sup>."

The declarations were transmitted within the time-limit and in the manner prescribed in Article 1 of the *Beamtenabkommen* and were accepted by the Directorate of the Polish State Railways at Danzig. These declarations have been differently interpreted by the Parties.

According to the Polish point of view, the object of the declaration was to make dear the fact that the officials really intended to remain in the Polish Railway service.

According to the Danzig point of view, as the declaration specifically refers to the conditions stipulated in the *Beamtenabkommen*, it constitutes, when duly signed by the Danzig official concerned and accepted by the Polish Railways Administration, an accord *de volentes*, having the legal effect of rendering the provisions of the *Beamtenabkommen* applicable to the relations between the Polish Railways Administration and the Danzig officials. [23]

In the opinion of the Court, the requests made by Danzig which led to the High Commissioner's Decision, of April 8th, 1927, were intended to establish a right of action on the part of the Danzig officials against the Polish Railways Administration based on the *Beamtenabkommen* or on the declaration made thereunder; they were not intended to obtain a decision by the High Commissioner as to the scope of the right of the officials under the *Beamtenabkommen* or the declaration. For this reason, the Court, having recognized a right of

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<sup>1</sup> English translation communicated by the Secretariat of the League of Nations: "Declaration\*. — I declare that I am prepared to remain, as from April 1st, 1922, in the Polish Railway service in the territory of the Free City of Danzig under the conditions laid down in the Agreement concluded between the Danzig and the Polish Governments on October 22nd, 1921.

[Signature.]

\* Further additions and conditions render this declaration null and void."

action on the part of the Danzig officials, deems that a determination of the nature and legal effects of the declaration is of no practical value for the purpose for which the Court is asked to give an advisory opinion.

\*

\*       \*

The answer to the question whether the Polish Railways Administration is bound to accept the jurisdiction of the Danzig Courts to adjudicate upon pecuniary claims based on the *Beamtenabkommen*, and to execute the judgments given by those courts on such claims, can be deduced from what has been said above; for the Court has reached the following conclusions:

(1) The jurisdiction of the Danzig Courts to entertain actions brought by the officials concerned in respect of pecuniary claims based upon one of the stipulations of the "contract of service" has been recognized by the first part of the High Commissioner's Decision of April 8th, 1927.

(2) The Court is of opinion that the *Beamtenabkommen* constitutes part of the provisions of the "contract of service", that is, "the series, of provisions which constitute the legal relationship between the Railways Administration and its employees".

From the foregoing considerations, it follows that judgments given by the Danzig Courts on pecuniary claims based on the *Beamtenabkommen* should, in conformity with the first part of the Decision of April 8th, 1927, be recognized and executed by the Polish Railways Administration. [24]

This conclusion does not preclude the right of Poland, under Article 39 of the Convention of Paris, to have recourse, should the occasion arise, to the international procedure provided for in the said article. Such an occasion would arise, for instance, if a decision of the Danzig Courts should go beyond the limits of their jurisdiction as laid down in the decisions of the High Commissioner or the provisions of the *Beamtenabkommen*, or if it should in any other manner be in conflict with the general principles of international law or the rules governing the relations between Poland and Danzig, such as the Treaty of Versailles, the Convention of Paris, other conventions or agreements concluded between the Parties, or decisions of the High Commissioner or of the Council of the League of Nations. If a judgment of the Courts of Danzig were in conflict with any of these rules, it would be possible for Poland to request the High Com-

missioner under Article 39 of the Convention, of Paris to give a decision in the matter.

### III.

The Court has so far examined the question underlying the dispute before the Council, with reference to the second part of the High Commissioner's Decision, i.e. the point whether the provisions of the *Beamtenabkommen* form part of the "contract of service".

The Court now proceeds to examine the same question with reference to the original application of Danzig of January 12th, 1927, i.e. in regard to the extent of Poland's obligation to recognize the jurisdiction of Danzig tribunals for pecuniary claims against the Polish Railway Administration. Paragraph *c* of Danzig's requests, contained in the above-mentioned application, which draws a logical conclusion from paragraphs *a* and *b*, puts the question essentially as one relating to the extent of Poland's obligation to recognize the jurisdiction of the Danzig Courts in a specified category of cases. The question as to what substantive law can be lawfully applied by the Danzig tribunals can only arise after the jurisdiction [25] has been established. The Court will therefore investigate the nature and extent of the jurisdiction of the Danzig Courts as regards the Polish Railways Administration.

The High Commissioner, General Haking, in his Decision of September 5th, 1921, lays down that:

"Everything connected with the Polish Railways Administration within the territory of the Free City is subject to the civil and criminal Courts of Danzig. The Polish Railways Administration has no sovereign rights within the territory of the Free City and therefore can establish no courts of law within its territory."

This Decision, which is couched in quite comprehensive terms, constitutes, in the opinion of the Court, the legal basis of the jurisdiction of the Danzig Courts to entertain actions brought by Danzig railway officials against the Polish Railways Administration. Judgments which are given within the limits of jurisdiction thus determined and which are not in conflict with other rules of law internationally binding upon Danzig in her relations with Poland are lawful, and

must be recognized by the latter. The recognition and execution of judgments given by Danzig Courts is the corollary of the recognition of their jurisdiction by Poland in accordance with General Haking's Decision.

Since the object of the concluding paragraph c of Danzig's request, dated January 12th, 1927, was to obtain the recognition, by Poland, of the judgments given by the Danzig tribunals on claims based on the *Beamtenabkommen* or on the declaration provided for in Article 1 of the *Beamtenabkommen*, the question to be decided by the High Commissioner was really this: do the judgments on pecuniary claims of railway officials, based on the *Beamtenabkommen* or on the declaration, fall within the jurisdiction contemplated in the Decision of September 5th, 1921, or are they in conflict with any rule of law internationally binding upon Danzig? [26]

As has been, stated in the first part of the High Commissioner's Decision of April 8th, 1927, pecuniary claims of railway officials relating to their "contract of service" fall within the jurisdiction established by the Decision of September 5th, 1921. Jurisdiction implies the right to decide what substantive law is applicable in a given case to which the jurisdiction extends. It is therefore for the Danzig tribunals to examine what law is applicable to a claim brought forward by a railway official against the Polish Railways Administration. If they hold that they have to apply the provisions of the *Beamtenabkommen*, the question whether such application is lawful, is determined by the rules which are internationally binding as between Danzig and Poland.

Since the *Beamtenabkommen*, according to its contents, deals precisely with the regime which Poland is bound under international law to grant to its railway officials taken over from Danzig, and since the *Beamtenabkommen* is an agreement to execute, amongst others, the Decision of September 5th, 1921, which established the jurisdiction of the Danzig tribunals, the applicability of the *Beamtenabkommen* by those tribunals must be considered as being in conformity with international law, unless the contrary is proved. Such proof could have been given in the international proceedings by showing that the *Beamtenabkommen*, as an agreement between Danzig and Poland, was, in the intention of the Parties, not intended to constitute a part of the "contract of service" or otherwise to be applied directly by the Danzig tribunals. The Court, for the reasons given above, has rejected such a construction of the *Beamtenabkommen*.

No other arguments have been adduced by Poland which, in the opinion of the Court, could preclude the Danzig tribunals from applying the *Beamtenabkommen* as substantive law to the pecuniary claims of the Railways officials. If, as seems to appear from some of the documents before the Court and especially from a legal opinion submitted on behalf of the Polish Government, Poland would contend that the Danzig Courts could not apply the provisions of the *Beamtenabkommen* because they were not duly inserted in the Polish national law, the Court would have to observe that, at any rate, Poland could not [27/4] avail herself of an objection which, according to the construction placed upon the *Beamtenabkommen* by the Court, would amount to relying upon the non-fulfilment of an obligation imposed upon her by an international engagement.

From the foregoing considerations, it follows that the Decision of the High Commissioner of April 8th, 1927, is not well founded in law in so far as it does not give satisfaction to the requests which Danzig has made. The conclusion reached upon an examination of the nature and extent of the jurisdiction established by the Decision of September 5th, 1921, fully confirms that which is based exclusively upon an examination of the nature and legal effect of the *Beamtenabkommen* in connection with the first part of the High Commissioner's Decision of April 8th, 1927.

FOR THESE REASONS,

The Court,  
unanimously,

is of opinion that the High Commissioner's Decision of April 8th, 1927, given as a result of the requests made by the Danzig Government on January 12th, 1927 — in so far as his Decision does not comply with those requests — is not legally well founded.

Done in English and French, the English text being authoritative, at the Peace Palace, The Hague, this third day of March, one thousand nine hundred and twenty-eight, in two copies, one of which is to be placed in the archives of the Court and the other to be forwarded to the Council of the League of Nations.

*(Signed)* D. Anzilotti,  
President.

*(Signed)* Paul Ruegger,  
Deputy-Registrar.

[28] Annex I.

Decision of the High Commissioner Regarding the Jurisdiction of Danzig Courts in Actions  
Brought by Railway Officials against the Railway Administration (on April 8th, 1927).

[*Translation.*]

On January nth, 1926, the Polish Representative forwarded to the High Commissioner a note in which it was stated that the Polish Government would not, in future, take cognizance of actions brought by railway officials which were based on the provisions of the Agreement of October 22nd, 1921. It would not enforce any judgment given in such actions by the Danzig Courts.

In a note dated May 27th, 1926, the Senate explained to me its point of view, requesting me to obtain, by mediation, the withdrawal of the Polish statement.

Prolonged conferences, for the purpose of reaching a solution, took place with the representatives of the two Parties. The Danzig Senate then asked me to give a decision in this matter with reference to the extent of the competence and jurisdiction of the Danzig Courts. The Senate wrote to me on January 12th, 1927, observing that there had been no withdrawal of the statement; it therefore requested me to give the following decision:

(a) that railway employees who had passed from the service of the Free City into Polish service, were entitled to bring actions in respect of pecuniary claims, even if these claims were based on the Danzig-Polish Agreement of October 22nd, 1921 (Agreement concerning officials, *Beamtenabkommen*). Or on the declaration made under Article 1 of this Agreement, which was accepted by the Polish Railways Administration;

(b) that Danzig Courts were entitled to hear the actions referred to in (a);

(c) that, consequently, the Polish Railways Administration was bound to accept the jurisdiction of the Danzig Courts in disputes such as those mentioned in (a), and to enforce the judgments given by those Courts.

In a letter dated February 8th, 1927, based on his note of January nth, 1926, and on a memorandum which he had [29] submitted to me during the negotiations of June 30th, 1926, the Polish Representative maintained the views to which I have referred.

The Parties submitted reply and rejoinder on February 28th and March 23rd, 1927, respectively.

My decision is as follows:

1. - The general argument upheld by Poland that the Danzig Courts are not legally entitled to take cognizance of actions in respect of pecuniary claims brought by railway servants who have passed from the Danzig service into Polish service, is unfounded.

In general, Danzig members of the railway staff are entitled to bring actions against the Administration in the courts of the Free City.

The right of officials and employees in the service of a State administration to sue in the civil courts for pecuniary claims on the strength of their contracts is not a right recognized *eo ipso*. The law of several countries does not recognize such jurisdiction and lays down that claims of officials against the State do not come within the scope of civil law. These claims therefore, failing any special provisions, do not come within the jurisdiction of the civil courts.

In the case of these railway servants, however, the rule that the Parties concerned may bring actions in the civil courts has been specially recognized.

It has been recognized in the Agreement of October 22nd, 1921, in Article 6 of which it is laid down that officials who have been kept on in the service of the Polish railways shall retain any acquired rights the existence of which can be proved.

It is laid down, moreover, in the Constitution of the Free City (Article 92) that officials may have access to the civil courts for the purpose of vindicating their pecuniary rights.

In Prussian law the same rule is admitted under a "Law concerning the extension of access to the civil courts", dated May 24th, 1861.

Poland is therefore obliged to recognize, in these actions, the jurisdiction of the civil courts.

In this instance the civil courts are the Danzig Courts. This is a consequence of a Decision given by the High Commissioner, General Haking, on September 5th, 1921<sup>1</sup> (No. 12 c), which is binding on both Parties and lays down that: [30]

"Everything connected with the Polish Railways Administration within the territory of the Free City is subject to the civil and criminal Courts of Danzig. The Polish Railway Administration has no sovereign rights within the territory of the Free City and therefore can establish no courts of law within its territory."

This Decision means that in all matters coming within the jurisdiction of civil courts, these courts shall be the Danzig Courts. In view of the other points to be examined, one observation must be added : General Haking did not contemplate and could not have contemplated the introduction of jurisdiction in cases in which otherwise there would have been none. He merely recognized the sole jurisdiction of the courts of the Free City in matters in which civil jurisdiction generally applies.

Pecuniary claims by railway employees at Danzig, based on their contracts, are subject to this rule; the jurisdiction of the Danzig Civil Courts is proved in principle and should be recognized by the Polish State.

Any claim for payment based on contracts, particularly claims for wages, pensions, half-pay and other grants under the contract, may form the subject of an action in the Danzig Civil Courts (unless there be some special jurisdiction recognized by law, as might be the case in questions connected with social insurance).

Such actions, brought personally and without intermediary by the Parties concerned, are in the nature of civil actions.

2. - The Senate also requests me to decide whether the position is the same in cases in which the claims for payment are based on the Agreement of October 22nd, 1921 (*Beamtenabkommen*), or on the declarations made in conformity with Article 1 of this Agreement.

The reply to this must be that such cases cannot arise. At law an official cannot found a claim for payment solely on the Agreement or the above-mentioned declarations.

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<sup>1</sup> See C. 328. M. 236. 1921. I. and *Official Journal*, November 1921, pp. 974-978. [Note by the Secretary-General.]

In order to bring a personal and direct civil action against the Administration, the employee must be able to plead some provision in his contract. It is through the contract given by the Administration that the latter assumes responsibility towards the employee. The conditions of the contract can alone establish the legal relations between the official and the Administration.

I need not here consider what laws, service regulations, etc., contain the provisions of this "contract", that is to say the [31] series of provisions which establish the legal relationship between the Railway Administration and its employees. It has been suggested to me that they may be contained in the Polish Law of October 19th, 1923, concerning the remuneration of officials (*Besoldung der Staatsbeamten*) and the regulations for its application as well as other similar rules. On the basis of all these provisions an employee may ask the courts to give a judgment.

But the provisions of the Agreement of October 22nd, 1921, are not provisions on which a civil, personal and direct action can be brought by the person concerned.

The Agreement of October 22nd, 1921, does not form part of the contract which establishes legal relations between the Administration and its employees. It is an international treaty concluded between two Governments, between two States, an international act which establishes reciprocal legal relations between governments. That is its only force.

It is a rule of law generally recognized in doctrine and in practice that international treaties do not confer direct rights on individuals, but merely on the governments concerned. Very often a government is obliged, under a treaty, to accord certain benefits or rights to individuals, but in this case the individuals do not themselves automatically acquire these rights. The government has to introduce certain provisions into its internal legislation in order to carry out the obligations, into which it has entered with another government. Should it be necessary to insist on the carrying out or application of this obligation, the only Party to the case who can legally take action is the other government. That government moreover would not institute proceedings in civil courts but would take diplomatic action or apply to the competent organs of international justice.

The case in question is not comparable to that of an undertaking on behalf of a third Party (*Versprechen der Leistung an einen Dritten*) which figures in certain civil codes, precisely because international treaties are not civil contracts under which governments assume obligations at private law on behalf of the persons concerned. To give an example: "the most-favoured nation" clause in a treaty of commerce does not entitle an individual to refuse to pay customs duties on the ground that in his opinion they are too high to be compatible with the clause; he can only base his action on the internal customs legislation which should be drafted in conformity with the clauses of the treaty of commerce. [32]

In this respect the *Beamtenabkommen* of October 22nd, 1921, is similar to all other international treaties. In the Preamble it formulates the rules under which the Polish Government agrees to take into its service the employees of the Danzig railways. The obligation undertaken by the Polish Government is towards the Danzig Government: a Danzig employee cannot therefore take action in the civil courts to secure the application of the Treaty. There is nothing to show that in this particular international agreement the Parties intended to institute an exception to the general rule as regards treaties, by conferring direct and personal rights on the individuals in question. In no case does the terminology of the Agreement differ from that of an ordinary agreement between governments; this fact is clearly brought out in the Preamble itself. Its clauses could hardly serve as a direct ground for personal civil action. A civil court would be more than a little embarrassed if it had to decide claims based not merely on considerations of private law, but also on points of general administrative organization. This observation applies, not only to clauses such as those contained in Articles 3, 5 and 12 and to actions for damages and interest which may be based on the same, but also to matters arising out of Articles 7 and 8, in which also considerations connected with administrative and general organization must necessarily play a considerable part.

The personal legal guarantees afforded to railway servants under the Agreement are not less important than those which existed under the Danzig Administration. Then, as now, railway servants were free to take civil proceedings in all matters connected with an infringement of their contract. If necessary, the Senate of the Free City can apply to the Polish Government when, in the Senate's opinion, some clause of the Agreement has been incorrectly applied to railway servants. It would then be possible to resort to international procedure and it is certain that the

railway servants would be afforded that protection to which they are entitled under the international provisions concluded on their behalf.

It is impossible, therefore, to conceive of an action brought by a railway servant against the Administration in the civil courts to obtain payment, if the action be based solely on a clause of the Agreement of October 22nd, 1921. In any case, the courts would be obliged to decide that such an action could not be maintained at law.

3. - I now have to consider whether the clauses of the Treaty itself might not provide grounds on which a personal action could be brought in the civil courts : this may be the [33] effect of the declarations made under Article 1 of the Agreement. The Senate asks me to lay down that the Danzig Courts may try actions based on these declarations.

The declarations in question are the personal statements which Danzig railway employees were bound to make if they wished to enter into Polish service.

The article of the Agreement is worded as follows<sup>1</sup>:

*"Artikel 1. - Wegen Uebernahme in den polnischen Eisenbahndienst im Gebiete der Freien Stadt Danzig sollen sich sämtliche Eisenbahnbeamten äussern, ob sie the Beibehaltung im polnischen Dienst wünschen. Diese Aeusserungen werden in der Form einer entsprechende auf diese Verordnung bezughabenden Erklärung zu erfolgen haben. Diese Erklärungen, welche keine weiteren Zusätze und Bedingungen enthalten dürfen, sind der polnischen Staatsbahndirektion in Danzig durch den durch Entscheidung des Hohen Kommissars vom 15. August 1921 bestellten Danziger Delegierten binnen 8 Wochen nach erfdlgter Uebernahme der Danziger Eisenbahnen durch Polen vorzulegen. Die Uebernahme erfolgt nach dem erforderlichen Kopfetat."*

In conformity with this article, declarations have been signed and forwarded to the Polish Administration.

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<sup>1</sup> Translation made by the Secretariat: "Article 1. - All railway officials shall, for the purpose of transfer to the Polish Railway service in the territory of the Free City of Danzig, state whether they desire to remain in the Polish service.

"The statement shall be made in the form of a declaration referring to this provision. These declarations, which may not contain any additions and further conditions, shall be submitted, within eight weeks after the taking over of the Danzig railways by Poland, to the Polish State Railway Management in Danzig by the Danzig delegate appointed under the High Commissioner's Decision of August 15th, 1921.

"Transfer shall be made according to the numbers required and provided for in the budget." [Note by the Secretary-General.]

In virtue of these declarations, signed by the employees and accepted by the Polish Administration, the latter must be deemed to have accepted the clauses of the Agreement as clauses of a bilateral contract between the State and the employees.

The declaration is worded as follows <sup>2</sup>: [34]

"*Erklärung* \*. - Ich erkläre mich bereit, vom 1. April 1922 angefangen, im polnischen Eisenbahndienst im Gebiete der Freien Stadt Danzig unter den in der am 22. Oktober 1921 zwischen der Danziger und der Polnischen Regierung abgeschlossenen Vereinbarung festgesetzten Bedingungen zu verbleiben.

[Unterschrift.]

\* Weitere Zusätze und Bedingungen machen diese Erklärung ungültig."

Is the legal effect of these declarations really to transform the articles of an international treaty into clauses in a personal contract ?

Personally I do not think so. It is not the signature and acceptance of these declarations which constitute the conclusion of a contract for service between the Danzig employee and the Polish Administration. The contract was concluded by the "taking over" (*Uebernahme*) to which the Polish Government had bound itself under the terms of Article 2 of the Agreement, namely<sup>1</sup>:

" *Artikel 2.* - Sämtliche Arbeiter - darunter fallen auch die im Arbeiterverhältnis stehenden Aushilfsbediensteten - werden nach dem Personalstande tot Tage des Abschlusses der Danzig-polnischen Konvention, d. i. vom 9. November 1920, vollzählig ohne besondere Anmeldung in den polnischen Eisenbahndienst übernommen werden.

Wenn der gegenwärtige Stand der Arbeiter und der im Arbeiterverhältnis stehenden Aushilfsbediensteten den Stand vom 9. November 1920 überschreiten sollte, werden von der Uebernahme in den polnischen Eisenbahndienst die überzähligen Arbeiter - von den zuletzt in den Eisenbahndienst eingetretenen angefangen - so lange

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<sup>2</sup> Translation made by the Secretariat: "*Declaration*\*. - I declare that I am prepared to remain, as from April 1st, 1922, in the Polish Railway service, in the territory of the Free City of Danzig under the conditions laid down in the Agreement concluded between the Danzig and the Polish Governments on October 22nd, 1921.

(*Signature.*)

\* Further additions and conditions render this declaration null and void." [*Note by the Secretary-General.*]

<sup>1</sup> Translation made by the Secretariat : "*Article 2.*-All workmen, including auxiliary personnel regarded as workmen, shall pass integrally into the Polish railway service without special notification, on the basis of their number on the date of the conclusion of the Danzig-Polish Treaty, i.e. November 9th, 1920.

"Should the present number of workmen and of auxiliary personnel regarded as workmen exceed the number employed on November 9th, 1920, the workmen in excess of the latter number, beginning with those who last entered the railway service, shall be successively excluded from such transfer until the number as on November 9th, 1920, is reached. Workmen in excess of the strength of any office shall be employed or held in readiness to fill vacancies in another office. Auxiliary personnel permanently. doing the duties of officials shall not be included in the budgetary number of workmen for purposes of transfer." [*Note by the Secretary-General.*]

aus-geschlossen, bis der am 9. November 1920 bestandene Arbeiterstand erreicht ist. Arbeiter, die bei einer Dienststelle überzählig werden sollten, werden zur Auffüllung [35] von Lücken an andere Stelle verwandt oder vorgemerckt. Die Hilfsbediensteten, die ständig Beamtendienste verrichten, zählen bei der Uebernahme nicht zum Arbeiterkopfetat."

The declaration itself is merely an antecedent condition to be fulfilled by the employee before the "taking over" (*Uebernahme*) of that employee. The "taking over" itself was effected according to Article 2 without special notification, directly the employees were allowed to continue to carry out their duties. It was a wholesale transaction by which the Polish Administration became the employer of the Danzig staff. As for the direct and personal obligations assumed by this employer towards the employees, we have only the legal provisions to which I referred above and which constitute the "contract of service".

The character of the antecedent declarations is obvious. It was simply a question of formally establishing the fact that before he was "taken over" each separate employee *really desired* to enter into the Polish service. These employees therefore were required to state whether they were prepared to make the change and whether they agreed to do so under the system defined in the Danzig-Polish Agreement. The Polish Administration, by accepting and taking cognizance of these declarations, did not thereby enter into a contract with each employee - a contract which would have converted the terms of the treaty into clauses of a civil contract. It merely verified the desire of the persons concerned; the declaration is a sort of *declaration of option*. It was a question of recognizing a system established under an agreement at public international law, and not of documents intended to constitute a "contract of service".

One. of the clauses of the Agreement - Article 9 - lays down that: "All matters connected with the officials and employees who have passed into Polish service shall be settled by the Polish Administration." (*Sämtliche Angelegenheiten der im pol-nischen Dienst übergetretenen Beamten und Arbeiter regelt die -polnische Staatsbahnverwaltung.*)

This is even clearer proof of the fact that, according to the very conditions under which the Danzig railways were transferred to the Polish Administration, it is under the internal laws and regulations of the latter (which laws and regulations should, of course, be in conformity with the provisions of the Agreement, as we have pointed out under (2) that the employees acquired their personal rights. With regard to the application by Poland of the provisions of the Agreement concluded with Danzig, the Government of the Free City alone is entitled to proceed

against Poland in connection with the observance of clauses favourable to Danzig employees.  
[36]

We must therefore conclude that no personal action to obtain payment under the terms of the contract of service, could be brought on the ground of the above-mentioned declarations; if such an action were opened in any civil court, the court would be bound to set it aside as not based on law.

4. - To sum up, my decision is as follows:

Pecuniary claims of any kind, based on one of the provisions which constitute the contract of service for Danzig employees of the Polish railways who have passed into the service of the Polish Administration under the Danzig-Polish Agreement of October 22nd, 1921, and in particular claims in connection with salaries, pensions, half-pay, and other grants under the contract, may form the subject of an action in the Danzig Courts (except for the reservation mentioned on pages 5-6<sup>1</sup>); the clauses of the Agreement itself, and the declarations referred to in Article 1 of the Agreement, are not to be regarded as provisions which constitute the contract of service of the above-mentioned employees, and therefore they cannot give ground for a personal action to be brought in the courts;

under these circumstances, I do not think that the question set out in (c) arises.

Done at Danzig, April 8th, 1927.

(Signed) VAN HAMEL,  
High Commissioner.

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<sup>1</sup> See page 30.

[44] Annex 3.

I.—Documents transmitted by the secretariat of the league of nations:

(1) (a) *Document C. 375. 1927. I. Note from the Secretary-General transmitting to the Council:*

- (1) Decision by the High Commissioner, dated April 8th, 1927 (*in English and French*).
- (2) Appeal by the Danzig Senate, dated May 12th, 1927 (*in English and French*).
- (3) Reply by the Polish Government to the Danzig. Senate appeal, forwarded by the High Commissioner on July 19th, 1927 (*in English and French*).
- (4) Observations of the Danzig Senate regarding the Polish Reply, forwarded by the High Commissioner on July 27th, 1927 (*in English and French*).
- (5) Text of the Danzig-Polish Agreement concerning officials, of October 22nd, 1921 (*in German, with English and French translations*).

(b) Documents held by the Secretary-General at the disposal of the Members of the Council:

- (1) Advisory opinion by Professor Schücking (*in German, with French translation*)
- (2) Advisory opinion by Professor Kaufmann (*in German, with French translation*).
- (3) Copy of the decision of the Danzig Supreme Court (*Obergericht*) dated June 29th, 1927, concerning the case of the railway employee Flander v. the Polish Railways (*in German, with French translation*).
- (4) Provisional Danzig-Polish Agreement concerning officials, dated July 20th, 1921 (*in German*).
- (5) Prussian Law of May 24th, 1861; *Gesetz betreffend die Erweiterung des Rechtsweges* (*in German*).

(2) (a) *Document C. 415. 1927. I. Note by the Secretary-General communicating to the Council Part V of the Note dated August 17th, 1927, which contains the Polish observations on*

the Danzig Note of, July 27th, 1927, and on the legal opinions of Professor Schücking and Professor Kaufmann, and on the sentence of the Danzig Supreme Court of June 29th, 1927 (*in French and English*).

(b) Documents mentioned in the Secretary-General's note as held by the Secretariat at the disposal of the Members of the Council:

Complete text of the Polish Note of August 17th, 1927 (in French), with the following annexes:

- (1) Decision of the Danzig Court pronounced on May 1st, 1926, concerning the case Flander (*in German, with French translation*).
- (2) Danzig-Polish Agreement of October 24th, 1921 (*in German, with French translation*).
- (3) Danzig Law dated May 30th, 1922, concerning the acquisition and loss of Danzig nationality (*in German, with French translation*). [45]

3. — *Document C. 429. 1927. I.* Note by the Secretary-General informing the Council that the following document had been received and was held by the Secretariat at the disposal of the Members of the Council:

Opinion of Professor Cavaglieri, of the University of Naples, submitted by the Polish Government.

Copy of this opinion (*in Italian, with French translation*).

4. — *Document C. 478. 1927. I.* Note by the Secretary-General informing the Council that the following documents had been received and were held by the Secretariat at the disposal of the Members of the Council:

- (1) Opinion by Professor Louis Le Fur, submitted by the Polish Government.
- (2) Danzig Note dated September 10th, 1927, containing the observations of the Danzig Senate on the Polish Note of August 17th, 1927, and on the opinion of Professor Cavaglieri.

Copies of the above-mentioned documents:

- (1) Opinion of Professor le Fur (*in French*).

- (2) Danzig Note of September 10th, 1927 (*in German, with French translation*).
5. — *Document C. 483*. 1927. I. Note by the Secretary-General informing the Council that the following document had been received and was held by the Secretariat at the disposal of the Members of the Council:
- Polish Note dated September 13th, 1927, containing the observations of the Polish Government on the Danzig Note of September 10th. 1927.
- Copy of this Note (*in French*).
6. — *Document C. 409 (1) and C. 409 (1) (a)*. 1927. I. Report presented to the Council by M. Villegas, representative of Chile, on September 22nd, 1927 (*in English and French*).
7. — Minutes of the fifth meeting of the 47th Session of the Council, containing the Resolution adopted by the Council on September 22nd, 1927 (*in French and English*).

II.—Documents sent by the high commissioner of the league of nations at Danzig on the request of the court, forwarded by the Secretary-General of the League of Nations:

- (1) Copy of the *Klage des Eisenbahnsekretärs Ferdinand Flander, Neuschoffland, Schellmühlerweg 2, Klägers, gegen die polnische Republik (Eisenbahnfiskus), Beklagte, wegen Feststellung und Zahlung, Werl des Streitgegenstandes G. 200*.
- (2) Copy of a letter from M. B. Langowski to the *Landgericht*, Danzig (March 30th, 1926).
- (3) Copy of a note from the *Obergericht*, Danzig, in the case of the Polish Republic v. Flander (April 6th, 1926).
- (4) Copy of a note from M. B. Langowski, Danzig (April 17th, 1926).
- (5) Copy of a letter from M. B. Langowski to the Danzig Supreme Court (April 26th, 1927).
- (6) Copy of the *Zwischen-Urteil* (May 1st, 1926) in the case of the Polish Republic v. Flander. [46]
- (7) Copy of a note from M. Max Hellwig and M. Heinz Bauer to the Danzig *Obergericht* (May 18th, 1927).

- (8) Copy of a note from M. B. Langowski to the Danzig *Obergericht* (June 7th, 1926).
- (9) Copy of a note from M. Max Hellwig and M. Heinz Bauer to the Danzig *Obergericht* (June 9th, 1927).
- (10) Copy of a note from M. Max Hellwig and M. Heinz Bauer to the Danzig *Obergericht* (June 10th, 1927).
- (11) Copy of a note from M. B. Langowski to the Danzig *Obergericht* (August 11th, 1926).
- (12) Copy of a letter from the Commissioner-General of the Polish Republic to M. Van Hamel, High Commissioner of the League of Nations at Danzig (January 3rd, 1927).
- (13) Copy of a note from M. B. Langowski to the Danzig *Obergericht* (January 20th, 1927).
- (14) Copy of a note from M. Max Hellwig and M. Heinz Bauer to the Danzig *Obergericht* (January 24th, 1927).
- (15) *Urteil des III. Zivilsenats des Obergerichts der Freien Stadt Danzig vom 22. Juni 1927 — 2. III U. 270/26 — in Sachen der Republik Polen gegen den Eisenbahnsekretär Flander.*
- (16) Note of January 11th, 1926, sent by the Commissioner-General for the Republic of Poland at Danzig to the High Commissioner of the League of Nations.
- (17) *Auszug aus der Verhandlung des Rates des Völkerbundes, March 3rd, 1921.*
- (18) *Danziger Juristischer Monatschrift, 4. Jahrgang, Nummer 12, Danzig, Dezember 1925.*
- (19) Note from the Senate of the Free City of Danzig dated May 27th, 1926 (*in German*).
- (20) Note from the Senate of the Free City of Danzig dated January 12th, 1927 (*in German*).
- (21) Note of the Commissioner-General of the Polish Republic to the High Commissioner of the League of Nations at Danzig (February 8th, 1927) (*in French*).

- (22) Note of the Commissioner-General of the Polish Republic to the High Commissioner of the League of Nations at Danzig (February 28th, 1927) and Annex (*in German*).
- (23) Note of the Commissioner-General of the Polish Republic to the High Commissioner of the League of Nations at Danzig (March 23rd, 1927) (*in French*).

III.—Documents filed on behalf of the governments directly interested:

*(a) Documents filed by the Agent for the Polish Government:*

- (1) Certified true copy of the judgment given in the case of Holz v. Polish Republic (*in German*).
- (2) Letter of July 6th, 1926, sent by the High Commissioner of the League of Nations to the Commissioner-General of the Polish Republic at Danzig and extracts in German of the legal *expose* of the Danzig Senate in the Menge case.
- (3) Ordinance concerning the deposit of the declarations provided for under Article 1 of the Agreement of October 22nd, 1921, dated December 22nd, 1921. [47]
- (4) Decision of the Polish Railway Administration at Danzig (concerning officials' uniforms) (May 4th, 1923).
- (5) Circular of the Polish Railway Administration at Danzig (concerning the swearing in of officials) (April 23rd, 1925).

*(b) Documents filed by the Agent for the Danzig Government:*

- (1) Certified true copy of the judgment given in the case of Holz v. Polish Republic (*in German*).
- (2) Certified true copy of a Note dated January 18th, 1928, and sent by the Senate of the Free City of Danzig to the diplomatic representative of the Polish Republic.
- (3) Certified true copy, in Polish with a German translation, of a Note from the Commissioner-General of the Polish Republic at Danzig, dated January 9th, 1928.

IV.—Collection of documents prepared by the registry:

- (1) Decisions by the High Commissioner of the League of Nations at Danzig (August 15th, 1921, and September 5th, 1921) (*in English, with a German translation*).
- (2) Extract from the Constitution of the Polish Republic (March 17th, 1921, and August 2nd, 1926) (*in French*).
- (3) Extract from the Constitution of the Free City of Danzig (League of Nations — *Official Journal* — Special Supplement No. 7—July, 1922) (*in French*).
- (4) Extracts from *Prawo Narodow*, by Ludwik Ehrlich (*English translation*).
- (5) Extract from *Danziger Staats- und Völkerrecht*, by Hermann Lewinsky and Richard Wagner (page 127) (*in German*).
- (6) Polish Law of August 3rd, 1922, constituting the Supreme Administrative Tribunal (*Dz. Ust. poz.* 600).
- (7) Polish Law of October 9th, 1923, concerning salaries of State officials and military persons (*Dz. Ust. poz.* 924).
- (8) Polish Ordinance by the Minister of Communications of April 12th, 1924, in pursuance of Article 5 of the Law of October 9th, 1923.
- (9) Decision No. 485 of the Supreme Administrative Tribunal of November 14th, 1924 (*L. R.* 135-24).
- (10) Ordinance of the President of the Polish Republic of September 24th, 1926 (*Dz. Ust. poz.* 568).
- (11) Extract from a Decision of the Supreme Administrative Tribunal of December 5th, 1927 (*L. R.* 932-25).
- (12) Extract from the *Gesetz-Sammlung für die Königlichen Preussischen Staaten* (p. 19) *Nr. 777. Verordnung wegen streitig gewordener Auslegung von Staatsverträgen (25. Januar 1823)* (*in German*).
- (13) Protocol signed on December 1st, 1921, by the Polish Railway Administration and the Free City of Danzig (*in German*).