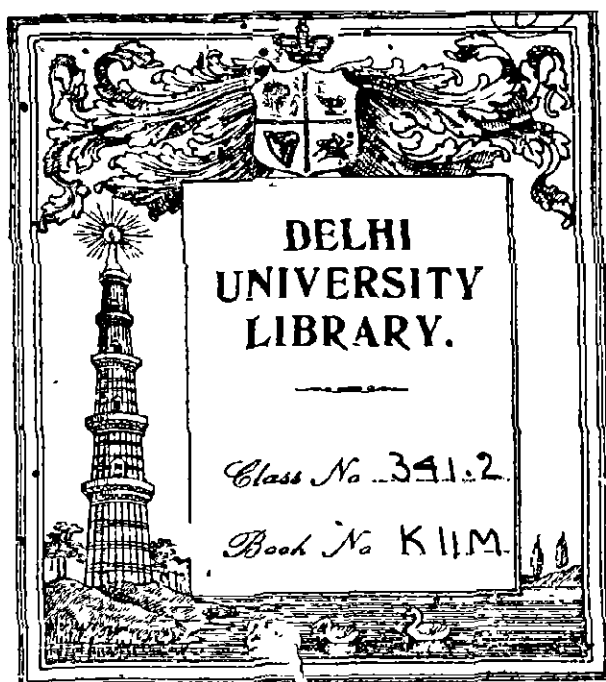




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THE MEMEL STATUTE

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FAULTON (SOMERSET) AND LONDON

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PART I
INTRODUCTION

CHAPTER I

GEOGRAPHY AND POPULATION

§ 1. *Definition of the Problem.* The Treaty of Versailles

Note and Addenda

This work was written in 1935. Since then several changes have taken place in Memel. The danger of war has practically disappeared, but the situation is still very bad. Except for the proposed solution and some of the conclusions herein contained the work, as far as the author can learn, calls for no drastic revision.

Thorsten W. Kalijarvi

Durham, N. H.
September, 1937.

§ 2. *Geography.* The name "Memel" applies to the Territory, the Kreis and the city. The city⁴ is

¹ League of Nations Documents, C. 159, M. 39, 1924, VII, pp. 97 ff.

² *Ibid.*, pp. 102-113.

³ *Ibid.*, Article 16 of the Convention.

⁴ Called also Memelburg, Memmels, Memelia, Memelium, Memella, Memelburgum, Kleipeda, Klaipeda, Klenpeda, Troipeded, and Klajpeda, etc. The *Memel* derivations come from the river name, which was originally *Mummel*. The *Klaipeda* forms are derived from the Lithuania "*klajs*", meaning flat or level, and *pėda* or *padas*, meaning ground or foundation. Therefore the whole word means level neighbourhood or territory. *Meyer's Lexikon* says *Klaipeda* is not Lithuanian. See: *Grosses Universal Lexikon*, Vol. XX, pp. 577-578; J. Sembritzki, *Geschichte der königlich Preussischen See- und Handelsstadt Memel*, chap. i.

the capital of the Territory and the Kreis. It lies opposite that part of the Kurisches Haff which opens into the Ostsee or Baltic at the mouth of the Dange River. Before 1919 it was the most northern of all East Prussian cities.¹ The Kreis is a part of the former administrative unit of Prussia surrounding the city. It is one of three such provincial divisions of the Territory. The Territory of Memel, which will be described in more detail later, is that part of pre-war Prussia which lies between the Memel River and the old Russo-German frontier beginning at a point slightly east of Schmalleningken. It skirts the Kurisches Haff, and continues beyond to a point north of Nimmersatt, a distance of a little over ninety miles.

Opposite the Memel Territory lies the Kurische Nehrung, a long arm of sand-dunes, some of them shifting, separating the Ostsee from the Kurisches Haff. This unique geographical phenomenon is the deposit left when the fresh water, which once flooded the whole area, met the receding salt water of the open sea.²

The Memel Territory is approximately the size of Luxemburg.³ Much of it is meadow, forest, and

¹ L. Jahn, *Memel als Hafen und Handelsstadt*, pp. 1-11.

² Richard Meyr, *Heimatkunde des Memelgebietes*, pp. 3 ff.

³ Johann V. Leers, *Memelland*, p. 7. W. H. Dawson, in *Germany under the Treaty*, estimates 930 square miles of land and 70 square miles of water (p. 244); Gade estimates 945 square miles (*Foreign Affairs*, Vol. II, No. 3, p. 411); *Oestergaard's Lexikon* gives 2,860 qkm., of which 443 qkm. are covered by the Kurisches Haff (Vol. XIII, p. 746); *Meyer's Lexikon*, 7th ed., 2,657 qkm. (Art. "Memelgebiet," pp. 220-222). As for the subdivisions, Memelland Kreis has an area of 844 qkm., Heydekrug 645 qkm., and Pogegen 928 qkm. The city of Memel has an area of 24 to 26 qkm., and owns some 55 to 65 qkm. more (*Haushaltsplan*, 1927).

swampland. Favourable beaches and shores, coupled with a fairly equable climate, have encouraged a summer population which has grown steadily, especially on the Nehrung. Fish abound, and the Nehrung is famous for its elk. Because of the flatness of the land the greatest natural danger to the population arises from floods, generally in the spring and fall. The Memel district is a section of the great water system made up of all Lithuania, part of Poland, and a part of Russia.¹ The Niemen or Memel River drains this area and under normal conditions should constitute the natural highway of commerce.² While the political boundaries can be said to be the old Russia on the north and east, the Ostsee on the west, and the Memel River on the south, they correspond rather closely to a natural triangle within which the whole area lies. This triangle consists of the Memel River on the south, the Telscher Hügelland on the east, and the sea on the west.³ The character of the country⁴ has determined its life. Formerly it constituted a part of agrarian East Prussia. The land is suitable for farming and forestry, and more than seventy per cent of the people earn their livelihood thereby. Another large percentage are fishermen. The river is the

¹ Rolf Schirenberg, *Die Memelfrage als Randstaatenproblem*, p. 18.

² W. K. Korostowetz, *The Rebirth of Poland*, pp. 235 ff.

³ Schirenberg, p. 18 ff. Thus the hypothenuse runs along the Schamaiten highlands, which constitute the real natural boundary—and not the river—between Germany and her northern neighbours. H. Mortensen, *Die Nationalitätengrenze zwischen Alt Preussen und Litauen*. Zeitschrift der Gesellschaft für Erdkunde, 1922, pp. 53-56.

⁴ Martin Grigat, *Die Memelniederung*. A good account of the people, life, and country.

natural outlet for lumber rafting from the hinterland to the Baltic,¹ however, due to political difficulties before the war and to the Lithuanian restrictions since 1923, most of this trade was and still is sent by rail via Königsberg.²

In 1914 the port of Memel was insignificant in comparison with Libau, Riga, and Königsberg. To-day it is doubly so. Restrictive Lithuanian economic barriers force Polish goods through Königsberg and Gdingen, and Russian goods through Riga, and Libau.³ When the lumber traffic began to dwindle the population turned more intensely than ever to producing eggs and butter for the only market left to them,⁴ but to-day the markets for these farm products are closed and the agrarian economic life languishes. To a smaller degree Memel carries on an export trade in flax, oats, linseed, rye, and grain. The city of Memel has chemical plants, a cellulose plant, and it also manufactures bricks and caskets.

The main railway line runs from Tilsit to Libau via Memel. During the war Germany built the Bajohren-Prekultn, and the Langszargen-Monkusuki, lines.⁵

¹ Korostowetz, p. 235.

² Königsberg, though founded after Memel, has dwarfed the latter and taken much of its trade. A most illuminating discussion may be found in *Sammlung einiger Denkwürdigkeiten von der Königlich Preussischen Immediat-Stadt Memel*, (Heft 3 und 4).

³ Jahn, p. 13. The rosy promises and expectations which Lithuania held out to the world for Memel have not been realized (*Bericht der Handelskammer für das Memelgebiet*, 1925, pp. 10, 11, 59, 61).

⁴ Restrictive trade measures have reduced eggs (February, 1925) to 1 pfennig apiece, milk to 2 5 pfennigs a litre, calves to 10 marks, and a cow to 40 marks. The Memel population is suffering inordinately from a war of restrictions between Lithuania and Germany.

⁵ Jahn, p. 12.

Indifferent roads may be found everywhere, but there is a sharp contrast between the roads in Memel, which are well kept, and those on the Russian side of the old frontier, which are veritable quagmires.¹

§ 3. *Population.* A bitter controversy rages over the population of the Memel Territory and the question of the original inhabitants.² An examination of authorities ancient and modern shows, first, that a wide difference of opinion exists as to who the aborigines were; and second, that all agree that the original people no longer live in Memelland.

The population history is a part of that of East Prussia. Prior to the coming of the Order into this area the Preussen lived south of the Memel River, and a narrow strip occupied by the Nadrauers separated them from the river itself. East of the Preussen³ were the Sudrauers or Jatwingers, while still farther east dwelt the Lithuanians. The area which is now called Memel was inhabited by the Schalauers and a few Kurs. North and somewhat to the east of them lived the Schamaiten.⁴ All of these people formed, with the Lithuanians,⁵ one of the oldest races of Europe. As will be seen in the

¹ See illustrations at end of Friedrich Janz, *Die Entstehung des Memelgebietes*.

² Compare, for instance, the map of A. Katschinski, *Das Schicksal des Memellandes*, p. 12, with Schirenberg's for the year 1282. The former has the Schalauers reaching across the Memel River, while the latter confines them to the north of the river. Oscar Hahn, in his introductory map to *Aus Altpreussens Vergangenheit*, writes, "Litauen" over the whole area, making Schalauer a subdivision of Lithuania.

³ Katschinski says that the name Preussen is derived from PRUTU-KLUG, meaning "unwise in religious matters".

⁴ The best work on this subject is Gertrud Mortensen, *Beiträge zu den Nationalitäten- und Siedlungsverhältnissen von Preussisch Litauen*, published in 1927.

⁵ Katschinski claims that the name Lithuania is from King Lithanano, whose son gave it to the country (p. 15).

historical summary, a series of devastating wars of attrition drove out or killed off most of these original races, and the remainder were absorbed into the conquering populations.¹ These wars, waged with the German Order, virtually depopulated a part of that which we now call the Territory of Memel.²

Repopulation, encouraged by rulers, took place over centuries.³ Without entering the controversial

¹ For representative and conflicting views concerning the early inhabitants see: Gertrud Mortensen, *Memorandum on the Memel Question*, pp. 1-3; Karl Lohmeyer, *Geschichte von Ost- und Westpreussen*; Alfred Katschinski, *Das Schicksal des Memellandes*, pp. 1, 16; Katschinski places the Finns in the north, the Letts on the Düna, the Kuren on the Kurisches Haff coast to a line from Russ-Coadjuthen, Lithuania on the upper and middle Niemen with Vilna and Kovno as their centres. He believes that the first settlers were the Jatwingers, who lost their territory in warring with the Slavs. Further discussions are to be found in P. Karge, *Die Litauerfrage in Altpreussen in geschichtlicher Beleuchtung*, 1st period; Walter Harich, *Das Ostproblem*, pp. 1-14; Oscar Hahn, *supra cit.*, pp. 1-9; J. Gauss, *Das Memelland*, pp. 1-9; Kurt Behrendt, *Die Memelfrage*, pp. 1-13; Felix Arvydas, *Das Memelland*, pp. 6-13; G. Mortensen, *supra cit.*, pp. 53-56; Emil Niepmann, *Edward Roberts Karten und Skizzen aus der Geschichte des Mittelalters*, Nos. 1, 3, 9, 18, 25, 26, 30, 36, 40; Richard Meyr, *supra cit.*, pp. 46 ff; Walter Wendenburg und Hans Friedrich Lange, *Die Memelfrage*, pp. 1 ff; J. Gauss, *Die Völkischen Verhältnisse des Memellandes*, pp. 13-36; Schirenberg, *supra cit.*, pp. 1-16; John V. Leers, *supra cit.*, pp. 12-20; W. St. Vydūnas, *Sieben Hundert Jahre deutsch-litauischer Beziehungen*, pp. 120 ff; Heinrich von Treitschke, *Historische und Politische Aufsätze*, pp. 1-6; Johannes Sembritzki, *Geschichte der königlich Preussischen See- und Handelsstadt Memel*, chap. i; Richard Sebücht, *Unsere Mittelalterliche Ostmarkenpolitik*, pp. 119 ff; and Lotar Weber, *Preussen vor 500 Jahren in kulturhistorischer, statistischer und militärischer Beziehung*, pp. 1-87 ff. The old authorities have been roundly attacked for three generations, especially since the war. The objects of these attacks have been the old chronicles contained in the collection, *Scriptores Rerum Prussicarum*, especially Peter Dusberg, Adalbert Bezzenberger, *Die litauisch-preussische Grenze*; and M. Töppen, *Geschichte der Preussischen Historiographie*. Even the old chronicles differed among themselves as to the early inhabitants as Töppen, *supra cit.*, shows in his discussion of Kaspar Hennenberger.

² Gertrud Mortensen, pp. 44 ff, especially; also pp. 26 ff and 54 ff.

³ Vydūnas (p. 286) lists among the immigrants: Swiss, French, Pfälzer, Magdeburger, and Hollanders numbering between 6 and 700,000. He shows that the attraction for the immigrant was very strong because the service in Memel was much easier than elsewhere in East Prussia.

On page 23 Katschinski gives the following list of immigrants and dates:

- | | |
|---|---------|
| 1. Protestants from Switzerland and Huguenots from France to the time of the Great Kurfürsten | 1,000 |
| 2. From middle Germany (1711-1713) | 27,000 |
| 3. From southern Germany (1721-1728) 20,000 families, total | 100,000 |

field it may be observed that the present inhabitants of Memelland are not the descendants of the aborigines; that the territory has been repopulated by no single race; and furthermore, that in the light of these two conclusions any racial statistics for this section must of necessity be misleading.

The exact numbers of people who have dwelt in the Territory of Memel have differed with different times. The figures for the pre-Order time must for ever be a matter of guesswork.¹ Between 1422 and 1709 re-population had been accomplished to a satisfactory degree. The number in 1709 is at the best only a matter of guesswork; but that it was more than that of to-day is certain.² However, the pest took an enormous toll of life and in the two years of 1709 and 1710 the population was cut to less than one half of that of 1708. In East Prussia the number dropped from about 600,000 to 200,000. The next century saw considerable immigration of the various

4. Salzburg (1732)	17,000
5. Mennonites from Kulm	3,000
6. (1751-1756) from Germany 1,230 families	6,150
7. Hollanders, Poles, Scots, English, <i>circa</i>	5,850
Total	160,000

Arvydas (p. 35) attacks this as superficial and inaccurate. Using Töppen and Bezzenberger, he bases his arguments on Lowmiaski and Gerulis to answer Mortensen, Karge, Ganss and Katschinski (pp. 21-35). Obviously the exact figures cannot be known. Many church registers and records have been burned or destroyed. In addition, the mixture of the people soon erased former racial identity.

¹ Only deceptive clues can be found in Dusburg, Nicolaus Jeroschin, Chronik von Oliva, Der Canonicus von Samland, Wigand von Marburg, Johannes von Pusilg, Stadtschreiber von Culm, *Zamelsche Chronik* and the Hochmeister Chronik. See Töppen, also Niepmann, Nos. 3, 9, 18.

² Katschinski, p. 16 ff. gives 600,000 for all of East Prussia in 1709. Vydūnas gives 320,000 Lithuanians in Memel.

nationalities previously mentioned.¹ They were encouraged especially by Friedrich Wilhelm I,² and Frederick the Great.³

The census figures for the last century show a population of less than 200,000, which fell considerably short of the figure previous to the past years. In 1905 the total population was 139,738.⁴ In 1910 the number was a little over 141,000.⁵

By 1919 there had been a slight increase,⁶ but the number has remained practically at the same level to the present day.⁷

Considerable debate is going on as to the percentage of the German-speaking as compared with the Lithuanian-speaking parts of the population.⁸ There

¹ Katschinski estimates about 160,000 in all moved into East Prussia

² Ganss, p. 32.

³ *Ibid.*, p. 33.

⁴ Katschinski, p. 30, 69,642 spoke German and 69,563 Lithuanian.

⁵ The figures vary slightly as follows.

		German speaking	Lithuanian speaking
Ganss (<i>Das Memelland</i> , p. 3)	141,238	73,809	67,124
Ganss (<i>Volk. Verhältn.</i> , p. 120)	140,766	not given	65,345
Johann von Leers (p. 7)	140,675	64,158	37,626
Felix Borchardt (pp. 283-284)	not given	68,000	54,000
P. Langhaus (<i>Deutsche und Litauer im Memelgebiet</i>)	141,455	72,160	68,035

This list might be extended but it suffices to show how unreliable the "quoted figures" are in this matter. The Lithuanian writers Arvydas and Vydūnas inveigh against the German figures, but there is no reason brought forward as to why the figure given in the text above should not be acceptable to them

⁶ 144,284 according to Ganss (*Volk. Verhältn.*, p. 134).

⁷ 1925—Ganss, *Memelland* 141,740

1924—*Meyer's Lexikon* 141,274

1925—*Meyer's Lexikon* 142,483

1924—Gade 150,000

⁸ Ernest Lémonon's unsupported statement that, "au point de vue ethnique" the area is "moitié polonaise et moitié lithuanienne" is only equalled by the other absurdities in that same article, where he states that the area was invaded on January 11th, and speaks of "ce statut, avec ses deux annexes complémentaires. . . ." The invasion took place on the 9th and 10th of January, while the city of Memel was invested on the 15th. The Statute

can be no question of any other racial groups of importance. The Polish group has never been large enough to be heard. It is only an infinitesimal part of the total population. (The arrival of the French, headed by General Odry accompanied by a Polish interpreter, in 1920 shows how very little the Conference of Ambassadors knew about the people of this area whose precarious destiny they decreed in their subsequent settlement.)

Whether there is a majority of one race as contrasted with the other, or whether there is more German than Lithuanian spoken in Memel, or vice versa, are not the questions which should be the determining factors in this Territory. They did not affect the disposition in 1923. They have only been of significance from the theoretical side since 1928.¹

The culture of the area is unquestionably German. The religion is Protestant. While the rest of Lithuania is Russian in culture, and Roman Catholic in religion, Memelland is preponderantly evangelical-Lutheran² and constitutes a separate synod. It has its own

has no annexes. It is itself the first of three annexes attached to the Memel Convention. There are several other errors in this article, "Le Sleswig, Dantzig et Memel depuis la Guerre," in *Revue Politique et Parlementaire*, No. 128, 1926, pp. 424-438. The above errors are found on pages 435 and 436.

¹ There is no need to enter the complicated language question. Controversy still continues as to whether certain names are Lithuanian. One school of writers believes that the many Lithuanian names are the vestiges of former Lithuanian rule and ownership. There is an opposing school, which does not deny the Lithuanian character of the names and towns, villages, streams, etc., but maintains that they were given by Lithuanians who were permitted to come and settle in Memelland under German rule. A good conception of this struggle can be found by consulting: Arvydas, pp. 1-30; W. Staniewicz, *Sprawa Kłajpedy*; Sembritzki, *Geschichte*, chap. i; von Leers, pp. 1-20; Katschinski, pp. 1-30; Karge, pp. 40 ff.

² The 1910 census showed 133,330 evangelical adherents, 5,403 Catholics, and 2,505 Israelites (Ganss, *Das Memelland*, p. 3).

Volksschulen, higher schools, lyceum, Lehrerseminar, trade schools, theatre, book stores and cultural institutions. German is the language used by the educated people, which is not strange when we consider the five hundred years of German occupation with only brief and temporary exceptions. The chief newspapers until recently were all printed in German. There are, of course, Lithuanian papers, religious services, and educated Lithuanians. The significant fact is that the political boundary before 1914 between Russia and Germany was also a religious, economic, and cultural one and so it remains to-day, setting Memelland apart from Lithuania. The autonomy promised by the Convention and the guaranteeing powers recognized that fact.¹

The Aloisi Report correctly stated that it was the boundary between Europe and Asia.

¹ St. Vydūnas says of the area, ". . . einem kleinen Teil rein deutsch, zu einem grösseren Teil gemischten Blutes. Ein ähnlich grosser Teil ist reiner litauischer Abstammung mit litauischer Sprache, und der grösste Teil litauischer Herkunft mit deutscher Sprache." His figures show that while threequarters of the population is of Lithuanian origin, the schools, business, courts, language, culture, etc., are all German (*supra cit.*, pp. 120 ff).

On the religious question consult K. Ballerstedt, *Die evangelisch-utherische Kirche in Lithuen im Kampf um ihre Freiheit*. For the opposing view see Gaigalatis, *Die evangelisch-lutherische Kirche in Litauen, ihre Nöte und Kämpfe im Zeitraum von 1925-1929*. (The name of the last author will be found spelled at various times as follows: Gaigalat, Gaigalaitis, Gaigailat. The differences in spelling used in this work aim to represent faithfully the name used either by the man himself, or in the work used as a source.)

On the cultural side see Meyer, *Heimatkunde*, Vydūnas, and Katschinski. John Sembritzki, in *Adel und Bürgerstand in und um Memel*, shows by a long list of names from church registers that the nobility of this area was German.

CHAPTER II

AN HISTORICAL BACKGROUND

§ 4. *History—Prior to the Coming of the Teutonic Order.*
While the purpose of this work is to trace the origin and growth of the Statute, a brief historical introduction is indispensable to an understanding of the present Memelland, whose destiny the Statute governs.

Only an imperfect knowledge of the early times exists. The early people (it is known from the remains which have been found), progressed through the customary rough stone, polished stone, bronze, and iron ages. They were nature worshippers, and at one time burned their dead. The original inhabitants probably belonged to the Baltic race, and when mentioned by the Romans, such as Pliny and Tacitus, they were called Aisten. Efforts were made to Christianize them with indifferent results. Several missionaries, among them Adalbert of Prague (997), met martyrs' deaths in this noble effort, which lasted until the coming of the Teutonic Order in the thirteenth century.¹

§ 5. *History—From the Coming of the Order to 1422.*
Memelland had been visited as early as 1199 by

¹ Some pertinent information on this period may be found in Wendenburg und Lange, p. 6; Katschinski, *Das Schicksal*, p. 1; Vydūnas, pp. 120 ff; Hahn, p. 8; Meyer, pp. 87 ff; Niepmann, Map. No. 3; Sebicht, pp. 119 ff; and *Unsere Mittelalterliche Ostmark*, p. 119.

German Knights under the leadership of Adalbert von Bremen, who landed on the Düna River. It was not until 1252, however, that the first serious effort was made to settle this area. Then Eberhard von Seyn and Bishop Heinrich von Curland built the Teutonic fortification, naming it "Memelburg" after the "Mummel" river. They placed it on the site of the old robber nest and pagan town, Klaipėda. The settlement of Neu-Dortmund, which is the present town of Memel, grew up under the shelter of its walls.

The founding of Memel was undertaken by the Schwertritterorden in order to join two divisions of the Teutonic Knights. One was carrying on a campaign in the territory now called East Prussia, whither it had come in 1231 under Hermann von Salza to aid the Poles in their wars with the hardy Prüssen. The other, the Schwertritterorden, founded by the bishop Albert of Riga, invited by the Danes who were no longer able to hold Estland, had come to their aid and had since conquered the whole area to the Peipus Sea. But the positions of the two branches were precarious and the erection of a fort at Memel promised them mutual assistance and defence.¹ Both needed an available route for reinforcements in case of need. The plan succeeded, and Memel became the centre from which expeditions were sent out against the Schamaiten, while the Memel River served as the "Anmarschstrasse."

¹ Nagel, p. 56 ff.; Treitschke, pp. 12 ff.; Schirenberg, historical part; Ganss, pp. 9 ff.; Wendenburg, pp. 6 ff.; Gertrud Mortensen, *supra cit.*; *Denkwürdigkeiten*, pp. 12 ff.

But the task of conquering and subduing the neighbouring area was hard. As it happened the Schamaiten were also the enemies of Lithuania, which had tried for generations to conquer them. The famous Lithuanian king, Mindowe, thought he saw an opportunity of defeating his enemies by allaying himself with the Order. He adopted Christianity and came to an agreement with the Livlandische Order; but this effort failed of its purpose and by 1262 Mindowe had abandoned his alliance and with it Christianity. Two years later he was murdered, and the Order stepped in and conquered all of Schalauen and Nadrauen (1274) during the subsequent chaos. Shortly thereafter the Sudauers were also conquered so that by 1283 the Order was in full control of all Prussia.¹

It was at this point, as was noted in the section on population, that Memelland was so depopulated that between 1283 and 1400 a considerable migration from Germany, Lithuania, and Schamaiten was invited into the Territory in order to fill the spaces which the war had laid waste.

But the problems of the Order did not come to an end with their victories over the pagan tribes. Instead of the divided tribes it now found itself confronted with two powerful opponents—the Lithuanians and the Poles. At first they were divided, but eventually they united and all but wiped the Order out of existence. Only a short sketch of what occurred before 1410 is necessary.

The wars were savage and cruel, and neither side

¹ Gertrud Mortensen, *supra cit.*; *Denkwürdigkeiten*, p. 13.

would spare itself nor the other. Gediminas, the Lithuanian king, complained to Pope John XXII against the relentless warfare of the Order whereupon the Order, badly in need of respite, agreed to obey the papal injunction against warfare. Not only was the breathing spell beneficial for physical recuperation; but Memel was given up by the Livlandische Knights,¹ and became a part of the Province of Prussia, coming completely under the control of German branch of the Teutonic Order.

War with the Lithuanians was soon renewed under Gediminas. Counting on Polish help, they had been led to undertake an exhaustive expedition, which came to nothing. A relentless war ended in 1343 with an equally relentless Peace of Kalisch. It was a German victory and the Knights rode the crest of the wave of a success, which was not to be long lived.² The sons of Gediminas, Olgirdas and Kenstutis, returned to the fray. Memel was burned. Attack followed attack, interrupted by occasional truces. Finally both sides adopted bombs. The superiority of the Order in their use gave it additional successes, which need not be listed.

However, Lithuania had meanwhile experienced a change in rulers. Vytautas had come to the throne, and he understood the value of coming to terms with the Polish ruler, Jagiello. The two joined forces and on July 15th, 1410, absolutely broke the Order's power at the Battle of Tannenburg Forest. The Order

¹ Weber, chap. ix; Sochaczewer, p. 10.

² Weber, pp. 282-288; Nagel, p. 59; Harich, p. 106

never recovered. The Peace of Thorn was signed. It left Memel and the surrounding territory to the Order. In 1414 the first and only claim of the Lithuanians to Sudauen and a part of the present Memel Territory was made by Vytautas.¹ Not once between 1414 and 1914 was another such claim uttered.

The uncertain state of affairs caused the Order to ask the Emperor for a settlement, but it was not until 1422 that the final definitive Peace of Melno See was drawn up. It was a world peace, a dictated peace by the victor powers. The Order was helpless. It was forced to take what Vytautas decreed. Under these conditions the old frontier between pre-war Germany and Russia was drawn, which frontier remained for almost five hundred years. Had Memel been Lithuanian, or had there been a reasonable claim to it, Vytautas would have taken it at this time, but he did not do so.

The year 1422 is thus of the utmost significance in the history of Memelland. Before that time the city of Memel had been burned repeatedly and changed hands. Memelland had been fought over again and again. The old population had been wiped out and a new one had been introduced, only to be wiped out in its turn.

§ 6. *History--1422 to 1914.* The Peace of Melno See was a turning point in Memel history, but it did not end the wars. In 1457 Memel revolted, but finally agreed, after two years, to return to the

¹ See Gertrud Mortensen for the correct explanation of Vytautas' boast.

government of the Order. Nine years later, when East Prussia became a Polish subject, Memel still remained German. Once again, under the Second Peace of Thorn, 1466, when other parts of East Prussia fell under foreign rule, the city and Territory of Memel were regarded as German.

Another very important historical event occurred at this juncture. The Reformation, which had begun in the German States, was extended to Memelland when Erich von Braunschweig was delegated to bring Protestantism to that area by the Comture, Duke Albert of Prussia.¹ The boundary laid down in 1422 became henceforth the dividing line between the Protestantism of Memelland and the Catholicism of Schamaiten and Lithuania. And such it remains to the present day.

To return to political events. Memel had suffered two further destructions, one at the hands of the Danzig fleet, and one through a fire in 1540. Then a period of comparative quiet set in, lasting until 1626, when the Swedish forces invaded Memelland during the Thirty Years' War and held it for six years. After that the constant warfare between Sweden and Poland brought the Swedes in again in 1656. A third Swedish investment in 1678 ended when Kurfürst Friedrich Wilhelm drove the Swedes out. Meanwhile the Tartars had also invaded the Territory and were only driven out after they had destroyed a great many lives and much property.²

¹ *Denkwürdigkeiten*, p. 17; Sembritzki, p. 58; Ganss, p. 16.

² Sembritzki, pp. 116 ff; *Denkwürdigkeiten*, pp. 18 ff.

In 1709 the pest¹ made its ravages with the result that Memelland experienced another change in the make-up of its people, as was noted in the section on population. This had its effect also upon the trade of Memel, for with the decimation of the population came a drop in trade. Before the recovery from the pest was completed a Russian army captured the city on July 15, 1757. However, it was retaken by the Prussians, and began a new chapter in its history. During the American Revolution trade grew and the whole area prospered from the commerce which it carried for the belligerents.²

The Napoleonic period also affected Memel. On June 8th, 1802, Friedrich Wilhelm and Queen Louise met Alexander of Russia here, and in 1807 and 1808, the queen took refuge from the French in the city. On the 28th of January of the latter year Prussia and England signed a treaty in Memel, while the French occupied it during their campaign against the Russians (1812), and exacted tremendous requisitions, leaving the whole country exhausted. The trade boom, which had resulted from the American Revolution, was thereby robbed of all its lasting benefits.³

The nineteenth century was a period of economic and social improvements. Serfs were emancipated; canals were built; roads were improved; and Memel-

¹ See Karge, pp. 67-79.

² *Denkwürdigkeiten*, p. 87 ff.

³ *Ibid.*, Ganss, p. 10; Sembritzki, pp. 253 ff; *Noticia de Entrada*, Flugschrift, 1757; Wendenburg, p. 11; *Encyclopedia Americana*, Vol. XVIII, p. 612.

land experienced its share of the general improvement of East Prussia.

§ 7. *Conclusions.* With the exception of the century prior to 1914 the history of Memel and Memelland is a catalogue of sufferings, war, plunder, pillage, and rapine. It would be difficult to find a city in the world which has been more often completely destroyed and immediately rebuilt. To-day its oldest construction is what is left of the old Memelburg fortifications, parts of which serve as an ice house. The oldest buildings are a warehouse dated 1813 on Libauerstrasse and an interesting cottage hidden away in a lumber yard on the Dange River. For the rest, the main street and almost all the buildings are uninspiringly recent and poor in construction. There is scarcely a trace of the long and bitter past to be found.

It cannot be imagined that under such circumstances the people themselves have escaped. Coming in as they have from many parts of Europe, but chiefly from Germany and Lithuania, they have lived side by side and intermarried for such a long time that it is hopeless to try to separate one nationality from the other. And indeed, in speaking with the Memellanders one soon discovers that it is sentiment which counts with them. Five hundred years of German culture have left such a strong impression on the population that they think of themselves as German. The results of the election to the Chamber of Representatives are good examples of the sentiment of the people.

PART II

THE ORIGIN AND GROWTH OF THE STATUTE

CHAPTER III

DECIDING THE FATE OF MEMELLANDERS—FROM THE OUTBREAK OF THE WORLD WAR TO THE SIGNING OF THE TREATY OF VERSAILLES

§ 8. *History from 1914 to 1920.* When the World War broke out, Memelland was a part of East Prussia.¹ Its former importance had disappeared and there was little to set it apart from the rest of North-eastern Germany. During the four years from 1914 to 1918 its population did not waver once in their loyalty to Germany, but thought of themselves always as Germans.² This fact must be kept in mind in reviewing the events which led to the formation of the Statute and Convention.

On September 12th, 1914, the Russians occupied Tilsit.³ For over a century their eyes had been fixed on Memel, and now the march on it began.⁴

¹ It achieved a momentary boom in trade during the revolution of 1848 and the Crimean War, which passed as soon as the political events had passed (Jahn, *Memel als Hafen und Handelsstadt*, pp. 1-12).

² The best record of this sentiment is the patriotic appeal of Katschinski, *Offener Brief an die ostpreussischen Landbewohner*—a simple appeal to a simple Bauernvolk. Also Gaigalat, *Litauen das besetzte Gebiet, sein Volk und dessen geistige Strömungen*; and Smetona, *Die litauische Frage*, both written in 1917 before the question of Memel had arisen. In neither work does any idea of a Memelland separated from Germany occur. Nor does one question the loyalty of the Lithuanians in the East Prussian Territory to Germany.

³ Meyer, *Heimatkunde*, p. 101.

⁴ Russia understood that Memel was comparatively ice free and that a new mole could be built at a small cost (Schirenberg, p. 42).

On the 18th of March, 1915, the investment took place, and the inhabitants fled in panic.¹ Three days later the Russians were forced to leave for manœuvres about Tilsit.² It was the only time during the World War that the Russians held Memel.³ Re-occupation by the Germans took place immediately, and the city assumed a new importance as the German forces occupied the Randstaaten in 1915 and began the construction of the Bajohren-Prekuln and the Langszargen-Monkushki lines.⁴

When the war was over, Memel awaited its fate, for it had been decreed that all of East Prussia was to be partitioned. What would become of Memel? Its future hung on the diplomatic situation. France had lost Russia as her ally in the old diplomatic game of playing both ends against the middle. She was intent on creating a new ally in the east, and that ally was to be Poland. Memel was originally thought of by the Allied Powers as a part of that new Poland. So also was Lithuania.⁵ In the last two respects, however, the Conference of Ambassadors soon was to learn that it was mistaken. The reason was that Lithuania proved to be much stronger and more determined than the Powers had bargained for. And when they tried to settle the Memel affair,

¹ Wendenburg gives March 17th as the date (p. 10).

² Meyer, *supra cit.* The Russians pillaged, burned, and plundered (Stegemann, *Geschichte des Krieges*, Vol. III, pp. 36-38, 134-137).

³ In a second Battle of Tannenberg in August, 1914, the Teutonic forces administered as severe a defeat to the Slavs as the latter had visited upon the Order five hundred years before.

⁴ Jahn, p. 12.

⁵ The Hyman Proposal.

they found in Lithuania a new and unexpected claimant.¹

Before speaking of the negotiations, which transpired at Paris, a word must be said about how the question of Memel became a Lithuanian problem. The idea of awarding this Territory to Lithuania did not arise in Europe. It was the American phase of the movement for an independent Lithuania which was responsible for that. One of the aims of that movement was to annex to the new Lithuanian State

¹ The Lithuanian struggle for freedom began very indistinctly at first. Over one third of all the Lithuanians were in the United States, with centres in Chicago, New York, Philadelphia, Boston, Wilkes Barre, Shenandoah, Baltimore, and Cleveland. There were some also in Canada, Russia, England and the Baltic States. The census of 1914 showed 689,786 abroad, with 3,000,000 in Lithuania (Gaigalat, p. 30). (These figures naturally are only an approximation.) The Lithuanians had a booth at the World's Fair in Paris in 1900. Four years later a Lithuanian National Congress was held in Vilna. During 1904 and 1905 the demand for Lithuanian autonomy grew in Russia. There were some twenty-odd Lithuanian organizations in the United States. When the World War broke out, a congress of 250 delegates met in Chicago on December 21st, 1914. Funds began to pour into Lithuania in the struggle for freedom. Three separate funds were established: (1) the National fund, (2) the fund for the aid of Lithuanians injured in the war, and (3) the fund for the support of the Socialists (*Ibid.*, p. 149). When, in 1864, Russia forbade works in Lithuanian from appearing (Ganss, p. 71), the Lithuanian activities against Russia shifted to Prussia. In 1879 Girenas, heading a Lithuanian delegation, turned to Emperor Wilhelm I for help. By 1900 there were three Lithuanian and seven German-Lithuanian newspapers in Prussia. Step by step more latitude was given for the use of the Lithuanian language in schools and in religion. The first Lithuanian paper had been printed in 1832, and the first in America appeared in 1885. By 1914 at least thirty-five were being printed in the latter country (Vydūnas, p. 123). From April 20th to 25th, 1916, a Lithuanian Congress held its sessions at the Hague. At the Lausanne Conference in the summer of the same year the Lithuanian representative asked for a free Lithuanian State (Smetona, p. 25). At the St. Petersburg meeting, in the spring of 1917, Lithuania had her own representative. During the same year, while Germany occupied Vilna, the Lithuanians held a national congress there. There the demands for an independent State with the desire for a closer co-operation with Germany was the keynote. A great movement for an independent Lithuania was on foot over the world (*ibid.*). Again, after the German resistance broke in 1918, the Lithuanians met in Tilsit. The move for independence bore fruit, and the new State of Lithuania was created. It declared its independence in February, 1918 (Behrendt, p. 21).

what is now termed the Territory of Memel or Memelland.¹ In Europe the Lithuanian element had been too busy with other things to be concerned about this Territory until the war was over. Pastor Gaigalat had extended his "sprachlich gemischte Grenzgebiete" far into East Prussia, but never once uttered a claim to Memel.² Smetona himself had said, in 1917, that the Lithuanian boundary should run, "alsdann etwa an der jetzigen deutsch-russischen Kampffront entlang bis östlich Dünaburg und über Illuxt an der kurländischen Grenze entlang bis zum Baltischen Meer,"³ a boundary which would not have included Memel. It was in the United States that the first rumblings foretelling of the ultimate disposition of Memelland occurred, when two hundred and fifty Lithuanian delegates met in a Congress on the 21st and 22nd of September, 1914, in Chicago, and demanded the annexation of Memelland to the proposed Lithuanian State.⁴ Not much attention was paid to them at first, but when the United States entered the war they were taken more seriously.⁵

¹ *Vydūnas* gives figures on p. 123. The Lithuanian Catholics in America collected 750,000 marks, the Socialists 120,000 marks, and the Hillsfund rose to 250,000 marks. The Ritter Litauen numbered 3,000 members, and all of the twenty odd organizations had their own funds. This was not unusual, because almost every European nationality in the United States carried on similar activities up to April, 1917. See Schirenberg's emphatic indictment, p. 65.

² *Supra cit.*, p. 13. When the war was over he changed his opinion, especially as the peace negotiations proceeded.

³ *Supra cit.*

⁴ Ganss, p. 77.

⁵ The multitude of bitter reproaches heaped by writers on the United States fail to distinguish between the acts of individuals (which they are free to undertake) and the official acts of the United States (which never occurred). While the Lithuanians agitated for the annexation of Memel

To return now to the negotiations at Paris at the end of the war. In all probability the American President had already heard of Memel when he landed in Europe, but he cannot have been very seriously impressed with the Lithuanian demands. The Lithuanians told him that all northern Prussia and Memelland were crying out for a reunion with Lithuania.¹ They were not too sure of their ground, however, and they became worried when they learned in the summer of 1918 at Geneva that Poland, too, had designs on Memel. To make matters worse they made an effort to rally Memelland to Lithuania which ended in a flat failure.²

Little is known of what actually transpired in Paris on this particular point,³ but that the Lithuanians were active is a matter of record. Ray Stannard Baker says "the Albanians and Lithuanians appealed on the 17th of March, 1919."⁴ He had reference to Wilson

to Lithuania, the United States Government had no share in the activities until the making of the peace. Behrendt's bitter reproaches are without proper foundation (*supra cit.*, p. 21).

¹ Ganss, p. 77 ff.; Katschinski, p. 38.

² Max Hildebert Boehm, *Europa Irredenta*, p. 213. The Taryba or Constitutional Convention met in Tilsit on the 25th of April, 1919, with Gaigalat as president. Even at that moment, Gaigalat, who in 1915 had been thoroughly German in his sympathies, was not sure whether or not he favoured the annexation of Memel to Lithuania. The papers of Memel refused to become enthusiastic and the Lithuanians founded their own, *Prusu Lietuvini Balsas*. An active propaganda agency, *Verein Spauda*, with connections in the United States and Switzerland, advanced the Lithuanian cause. From now on the campaign went on with increased intensity (Ganss, p. 71).

³ So obscure was this problem in all of its phases that Lémonon deplored the fact that Poland was not heard in the framing of the Statute, and he said that Memel was the gift of the Conference of Ambassadors to Lithuania at the expense of Poland (*supra cit.*, pp. 437-438). But he concluded that the geography of the hinterland would determine the politics of the future.

⁴ Woodrow Wilson and the World Settlement, Vol. II, p. 24, Germ. ed., Vol. II, p. 19.

and the Conference of Ambassadors before whom the new nationalities were making their various pleas.

Before going farther it is vitally necessary to distinguish the three most important points of view before the Allied and Associated Powers as they determined the fate of Memel. They were (1) the Lithuanian, (2) the Polish, and (3) that of the advocates of autonomy. First with regard to the Lithuanian. Woldemaras and Smetona took the lead for Lithuania and utilized the breakdown of Germany to its fullest advantage. They abandoned all claims to Russian territory and concentrated on the German.¹ They built up a case for Memel, professing that the population was a minority which must be rescued from the clutches of Germany. This minority was desirous of being "reunited" with Lithuania.

Second, the Polish claims which leaked out were a demand for another outlet to the sea besides Danzig.² Poland had not reached a state of serious opposition towards Lithuania as yet, for Lithuania was only a *de facto* State, which Poland hoped eventually to annex.³ But if Memel could be obtained independently of Lithuania, Poland was only too glad to take what she could get. The Polish delegates worked out a propaganda map showing why they should have Memel,⁴ they even talked of an exchange of Vilna

¹ The Greater Lithuania had once extended from the Baltic to the Black Sea.

² H. W. V. Temperley, *A History of the Peace Conference*, pp. 290-291.

³ Felix Borchardt, *Memel*, p. 284.

⁴ Wendenburg, p. 12; Sir Robert Donald, *The Polish Corridor and the Consequences*, pp. 6, 7, 69, 70.

for Memel. That, however, was in a moment of weakness and it was immediately abandoned. The thirteenth of the Fourteen Points of Woodrow Wilson guaranteed Poland a free access to the sea, and she fell back upon it for support in Memel.

The third party in the disposition of Memelland was the movement for autonomy,¹ agitated chiefly by the *Memeler Dampfboot* and the *deutsch-litauische Heimatbund*. At first they asked for a status similar to that of Danzig for Memel; but the Polish activities in Danzig soon placed an effective check on the Free State movement. The autonomy movement asked for independence under the protection of an Entente State. The leaders said that they wished to be neither Polish nor Lithuanian, but asked only to be allowed to live in peace with their neighbours.

These were the views of the three claimants who presented their demands at Paris. Lithuania was the most vociferous of the three. The question now was, which way should the Allies turn? Which of the three should they favour? It had been decided that the Memel Territory should be taken from Germany; but to whom, and how, should it be given? The terms of the Armistice had been renewed by special agreement on January 16th, 1919.² But nothing had been said in the Armistice about Memel. In fact that instrument had been drawn up and agreed to upon the basis of the Fourteen Points, the fifth of which provided for the self-determination of people, giving

¹ Wendenburg, p. 14.

² Schücking, Kraus, Rödiger, *Kommentar zum Friedensvertrag*, pp. 84 ff.

them a right to be heard in the settlement of their own territory.¹

On February 16th, 1919, the Lithuanian delegation arrived in Paris and asked Clemenceau to be allowed to officially present their case before the Peace Conference.² Whatever hope had existed for a plebiscite or for an observation of the Fourteen Points in Memel disappeared when they discovered that Poland was treated as one of the Allied and Associated Powers, while Lithuania was dealt with only as a *de facto* State without official representation. The cry went up that Poland had annexed "Lithuanian territory," and was threatening to annex more.

On the 28th of March, the Lithuanians, having made no progress in their campaign for recognition, and realizing that their claims to Memel were futile without recognition, sent a note to Clemenceau,³ which said that the Lithuanians refused to be reunited with Poland and asked for a complete, unequivocal independence, justifying the demand partly on the grounds that Lithuania would become a buffer State for Europe against Russia.⁴ They asked for the Niemen River to the sea, which of course included Memel.⁵ All in all, this note was a clever analysis of the psychology of the Big Four. It played upon Clemenceau until he announced that he would free

¹ In his speech at Washington's grave in Mount Vernon on July 4th, 1918, Wilson repeated this very strongly.

² Janz, *Die Entstehung*, pp. 17, 97-99.

³ *Ibid.*, p. 20.

⁴ Lithuania had already asked Wilson for recognition on March 17th, 1919.

⁵ *Ibid.*, pp. 103-104; Leisewitz, p. 13.

the "poor oppressed Lithuanians" from the "German yoke in East Prussia."

Meanwhile the news arrived from Memelland that the litauische Volksrat for the protection of the interest of Prussian Lithuanians at Heydekrug, had written on the 7th of March to the Oberpräsident of East Prussia stating that even though the population of Memelland contained many Lithuanians they wished to remain with Germany, because spiritually, intellectually, and culturally they were near to Germany and far removed from Russia.¹ The Lithuanian delegation at Paris realized now that something had to be done, or between Poland and the Memellanders their prize would be lost. Clemenceau's changed attitude gave them new hope, and Klimas, the secretary of the delegation, took up his work with renewed vigour and used the writings of Gaigalaitis and Bezzenberger as the bases for new propaganda material.² His statistics grew conveniently confused. He began to exaggerate and to speak of "Lithuanian colonies."³ "Lithuania must have an outlet to the sea." He knew that this argument had worked for Poland in Danzig and he correctly thought that it stood a fair chance of working for Lithuania in Memel. Woldemaras told the Conference that the Lithuanian position in Memel was identical with that of Poland in Danzig.⁴

¹ Signed by Kubillus, Laurus, Grigat, Blosze, Pagalics, Matschullat (*ibid.*, pp. 103-104); 6,808 votes cast, 5,404 for Germany (Katschinski, p. 38).

² *Ibid.*, p. 21.

³ *Ibid.*, p. 22.

⁴ *Ibid.*, p. 24.

During this time the controlling power changed hands in the Peace Conference. Wilson passed the zenith of his power,¹ and Clemenceau became the master. This was important for the Memel settlement. Clemenceau wrote to Lloyd George in answer to the latter's memorandum on the 29th of March, 1919, that he wished to aid the new States of Eastern Europe. The new boundaries thus became his work. He turned for advice to Tardieu and from that time forward that gentleman played a deciding rôle in the ultimate disposition of Memel.² A sub-committee of the Conference of Ambassadors, the "Commission des Affaires polonaises," including as members Sir William Tyrell, Isiah Bowman, Marchese della Toretta, and Otchia,³ was charged with formulating recommendations on the Memel settlement, and their sentiments were similar to those of Clemenceau and Tardieu.

This committee began its sittings on the 12th of February, 1919. It divided itself into two sub-committees, and Laroche in the French Foreign Office was left to busy himself with Memel. Here

¹ The mania for saddling Wilson with the blame for the miscarriages of the treaties of peace and their execution both in Europe and the United States is preposterous. As in the question of the Saar, where most of the evils came from the peculiar method adopted for the enforcement of the treaty provisions, so also in Memel, Wilson has been unjustly blamed for most of the wrongs by many writers. And this in spite of the fact that he had absolutely nothing to do with the framing of the Convention or the Statute. Wilson has been the blind behind which political leaders have played their game of whitewashing for a decade and a half.

² He does not speak directly of Memel in his book, but mentions himself as a member of the Commission for the "Revision des Clauses Territoriales", on which the other two members were Laroche and Aubert (Tardieu, *La Paix*, p. 108).

³ Janz, pp. 27-28.

again the Polish influence must be noted. As far back as October 8th, 1918, the Pole, Dmowski, had suggested to Wilson that all East Prussia including Memel should be given to Poland. Poland had adopted this as her official view on the 25th of February, 1919, and she had practically convinced the full committee of the justice of this point of view during the first half of March.¹ The Polish case grew into a well-rounded-out argument. It agreed that the area was German in population, but was geographically a part of Poland. Economically, it contended that the area was stagnant, and socially was back in the Middle Ages. The best thing to do was either to cede the whole of East Prussia to Poland outright or else to make it independent, but tied to Poland by a customs union. The new Polish State would include Lithuania and extend northward to Libau.² It was based on Dmowski's recommendations that the sub-committee now reached its decisions. It drew up the provisions and wording of Articles 87 to 108 of the Peace Treaty, which included the settlement concerning Memel. They recommended to the Conference that these articles should be adopted as a part of the Treaty of Versailles.³ There was some difference of opinion in the minds of the committee as to what should be done with some of the other parts of East Prussia; but there seems to have been a unanimous decision on Article 99 dealing with Memel.⁴

¹ Janz, p. 29.

² *Ibid.*, p. 37.

³ Temperley, Vol. II, p. 247.

⁴ *Ibid.*, Vol. II, pp. 247-248.

M. Didelot said that there was some talk of making Memel a naval base for France, but this idea died a natural death.¹

The pro-Polish leanings of the committee had been known for some time and its activities were keenly watched. As the news of the nature of its recommendations leaked out a positive reaction occurred in Memelland. Not only did the people protest against the possibilities of a Polish rule, but the deutsch-litauische Heimatbund, with its membership of 68,535,² stated unhesitatingly that a union with Lithuania was impossible. But the committee of the Peace Conference had no intention of listening to the local population.³ When Kubillus wrote to Wilson in April, 1919, and told him that the people of Memelland wished to remain with Germany,⁴ the committee denied his plea and virtually admitted its pro-Polish bias.

The recommendations of the sub-committee were adopted by the Big Three at Paris. Orlando had left for Italy as a result of his quarrel with Wilson over Fiume and the Italian borders. Thus the fate of Memelland was decreed when Lloyd George, Wilson, and Clemenceau decided to incorporate Article 99 into the Treaty of Peace.

On May 7th, 1919, the peace terms were first presented to Germany. Two days later a general

¹ J. Didelot, *Le Marine de l'Aigle Blanc*, Paris, 1924, p. 30.

² Ganss, *Das Memelland*, p. 18.

³ Ganss, *Völkische etc.*, p. 82.

⁴ Janz, pp. 39, 105-107.

protest without reference to Memel was sent by Germany to the Allies.¹ On the 13th another German Note was sent dealing with the territorial settlement; but it said nothing about Memel.² Nor did Clemenceau's answer mention Memel on the 24th of May.³ But on May 29th Brockdorff-Rantzau protested in a fiery note saying that the inhabitants of the Kreises Memel, Heydekrug and the parts of Tilsit and Ragnit, which were to be taken away, had never wished for separation. Only Heydekrug, according to the 1910 census, had a majority of non-German speaking people, approximately 53 per cent. Memel had a population of 68,000 Germans as opposed to 54,000 Lithuanians. As for Memel city, it was purely German. The Lithuanians had served the German masters since 1252 in Memel. The only possible excuse for the proposed arrangement was the agitation of an infinitesimally small number of the Roman Catholic Lithuanians, who for obvious reasons had wished for a union with Russian Lithuania before the war. Of course the Germans would protest against such a settlement.⁴ The Treaty was impossible of fulfilment, and the German people were only signing their own death warrant.⁵

Clemenceau's reply was dictated by the pro-Polish leanings of Tardieu and the committee. It was an ultimatum delivered on June 16th, 1919. The Allied

¹ Behrendt, p. 19.

² Schücking, *Kommentar*, p. 242.

³ *Ibid.*, p. 269.

⁴ *Ibid.*, p. 685; *Materialien betreffend die Friedensverhandlungen*, p. 49.

⁵ Behrendt, p. 19; Katschinski, p. 39; Temperley, pp. 290-291.

and Associated Powers had decided to take the Memel Territory from Germany. It had always been Lithuanian. The majority of the population as to origin were Lithuanian, and the fact that the city of Memel itself was German should have no effect upon the rest of the Territory. Paradoxically the Note said that it was admitted that the separation of the Territory might contradict the principle of nationality, but it was grounded on the fact that the city of Memel itself was German should have no effect upon the rest of the Territory. Paradoxically the Note said that it was admitted that the separation of the Territory might contradict the principle of nationality, but it was grounded on the fact that Memel was Lithuania's only outlet to the sea.¹ It was obvious that Laroche, Clemenceau's adviser, had no intention of permitting a plebiscite in Memel because he knew it would go against both Poland and Lithuania, and he had no intention of hazarding the case of either.²

So it was that on June 28th, 1919, Germany was forced to sign the Treaty of Versailles. On January 10th, 1920, it was ratified. Article 28 defined the boundary. The part which applies to Memelland read:—

“ . . . thence the old frontier of Russia to a point east of Schmallengen then the principal channel

¹ *Materialien*, p. 22. Borchardt's conclusions are not supported because the Conference of Ambassadors intended to help Poland in the Memel settlement.

² Janz, p. 41.

of navigation of the Niemen (Memel) downstream, then the Skierwieth arm of the delta of the Kurisches Haff;

“thence a straight line to the point where the eastern shore of the Kurische Nehrung meets the administrative boundary about 4 kilometres southwest of Nidden;

“thence this administrative boundary to the western shore of the Kurische Nehrung.”¹

Article 99 stated:—

“Germany renounces in favour of the Principal Allied and Associated Powers all rights and titles over the territories included between the Baltic, the north-eastern frontier of East Prussia as defined in Article 28 of Part II (Boundaries of Germany) of the present Treaty and the former frontier between Germany and Russia.

“Germany undertakes to accept the settlement made by the Principal Allied and Associated Powers in regard to these territories, particularly in so far as concerns the nationality of the inhabitants.”²

The Niemen or Memel River was internationalized along with the Elbe, Oder, and Danube.³ Article 443 relating to Eastern Europe provided that the German troops should remain in the relinquished areas until

¹ Read in this connection also Articles 29 and 30 which tell how the boundaries are to be reckoned.

² The German, French, and English texts are very serviceably printed side by side in the *Friedensvertrag* published as No. 140 of the *Reichsgesetzblatt* von 1919.

³ Treaty of Versailles, chap. iii, especially Articles 331–345.

the Allied and Associated Powers decided that from the standpoint of internal order it was safe for the German soldiers to leave. Under this article German troops remained in Memel until January, 1920. Articles 254-256 provided that the Powers taking over territory from Germany should pay that territory's share of reparations.¹ The public property located in the areas was to be transferred to the acquiring State. All of these articles applied to Memel, as will be seen in the later discussions of the evolution of the Statute.

Puricki, the Lithuanian diplomat, admitted in 1920 that the ambassadors were uncertain of what they intended to do with Memel when they took it from Germany.² Such a confession indicates that some of the later contentions of Lithuania, especially those which said that the Conference of Ambassadors intended to transfer sovereignty over Memel to Lithuania as soon as the latter was recognized, were not correct. In both Danzig and Memel the Powers had to choose between the principles of nationality and an access to the sea. Choice of the one precluded the other.³

§ 9. *Internal Developments in Memelland between 1918*

¹ Exceptions for France in Alsace-Lorraine and parts of Poland in Article 255.

² Borchardt, *supra cit.*

³ For the varying opinions as to the motives of the Ambassadors see: Temperley, Vol. II, pp. 382-383; Léon Bourgeois, *Le Traité de Paix de Versailles*, Paris, 3rd ed., p. 51; A. Ebray, *Der unsaubere Frieden*, p. 140; Janz, pp. 47, 66; Boehm, p. 243; Behrendt, p. 22; and Ch. Benoist, *Les nouvelles frontières d'Allemagne et la nouvelle carte d'Europe*, 3rd ed., Paris, 1919, p. xxii; Sir Robert Donald, p. 110. Romain Roland wrote to Jean Longue in *Le Populaire* on December 21st, 1918, "Unless a tremendous effort is made, I see on the horizon a century of hate, of new wars of revenge, and the destruction of the European civilization."

and 1920. During the course of the negotiations at Paris between 1918 and 1920 events of importance occurred in Memelland. The Lithuanian propaganda, which had had its effect abroad, failed to convince people in Memel.¹ On November 16th, 1918, a national council for the Preussisch Litauen had been founded by Erdmann Simonaitis, Viktor Gailius, Jonas Vanagaitis, Gaigalat, and Jurgis Aukstuolaitis. Their publications were poured into Memelland from the French embassy in Kobenhaven, and they called upon the Lithuanians in Germany to rise.² A Press bureau was set up at Berne. But all of these activities failed to impress the Memellanders. They knew that they were the work of an organized minority of Greater Lithuanian agitators in Memelland, linked with a large organization abroad supported by considerable capital. Therefore the German sympathizers organized protest meetings. During the month of April, 1919, these took place everywhere.

As the news of what the Treaty terms were to be began to leak out the worries of the majority of Memellanders increased. They sought aid in the only quarter, which did not turn a deaf ear to their

¹ This propaganda began with the Young Lithuanian Movement under Bassanavicius, when the World War produced the idea of freeing border people. The Chicago assembly in 1914 has already been mentioned. In the Berne Conference of November 6th, 1917, Memel played an important part as Lithuania's only port. But it must be remembered that the Conferences at Stockholm, Vilna, Berne, Lausanne, Kiev, and St. Petersburg were composed almost entirely of Russian Lithuanians, or of emigrants in other lands. Gaigalat and Smetona's positions relative to the new Lithuania have already been discussed. Towards the breakdown of the Central Powers an unusually strong Lithuanian propaganda was fostered in Tilsit, Ragnit, Heydekrug, and Memel by the papers *Nauja* and *Tilzes Keliaus*.

² Janz, p. 59 ff.

pleas. On the 14th of May, 1919, a delegation from the northern part of the Territory, headed by Batocki, waited upon President Ebert, and asked for a reunion with Germany.¹ This influenced Minister Heine of Prussia to protest against the separation on the 20th.² And when Clemenceau's answer to Brockdorff-Rantzau became public property,³ the Memellanders asked that Brockdorff-Rantzau and Erzberger should seek for them a status similar to that imposed upon Danzig.⁴

In June, 1919, a so-called Vor-Parlament consisting of one hundred members, representing the whole of Memelland, met to discuss a Free State. Eighteen of the members, who were Lithuanians, withdrew.⁵ The rest voted to remain with Germany. But this was not the Allied intention. They preferred to listen to Dr. Gaigalat, who advocated an Allied occupation of Memelland, which should gradually be relinquished in favour of Lithuania. They even lent an ear to the suggestions of Klimas that a plebiscite should be held in Memelland. If it were favourable to Lithuania, Memelland should go to Lithuania. If the results were unfavourable, an arrangement such as that to be adopted in Upper Silesia could be followed.⁶

The Memellanders did not know what to expect next.

¹ Deu, p. 4.

² *Ibid.*, p. 5.

³ *Supra cit.*

⁴ Janz, p. 67.

⁵ Friescke, *Das Memelgebiet*, p. 16.

⁶ The *Mémoire sur la Lithuanie*, printed in Geneva on December 10th, 1920, said that the settlement was "entièrement insatisfaisante". See also Janz, p. 73.

In July, 1919, the Kreistag of Memelland, Heydekrug, and Pogegen voted to summon a second Vor-Parlament in Memel City. When it met, it asked for an English occupation, if there was to be any occupation at all.

Simultaneous with this gathering the sympathizers with Lithuania, called "The Little Lithuanians," met in Tilsit. There were thus two forces at work in Memel Territory—the first was a large one favouring the German rule, and if that failed a Free State; the second was small, but active, favouring annexation to Lithuania, and if necessary a modified degree of autonomy. On the former very little has been heard, while the latter has gained a notoriety far out of proportion to its importance. In the Kreistage elections of July 10th, 1925, for instance, the Lithuanians held only twelve of the sixty-two seats.¹

On August 5th the Vor-Parlament turned to the United States and the Allied representatives in Berlin, and asked them to reach a rapid decision in the settlement of the affairs of Memel. They made it plain that the population did not want to be ruled by Poland or Lithuania.² On August 26th, they asked for a Free State status under a German mandate, and if that was not possible, for self-government.³ But the Allied Powers said that the Treaty could not be changed. Thereupon the Vor-Parlament decided to declare Memelland a republic under Prussia. If Prussia refused to accept it, it would turn to Germany. If the Allies refused to

¹ Ganss, p. 18.

² Janz, p. 76.

³ *Ibid.*, p. 119.

agree, the Vor-Parlament would demand a plebiscite. The Vor-Parlament meanwhile proposed to exercise supreme power until a new Parlament could be elected on the basis of one representative for every ten thousand inhabitants. An executive committee¹ was to be elected from the new Parlament, and one member was to act as president. All German laws, decrees, and officials should remain as they were until they were specifically changed, and all innovations were to be subject to review by the overstate.² A special committee was set up (November, 1919), to work out a constitution in anticipation of the new State.³

This committee entrusted with the formulation of a constitution for the free State reported shortly after it was created. It proposed a constitution in which Article 99 of the Treaty of Versailles was accepted, and the boundaries of the Free State of Memel thereby delined (§ 1). Further provisions of this draft for a Free State provided that:—

- (§ 2) The coat of arms of Memel City shall be retained.
- (§ 3) The people were to be the source of the supreme power. A Senate was to act as the executive body; and a Landtag was to be the legislative body.
- (§ 4) The Landtag was to consist of sixty members.
- (§§ 5–17) A series of regulations governing its work and the right to membership were recommended.

¹ Ausschuss.

² Janz, p. 78 ff.

³ *Ibid.*, p. 120.

- (§ 18) The Senate was to consist of twelve members with a presiding officer.
- (§ 19) Their duties would be divided according to the administrative divisions in the State. Members of both bodies were to be free from arrest during the time they were on duty for their Government.
- (§ 16) The Senate would have the right to be present at the sessions of the Landtag.
- (§ 22) The president of the State would be the presiding officer in the Senate.
- (§ 23) The Senate would be the Supreme Court of the State.
- (§ 26) The Senate would have the right to sign treaties.
- (§ 32) The local government was to be divided into Städte, Kreise, and Gemeinden.
- (§§ 33-34) Two short sections laid down general provisions for courts.
- (§§ 35-36) Two articles dealt with religion.
- (§ 37) The last article stated that during the transition period the old German laws and regulations were to remain in force.¹

This proposal met an untimely death at the hand of General Odry, who swept it aside when he came into power. It is, however, very important, because it was the only time the Memellanders had a chance to make a concrete suggestion as to how they wished to be governed. And barring the nebulous suggestion of Dr. Gaigalat, it was the first proposal for a constitution for the governance of Memelland.

¹ Janz, pp. 120-127.

CHAPTER IV

FROM THE TREATY OF VERSAILLES TO THE LITHUANIAN "COUP" IN JANUARY, 1923

§ 10. *Transition. January, 1920, to January, 1923.* The signing of the Treaty of Versailles did not end the problem of Memel, nor did Article 99 give that Territory a final status. Further action by the United States, England, Japan, France, and Italy was necessary before a real settlement could be achieved. In anxious expectancy Memel awaited its final fate. It was kept in this uncertain condition from January, 1920, to January, 1923.

The first problem which had to be settled was the transfer of sovereignty to the Allied and Associated Powers. The Treaty of Versailles had been signed, but not ratified; and the armistice had been extended to January, 1920. The German Government and the German troops still remained in Memel. On the 3rd of January Oberbürgermeister Altenberg and Consul Jahn came to Paris as Memel delegates to participate in a meeting presided over by Ernst von Simson, where the whole matter was discussed. The determining meeting, however, was held on January 9th between Le Rond and von Simson.¹ They decided

¹ Schücking, *Kommentar*, p. 868. These matters had already been discussed in November, 1919 (Deu, p. 7).

the terms upon which Memel was to be transferred. It was agreed that the transfer of sovereignty to the Allied and Associated Powers should take place *ipso facto* as soon as the Treaty of Versailles went into effect. The Allied and Associated Powers should receive all books and accounts for the area, and with their receipt all German rights should be terminated. The *procès verbaux* were to be signed by the Allied Powers and Germany. All the administrative and judicial officers, whose work had not been hostile to the Allied Powers, were to continue in office for the time being. The provisions for new economic and tax administrations were to be drawn up and given effect after the political adjustments for these areas had been made.¹ At the same time a special arrangement provided that the evacuation by German troops should take place as follows:—

“4. Le territoire de Memel à une date fixée d’après la date d’arrivée des contingents alliés, date qui sera portée à la connaissance de la délégation allemande le 12 janvier au plus tard.”²

These agreements drawn up at Paris gave effect to Article 99 of the Treaty of Versailles.³ They were ratified on the next day.⁴

The second outstanding problem which had to be decided upon was which of the Allied Powers should

¹ Schücking, p. 868.

² *Ibid.*, p. 868. Brockhaus, *Handbuch des Wissens*, Bd. 3, p. 218. Article, “Memel.”

³ *Die Erfüllung des Vertrages von Versailles durch Deutschland bis zum 1 April 1921*, p. 11.

⁴ *Die Leiden des Memelgebiets*, p. 7.

protect Memel during the period of transition. An English quartermaster was sent to make ready for the arrival of the Allied troops, whom everyone expected to be English. But on February 5th it was announced that the French were to occupy Memel. They were to be commanded by General Odry and would arrive about the 12th or the 14th. Lithuania would have liked to have been the occupying power, but since that was impossible, she preferred the English to the French. She feared that Poland would occupy Memel as it had already occupied Vilna with the connivance of the Polophile French commander and troops. This was a psychological factor of continuing importance until as late as January, 1923.

It had been arranged at Paris that the German troops should be out of the way before the Allied troops arrived. On the 9th of February, therefore, they began to leave. On the 12th the evacuation was completed.¹ The first Frenchman arrived on the 13th. General Odry, with the rest of his battalion of 1,800 chausseurs, on the 14th.² On the next day General Odry took over the power from Reichskommissar Lambsdorff.³

Now arose the question of what the new government of Memel should be. Germany had continued the old local institutions while she remained in power, and Count Lambsdorff had made very few changes

¹ Janz, p. 84; Katschinski, *Schicksal*, p. 39. These two works disagree on the date of departure.

² J. Błociszewski, *L'Affaire de Memel*, gives February 17, 1920, but no supporting authority can be found for this statement (p. 146).

³ Katschinski, p. 39; Deu, p. 8; *Leiden*.

during his rule, except to create a Directorate to help him. This Odry in his turn continued temporarily. He gave the city its own coat of arms instead of the German eagle in April, 1920.¹ Most of the Memellanders were apprehensive about the French rule, but their fears proved needless, because Odry formed a representative Directorate whose counsel he took.² It did not take the Memellanders long to accustom themselves to the transition.³ Of course governmental changes would have to be made, and there was some speculation as to what Odry would do.⁴ The answer came when M. Petisné was appointed civil commissioner. The civil reforms were

¹ *Amtsblatt des Memelgebietes*, hereafter designated ABt, 1920, p. 28. It was made the official organ for the Territory on April 20th, 1920 (*ibid.*). This was repeated on March 13th, 1922, and November 2nd, 1925 (*ibid.*, 1925, p. 342).

² ABt, 1920, p. 269, also No. A.124 on August 24th, 1920; Katschinski, p. 40 ff.

³ Langer (p. 392) says that, since the United States did not sign and ratify the Treaty of Versailles and the agreements for the transfer of Memel, Germany is not bound thereby. Friesecke (pp. 19-22) recognizes how impossible such an argument is, and says that the United States consented with her silence; and quoting from List and Fleischmann he concludes, "Qui tacet, consentire videtur, dum loqui potuit ac debuit". Article 440 of the Treaty of Versailles reads, "From the date of this first procès-verbal the Treaty will come into force between the High Contracting Parties who have ratified it. For the determination of all periods of time provided for in the present Treaty, this date will be the date of the coming into force of the Treaty. In all other respects the Treaty will enter into force for each Power at the date of the deposit of its ratification." In view of this article Friesecke's Thesis is untenable. Germany lost Memel in fact and in law. Nothing in Article 99 can be construed to support the views proposed. To follow such a doctrine would lead to the absurdity that every State by refusing to take part in a wrong (even though it were unable to prevent it) consented to the wrong by its silence. This would mean that an international court in a given case might have to render judgment in favour of an injured State against not only the responsible power, but also against all others who said nothing, even though in silence they may have condemned the misdeed.

⁴ Dix, in his *Politische Geographie*, p. 527, gives voice to the view that Memel became a "Französische Kolonie". The French administration does not justify such a description.

to be in his hands,¹ and he set about making them with the help of the Directorate.²

While Petisné's reforms were being prepared the old institutions and laws remained in force. Ragnit and Tilsit were combined into a single Kreis Pogegen on January 27th, 1920. The German employees retained their positions.³ Early in March the Territory was made a Landgerichtsbezirk,⁴ and in May, when starvation threatened, relief was arranged by the French in agreement with Lithuania.⁵ The Memel River became a tariff, pass, export, and import boundary between Germany and the Memel Territory. Danzig and Memel were given a common supreme court,⁶ and postal arrangements were made with Latvia.⁷ The duties of the notaries were changed,⁸ and several other excellent measures were adopted.⁹ On September 21st, 1920, the awaited reorganization of the Government was decreed.¹⁰

¹ AB1, 1920, pp. 200 ff. Date of appointment was July 7th, 1920.

² Friesecke, p. 21, says that Memelland was in the same category with the Saargebiet. The sovereignty over Memelland had been permanently taken from Germany; but in the Saar only possession was contingently lost. A plebiscite was provided for in the Saar; but not in Memelland. While the government of Memel was not a condominium, the Four Powers had a condominium in it. They were the trustees and France acted for them. In only one respect were Memelland and the Saar alike, namely, during the transition period they were held in trust for a subsequent permanent holder. The Directorate in question here consisted of Altenberg, Jahn, Dr. Honig Grabow, Matzies, von Schlenther, Schen, Pastor Reides, and Simonaitis. The last two were added on March 12th (Deu, p. 8).

³ AB1, 1920, pp. 29-31; Janz, p. 82.

⁴ Deu, p. 9.

⁵ *Ibid.*

⁶ AB1, 1920, pp. 307, 339. By agreement of August 30th, 1920, which was never put into effect.

⁷ *Ibid.*, p. 295.

⁸ *Ibid.*, p. 313.

⁹ *Ibid.*, pp. 1-346.

¹⁰ *Ibid.*, pp. 347 ff. No. A.138.

At the head stood the French Commissioner. Under him came a Directorate (*Landesdirektorium*) absorbing the temporary local commission and consisting of six to eight members. Its duties were divided into seven different sections and its members were given diplomatic immunity.¹ The old Directorate was continued in office until December 3rd, 1920, when it was replaced by the new one.² The new Directorate was given the care of police, justice, and finance. Next came a Staatsrat or Council of State, consisting of twenty members, whose duties were chiefly advisory in economic and financial matters. It was both elective and appointive and represented the chief economic and trade groups in Memel. This arrangement was complemented with an Administrative Tribunal (*Verwaltungsgericht*) to settle differences which might arise between different branches of the administration.³ Under the French administrator stood the Burgomeister, who ruled over the commune. An association of the latter constituted an *Amtsbezirk* under an *Amtsvorsteher*. The whole land was divided into three *Kreises*, presided over by a council, or *Landrat*. Odry was Governor-in-Chief, and he was assisted by *Petisné*.⁴ This was the Government which ruled over Memeland from September, 1920, to the *coup* in 1923. The details of its activities do not belong to this discussion.

¹ By decree of November 10th, 1920.

² The new Directorate consisted of Altenberg, Wedel, Matzies, Reidys, and Simonaitis.

³ By decree of November 25th, 1920.

⁴ *Blocizewski*, p. 146; *Friesecke*, p. 22.

In the main the governmental changes were not so drastic as might at first appear. They were adaptations of the previous Prussian rule to Allied trusteeship. Further changes followed immediately. The first were ordered on the 1st of December by the Directorate.¹ Postal,² police,³ prices, elections, renting, and real estate regulations were made more effective than before. Abuses in connection with the employment of women were rectified⁴. A Handwerkskammer was set up for Memelgebiet on February 9th, 1921. On April 4th a Lehrerkammer was created.⁵ Meanwhile on May 1st, 1921, Odry, saying that his work was ended, handed over his office to Petisné and left Memel.⁶ V. P. Wedel was named president of the Directorate as Altenberg resigned.⁷ Then further changes were made in courts of justice, criminal laws,⁸ and railway regulations.⁹ An agreement was signed on March 23rd, 1921, between Odry and Lambsdorff regarding the navigation of the Memel River,¹⁰ and in December, 1921, the Conference of Ambassadors gave Memel the right to draw up commercial treaties with its neighbours.¹¹ It also was given the right to a flag of its own.¹² These were the most important governmental changes which were made under the French rule.

While the governmental reorganization was being effected in the Memel Territory, another drama,

¹ AB1, 1920, p. 436.

² AB1, 1920, p. 505.

³ AB1, 1920, p. 625.

⁴ AB1, 1921, p. 163.

⁵ AB1, 1921, pp. 352-353.

⁶ AB1, 1921, p. 414; Deu, p. 11.

⁷ AB1, 1921, p. 707; Deu, p. 13.

⁸ AB1, 1921, p. 815, September 7th, 1921.

⁹ AB1, 1921, p. 849, September 22nd, 1921.

¹⁰ AB1, 1922, p. 51.

¹¹ Friesecke, p. 24.

¹² See AB1, 1920-1923, for other numerous acts.

which had a powerful influence on the final disposition of Memelland, was being enacted elsewhere. This was the question of Vilna. Briefly the facts were as follows. The Allied efforts to crush Russia had failed in 1919. The French support of Poland in 1920 and the strategy of General Weygand had saved that country as the Russians threatened to sweep into Warsaw. Lithuania, temporarily freed from Poland, entered into agreement with Russia in June and July, 1920. Under this she was to receive Vilna, Gridno, Suwalki and Lida.¹ Fighting about Vilna resulted in the Curson Line laid down in September, 1920. On the 7th of October the Polish-Lithuanian peace of Suwalki momentarily handed Vilna over to Lithuania. On October 12th the Treaty of Riga was signed, ending the hostilities between Russia and Poland.² The newly released Polish troops, led by General Zeligowski, carried out a *coup de force* against Vilna and took it from Lithuania for Poland. This seemingly remote struggle directly involved Memel, because from this moment on the Lithuanians insisted upon playing off the Vilna and Memel settlement against each other.

While governmental reorganization was taking place in Memelland, and while the drama of Vilna was running its course, the question of what was to be done finally with Memelland continued to plague the Conference of Ambassadors. Poland and Lithuania would not yield to each other, and the Brussels Conference was called, April, 1921. Its

¹ Behrendt, p. 24 ff.

² *Ibid.*

purpose was to settle the Vilna dispute,¹ but it was soon discovered that the Memel question could not be excluded from the discussion.

It was at this juncture that Hymans, hoping to achieve a great success, projected the plan which to-day bears his name. He proposed to set up a new State which should consist of Poland, Lithuania, and Memel, each constituting a separate canton in a governmental organization based on the Swiss model.² Lithuania saw that this arrangement would hurt her cause and she refused to accept it. Professor Askenasy said that he thought that the Memel River should be internationalized according to Article 331 of the Treaty of Versailles, but that was as far as he would yield. Thereupon the whole matter was taken to the League of Nations in September, 1921, without any results. France tried to cow Lithuania into submission. She threatened and blustered, and carried on a campaign against Lithuania with her gold francs, but achieved nothing.

Meanwhile opinions as to the best course to be followed by Lithuania were divided. In the midst of these quandaries the Lithuanian Sejm passed a resolution on November 11th, 1921, stating that Memelland had a right to an independent internal rule and administration based upon an economic autonomy.³ Thus Lithuania had reached the point where it could agree in principle to a union with Poland. It seemed almost as though the Hyman

¹ Protocol of March 25th, 1921. ² Schirenberg, p. 67. ³ Borchardt, *supra cit.*

Plan might in spite of everything become a reality. But unwise Polish statesmanship refused to make any concessions and brought itself into sharp conflict with Lithuania at Geneva. The chance slipped through the Polish fingers. Thoroughly disillusioned, the Lithuanian delegates returned only to find that the people at home were adamant in their opposition to any form of union. The English troops had now returned from the Orient and Lithuania counted upon some help from that quarter. The long and short of the matter was that the Hyman proposal was rejected and Memelland's future was left undecided. It was just as well, because had the Hyman Plan been adopted there would have been no co-ordinating culture in the proposed State such as exists in the cantonal Switzerland of to-day.

These events determined two facts in Memelland. One was the French attitude. The second was the reaction of the people of Memel against the much feared Polish aggression. First, as to the French attitude. The French rule in Memel was benevolent in the beginning for a very good reason. France wished Memel to become either a part of Poland or else to come under French protection. In either case she had to win the confidence of the people, and she set about doing so with a conciliatory and seemingly far-sighted rule. She began by allowing most of the Memel leaders to remain in the Territory after February, 1920. Barring a few regulations, such as that of March 14th, 1921, relative to education,¹

¹ It decreed that not German but Lithuanian should be taught where the people were Lithuanian (AB1, 1921, p. 283).

it did not take long to lull the local population into a temporary state of indifference. The educated people the spiritual leaders, and the papers continued to protest, but the people as a whole became indifferent to the French, and remained indifferent until the fear of the Polish aggression awoke them to new activity.¹

The second factor, or the popular reaction against possible Polish aggression, was so completely involved in the local political situation that a digression into the internal affairs of Memelland is necessary at this point. The Deutsch-Litauische Heimatbund was carrying on a campaign of protests, declarations, and meetings against both Poland and Lithuania. The idea of a Free State had captured the imaginations of the people; 54,529 adherents were listed in this cause in the summer of 1921.² But set against these movements was that of the so-called "Greater Lithuanians," who thought of Memel as an unredeemed little Lithuania. They consisted of two groups. The first group thought of Memelland only as a Germanized part of Lithuania, which they wished to bring home. A few of them admitted the German contentions, but insisted that Lithuania needed and should have the harbour and the land. The second thought that since Memel could not be German and that since a Free State was a Utopia constantly menaced by Poland and France, annexation to Lithuania was the least of all evils.³ This movement had only some 10,000 members, but was

¹ Katschinski, p. 40 ff.

² *Ibid.*, p. 45 ff; Wendenburg, pp. 14 ff.

³ Wendenburg, p. 18.

supported by money from abroad and was especially active.¹ Its most active branch was the *Wirtschaftspartei*, founded by Simonaitis with a programme based on the following: (1) to continue present economic, social, and cultural relations; (2) full equality of Germans and Lithuanians in Memelland; (3) the bringing of volunteers to maintain order; (4) to join Memelland to the economic system of Lithuania, but permitting it a position as a Federal State; (5) free use of the harbour by Memelland and Lithuania; (6) to make the Allied Powers fix more certain terms, which terms were to be placed under the guarantee of the League of Nations.²

At the end of the year, 1921, the strongest movement in Memelland was for a Free State.³

The Hyman Plan and its failure awoke all organizations in Memelland to the Polish danger and warned them of the French political game. But it was costly, because the fear that Memelland might be returned to Germany aroused Petisné to intrigue. He was especially disturbed over the founding of the *Arbeitsgemeinschaft für den Freistaat Memelland* on December 1st, 1921. It was the signal for a renewed French activity to offset the danger from Germany. A parliamentary study commission arrived in Memel under the direction of Géo Gerold. At the same time the Conference of Ambassadors sent Count de Monzie to investigate affairs in Memel. Both of these men reported to the Conference of Ambassadors that

¹ Schirenberg, p. 90 ff.

² *Germania*, March 4th, 1922. No. 145, p. 1, "Der Parteikampf im Memelland."

³ Friesecke, p. 28.

complete freedom of the harbour should be granted to both Poland and Lithuania.¹

There was another side to the Monzie and Gerold visits to Memelland. By November, 1922, the Lithuanians in Paris had exhausted all reasons why Memel should be included in Lithuania. Still they had not been able to convince the Conference to give them the Territory. Therefore they changed tactics and contended that the Free State idea was manufactured in Germany. Even that did not convince the Conference. The problem of Memel being therefore no nearer a solution, the Conference again entrusted M. Laroche with the task of working out a new plan. He set to work with a committee and sought information from all parties concerned. The French Commission and that of Count Monzie paid their visits to Memel as a part of this effort to solve the Memel problem.

A good example of how confused the whole question had become may be seen in the negotiations for the recognition of Lithuania, which took place in the summer of 1922.

On July 13th, 1922, the Allies informed Lithuania that they would recognize her provided she would observe the provisions of the Treaty of Versailles with respect of the Niemen River.² On August 4th Lithuania agreed, providing that Memel be "reunited" with Lithuania; but the Conference of

¹ Schirenberg, p. 95.

² *The Question of Memel*, p. 8. There are two collections of documents published by the Lithuanian government. One is the one just given. Hereafter it will be designated as *The Ques*. The other is French and carries the title, *Question de Memel*. It will be referred to as *Ques*.

Ambassadors stated, "The question of the *de jure* recognition of the Lithuanian Government could not be confused with that of the Statute of Memel."¹

On November 6th, 1922, the Lithuanian delegates appeared before the Laroche Commission and gave financial, economic, national, and political reasons why Lithuania should be given the title to Memeland.² On the next day Laroche sent a questionnaire to the Lithuanian delegation asking:

- (1) If Memel were made a Free State what effect would the closing of Lithuanian frontiers have on it?
- (2) What effect would a settlement favouring Lithuania have on the river traffic?
- (3) If Memel were united to Lithuania and a war with Poland followed, how would this affect Memel?
- (4) Have the Lithuanians in mind a special régime for the port?
- (5) What are the Lithuanian reactions to the setting up of a council consisting of a Polish, a Lithuanian, and a Memelland member for the administering of the port?³

After over a month's delay the Lithuanian reply was sent by O. V. Milosz on December 9th. It stated:

- (1) Closing of the Lithuanian borders would mean rapid economic decay.
- (2) Giving Memel to Lithuania would mean a rapid economic, cultural, political, and national growth for Memel.

¹ *Quas.*, pp. 53-54. ² *The Quas.*, p. 8. Date, October 13, 1922.

³ *Quas.*, p. 19.

- (3) The answer to this question was an indictment of Poland for her acts in Vilna.
- (4) Lithuania contemplates a special régime for the port.
- (5) Lithuania does not want a joint administration of the port.¹

These answers were based in part on a scheme for the government of Memel adopted at Kovno by the Lithuanian Constituent Assembly on November 11th, 1921, which read:

“ . . . The Constituent Assembly . . . takes into account . . . the necessity for guaranteeing to all inhabitants of the Republic equality of rights, facilities of all kinds and duties, safeguarding in a satisfactory manner the general interests of the Republic, and protecting as fully as possible the particular interests of the population of the Memel region. In order to assure the protection of the particular interests of the Memel region, a constituent part of the Republic, there shall be recognized to it the right to occupy itself with all local, economic, and administrative questions, questions of social protection and of labour; those concerning the courts, instruction, education and religions; and of a separate autonomous unit organized upon democratic bases. . . .”

Under this plan Memelland was to be an integral part of the Lithuanian Republic. The inhabitants would share in the elections to the Seimas and, while living as a separate canton, they would come under

¹ *Ques.*, p. 52.

the same constitution as the rest of the Republic. The Seimas and the central Government were to have charge of: the armed force; communications, railways, telephones, telegraph, post, ports, and communications by sea and air; public finances, customs, domains, monopolies, excise rights, and State taxes; foreign policy; the establishment of general principles for instruction, especially in the higher schools; the administration of State domains; supervision of the judicial institutions; and "State control". The Seimas and the local Government were to have charge of local administration, organs of urban and rural autonomy, economic questions, trade, industry, fishing, agriculture, and agrarian reform; social protection and labour; institutions, societies, education, religion, and its own schools of higher learning; taxes, for local needs; roads and all means of communication except those already mentioned; all courts except the Supreme Court of Appeal, including the passing of civil and criminal codes, which it had to keep until it could change them with the consent of the regional Seimas; and to elect a regional Seimas on a democratic basis.¹ The Laroche Commission refused to adopt this scheme, when it was first proposed; but it is well to keep it in mind because many of its points were similar to those contained in the present Statute.

The Laroche Commission sent a questionnaire also to Gaigalaitis, who was acting as the representative

¹ *Ques.*, pp. 26-27.

for the Taryba in Paris. The first three questions were identical with those which were presented to Lithuania in its questionnaire. Numbers 4 and 5 were different, however, and read:

- (4) As an independent State deprived of Polish and Lithuanian aid, can Memel prosper?
- (5) What part of the prosperity of the port depends on foreign trade and what part depends on internal trade? The answer should give attention to factors which enter into the balancing of a budget.¹

The answers (signed by Simonaitis) came back on the 21st of November.

- (1) Memel would be paralyzed in trade and commerce, if she were cut off from Lithuania.
- (2) The port in Lithuanian hands must prosper and grow.
- (3) No specific answer was given to this question. It was pointed out that Memel always showed a deficit under Germany.
- (4) Without the support from the hinterland Memel could not exist as an autonomous province.
- (5) The budget would be balanced under Lithuania.²

It is unnecessary to recount further details. The period from January, 1920, to January, 1923, was for Memelland one of uncertainty, indecision, and expectancy. The Allied Powers gave no sign of being able to decide upon a final status for Memelland.

¹ *Ibid.*, p. 40. ² *Ibid.*, p. 40.

CHAPTER V

LITHUANIA FORCES THE HAND OF THE CONFERENCE OF AMBASSADORS

§ 11. *The Coup of January, 1923.* At the close of the year 1922 it was evident that Lithuania was in for a long fight over Memel, if she could not force the hands of the Conference of Ambassadors. The diplomatic situation in January, 1923, gave her the opportunity which she sought. France had the chairmanship of the evenly divided Reparations Committee and thus she was able to cast the deciding vote, which declared Germany in default on reparations payments. French soldiers marched into the Ruhr on January 11th, 1923. All French military strength was concentrated on the occupied areas. England and Italy were anxiously watching the French moves. They had no time to look elsewhere. United States had declared itself as disinterested in European affairs. Poland and Russia were too busy with their own affairs to take a hand in anything which might occur in Memel.

Things, however, began to happen in Memel before the Ruhr occupation. On January 3rd, 1923, Zilius, the Lithuanian representative in Memel, had met Simonaitis in Kovno for a Conference.¹ On

¹ *Quest.*, p. 69.

the 4th of January they decided that a Lithuanian attack should be made on the Territory. A so-called "Committee for the Salvation of Lithuania Minor" was organized at Heydekrug¹ and it became the presumptive head of the revolutionary movement. On the 9th of January it issued a manifesto saying that the German Directorate, headed by Dr. Steputat, was trying to ruin Memelland by fostering the Free State idea and that a debt of over a milliard marks for the costs of the occupying forces had not been paid. The Committee therefore assumed the power, deposed the Directorate, and authorized Simonaitis to take the lead in a new Government to be headed by a Directorate consisting of five members to be named by Simonaitis within the next three days. Martial law was established, and a special court was set up with the power to inflict the death penalty. Officials were told to remain in their offices and the French were asked to be lenient towards the *coup de force* in view of the fact that Clemenceau had already promised the area to Lithuania, which had been prevented from assuming full power through the German machinations. The manifesto was signed by Jankus, Strekys, Lebartas, Saulinskis, and Bruvelaitis². It had been anticipated two days before by a call to arms of all Lithuanian volunteers who wished to aid "the liberation of Memel" by force.³

On the 10th of January a force of "volunteers"

¹ Hatvany and Kellor, *Security against War*, pp. 265-266.

² *Ques.*, pp. 45 ff.

³ *Ibid.*, pp. 47 ff.

in civilian clothes poured into Memelland from Lithuania. Most of them were soldiers or officers from the 2nd, 5th, and 8th infantry and the 1st and 2nd cavalry regiments of the Lithuanian regular army.¹ This so-called "uprising" was in reality an invasion. Its leader was one Budrys. Both France and England protested against what was called the "suggested assistance" of Lithuania. They refused to recognize "The Committee for the Salvation of Memel Territory," and asked Lithuania to use her influence through Zilius to prevent excesses against persons and property.² Galvanauskas replied that Lithuania had done all that she could to prevent armed partisans from going into the area;³ but the Conference of Ambassadors was not satisfied, and Poincaré sent a note on the same day (January 11th) saying that Lithuania had failed to fulfil her promise.⁴ Galvanauskas protested (January 12th) that Lithuania could not help what was happening.⁵

The "volunteers" concentrated their attention first on pogezen. Their objective was the Langszargen railway, which they soon had in complete possession.⁶ The movement swept north and west. Petisné protested weakly as the "volunteers" kept pouring over the borders. On January 13th Poincaré again

¹ Borchardt, p. 238.

² *The Ques.*, p. 48. Signed by Padovni and Dilley.

³ *Ibid.*, p. 49.

⁴ *Ibid.*

⁵ *Ibid.*, p. 50. The note was delivered by de Milosz.

⁶ The military acumen displayed in the various moves, which followed, definitely shows that the movement could not have been a spontaneous uprising of the people of Memelland.

informed Galvanauskas that he did not think that Lithuania was doing all she could to prevent trouble.¹

Meanwhile the new Directorate was formed on the 13th at Heydekrug. It consisted of Simonaitis as president, Reisgys, and Toleikis. Two further members were to be selected as soon as times were normal from the Kaufmannschaft and the Arbeiterschaft of Memel.² The two men who were later appointed were Dr. Gaigalat and Leksas.³ The Lithuanian plans were operating smoothly, for the new Directorate was of the temper to give the *coup de force* all necessary assistance.⁴

By this time the invaders and volunteers had reached Memel City, the main objective of the revolt. They warned Petisné that he must hand over the city or stand responsible for the bloodshed. Petisné made a pretence at resistance in which a few people were killed on both sides;⁵ but an armistice

¹ *The Quest*, p. 50.

² AB1, 1923, p. 25.

³ *Ibid.*, p. 96.

⁴ Gade describes the affair partly as follows: "Flouting the authority of the League of Nations as completely as had Zeligowski in seizing Vilna, the so-called 'Committee for the Welfare of the Territory of Memel' seized the city (*supra cit.*, p. 413).

The League of Nations did not enter the controversy until late in the summer of 1923 when recourse was had to the Council to settle the entanglement into which the negotiations over the Statute had fallen. That was long after the *coup* had occurred. The "authority flouted" belonged to the Peace Conference, the Conference of Ambassadors, and the Allied and Associated Powers. The *coup* in Vilna was carried out by a stronger power against a weaker one. The *coup* in Memel was the act of a small group of men setting the great powers of the world at defiance.

It has been contended that the Memel *coup* was also the act of a stronger power (Lithuania) against a weaker one (the population of the Memel Territory). However, the judgment in this matter must depend in any case upon the definition of the word "power". In this work "Power" is used as a synonym for a State or nation. That Memel can under no circumstance be adjudged.

⁵ Schirenberg makes all the dates one day later, but he is alone in this. See also Blociszewski, pp. 154 ff.

was soon signed and the city came into Lithuanian hands on the 15th of January.

It is ridiculous to think that the French troops, experienced in war, well equipped, and headed by able leaders, were not able to hold the Lithuanians in check. The explanation for the surrender lay in an unwillingness to take action here, when all French efforts were being concentrated in the Ruhr. On the 13th the Conference of Ambassadors decided to send Allied battleships to Memel under the command of Colonel Trousson, the French attaché at Warsaw. There was some thought of sending in a Polish army to assume a mandate over Memel, but the fear of Russia prevented this.¹ Lithuania had calculated well. The audacity of the move was colossal. Poland had taken Vilna from Lithuania; but weak little Lithuania had taken Memel from the Allied and Associated Powers.

On the 15th of January Galvanauskas wrote to Poincaré that the Memel Territory was so upset it was doubtful if Lithuania could do anything to calm it. Nevertheless Galvanauskas was ready to try moral suasion.² The ire of the Conference of Ambassadors grew, as helpless it saw the double game played by the Lithuanians. On the 17th Padovni delivered an Allied Note and telegram to Lithuania saying that there would be no final decision reached about the Memel Territory until quiet and tranquillity were restored with the Allied and Associated Powers once

¹ Schirenberg, pp. 97 ff.

² *The Ques.*, p. 51.

more in control.¹ Orally he placed the responsibility on Lithuania for the death of the French soldiers.²

The Lithuanians played an astute game. Simonaitis wrote from Heydekrug on the same day, addressing the Ministers of Foreign Affairs in Great Britain, France, and Italy, blaming Petisné for all the bloodshed.³ Two days later, when no answer had been forthcoming, he repeated what he had said before, and added that the Allied warships which had been sent into the port were a menace to the peace of the community. He concluded with a demand that the warships, Petisné, and the French troops should all be withdrawn immediately⁴. At the same time the self-named "General Assembly of the Memel Territory", consisting of the "Central Committee of Salvation for the Memel Territory", and many other Lithuanian members posing as representatives of particular communities, or actually representing preponderantly Lithuanian communities, passed a declaration on the 19th demanding: (1) union of Memel with Lithuania; (2) that the Central Committee should achieve the union which should "be juridically recognized" by the Allies; (3) that Lithuania should give her military and financial support in order to achieve the first two aims; (4) that the Central Committee should hereafter be the official representative for Memelland; (5) that the Central Committee should organize the Council for Memel Territory consisting of repre-

¹ *The Ques.*,

² *Ibid* p. 70.

³ *Ibid.*, p. 52.

⁴ *Ibid.*, pp.53-54.

sentatives from the most considerable groups in the Territory.¹

The happenings in Memelland placed the Conference of Ambassadors in an awkward position. They could not use force for two reasons. In the first place, the interested Powers were unwilling to use any troops in Memel because of the Ruhr and Russo-Polish difficulties. In the second place, Lithuania had been half promised the area which she was taking by force. The Allied Note of January 11th² said that the Lithuanian action had caused a very unfavourable impression in Paris. The second protest, dated January 13th, was couched in a little firmer tone as Lithuania was asked to prevent the "volunteers" from going into Memel. Lithuania's reply was that a two-hundred kilometre front which was sparsely policed was hard to guard. The Allied Note of the 17th employed a slight change in tactics and accused Lithuania of promising to prevent the invasion when she did not intend to live up to her promise. Therefore she was told that the Allies held her responsible. Meanwhile the Simonaitis Note placed the blame on Petisné. It was followed by a second and a third of even more emphatic nature.

While the Conference of Ambassadors refused to take any notice of Simonaitis,³ they had to save their faces. They decided to appoint a special investigating committee consisting of Clinchant, Aloisi, and Fry

¹ *The Quest.*, pp. 54-55.

² *Supra cit.* for all notes referred to in this paragraph.

³ *The Quest.*, p. 56.

to inquire into the affairs at Memel. Therefore they asked that the armistice of January 15th be prolonged so that the committee could undertake its work. It arrived on the 26th, informing the Lithuanian Government that its task was: (1) to restore order; (2) to set up a temporary Government after hearing both sides; and, (3) to make a report to the Conference of Ambassadors. In this same communication the Commission said that it would "not recognize any change introduced into the *Statute of Memel*,"¹ although no statute had been drawn up for Memel as yet.² An ultimatum was sent to Simonaitis demanding a reply by ten o'clock. He must inform the Commission whether or not he was willing to resign and demobilize the troops immediately. Smetona, the Lithuanian extraordinary delegate in Memel, answered that Lithuania could not help what was going on there,³ while the central committee under Jankus asked if the ultimatum of the Commission meant that the armistice with the French commander was to be broken by the retirement of Lithuanian troops.⁴ The answer was, no, that the armistice of January 15th still remained in force.⁵ These were significant questions, because the day before, i.e., on the date of the Commission's arrival, Budrys had protested against the presence of French soldiers in mufti in the streets of Memel City and against the Allied warships in the harbour.⁶ The

¹ Italics are the writers.

² This is the second reference of this sort.

³ *The Ques.*, p. 57. January 27th, 1923.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*, p. 58.

Clinchant Commission in the face of necessity had to sacrifice its tactical advantages. The continuance of the armistice meant a continuation of the Lithuanian advantage. Poland, too, had protested. On the 25th the Polish Sejm demanded: (1) the liquidating of the Lithuanian aggression; (2) a permanent solution for Memel; and (3) a scrupulous regard for Polish rights in Memel.¹

Meanwhile the position of the Ambassadors grew worse. Budrys' Note warned the Allies that an effort of the French soldiers in musti to change the situation would be met by force. He declared a state of siege and warned that anyone found in the possession of arms would be shot on the spot.²

Only the peculiar diplomatic and political situation of the world at that particular moment enabled the enactment of this *opéra bouffe*. The Allies were told that their troops were not only a disturbing element in Memel, but that they were buying up the merchandize in such large quantities that they threatened the economic life of the area. Would they please leave?³ Lithuania now knew that the weakness of the Allies, for which she had hoped, was a reality, and the Allies realized that she knew. This brought a change of tactics.

On February 1st⁴ a Note was sent to Lithuania. The Allies said they knew that the *coup de force* had

¹ Schirenberg, pp. 97 ff.

² *Security*, p. 269.

³ *The Quers.*, p. 68.

⁴ Delivered at Kovno on the 2nd Galvanauskas, as Secretary for Foreign Affairs, received it.

been planned in Lithuania and that the Lithuanian Government was responsible. The soldiers, officers, money, arms, and plans had all come from Kovno. Therefore the Conference asked Lithuania to withdraw her troops, dissolve the armed bands, dissolve the Committee for the Salvation of Memel Territory, and dismiss Simonaitis. The Allies would then set up another Government, which would permit them to reach an equitable solution under Article 99 of the Treaty of Versailles. If these conditions were not fulfilled in seven days, the Allies would notify the Council of the League of Nations, which act would in all likelihood lead to a rupture of diplomatic relations between Lithuania and the Allied Powers.¹ The olive branch had been extended. The tone of the Allies was no longer peremptory, but persuasive. But the Lithuanian attitude would not change with one plea, and Simonaitis answered that the Extraordinary Commission instead of trying to smooth out conditions had only succeeded in stirring up trouble, and in inciting the people to disorder.² Therefore, he asked the Allies to have their Commission refrain from such activities.

Evidently a second effort was needed. On the 4th of February another Note of conciliation was sent, and Lithuania was warned that she was being encouraged by Russia and Germany to come to odds with the Allies. Berlin could desire nothing

¹ This is the first mention of the League of Nations in the entire history of the Memel affair.

² Note of the 5th of February (*The Ques.*, p. 60).

better than a state of confusion in the midst of which she could step in and seize Memel. The Lithuanian case would remain weak unless Lithuania officially received the Territory of Memel from the Allied and Associated Powers. The Note read in part, "It is certain that the decision of the Allied and Associated Powers will transfer the sovereignty of Memel to Lithuania with the sole conditions of autonomy and free exercise of river and maritime transit. . . ."¹ This was the first definite and unqualified promise of title to the Territory given to Lithuania. It was a tremendous concession and changed the Lithuanian tone and attitude immediately. The fear of Germany was too real, and the veiled suggestion that the withdrawal of Allied protection would bring Germany in was too great a danger to risk. Besides, the Allies now promised to give the area to Lithuania. It had its effect.

On the 8th of February a Lithuanian Note disclaimed responsibility for what had happened in Memel; but said that since Lithuania wished to see the Allies and Associated Powers restored in Memel, it had issued orders asking the irregulars to return home within the next three weeks.² It added, "as for the money which may have been furnished to the insurgents, the Lithuanian Government finds itself absolutely unable materially to prevent the population of Lithuania and the numerous and rich Lithuanian colonies abroad from sending gifts to

¹ *The Ques.*, pp. 59-60.

² *Ibid.*, p. 61.

their compatriots at Memel". Meanwhile the Conference was bombarded by requests for the union of Memel with Lithuania. The most important of which was that of Simonaitis of February 3rd.¹ The Clinchant Commission reported to the Conference of Ambassadors and that body notified Lithuania on February 11th that it would render a decision soon, probably within the next week.² It would include "a declaration on the part of the Conference according to which the sovereignty over the area is given to Lithuania with the reservation of autonomy and the organization of riverine and maritime transit, after having consulted the Lithuanian Government and the provisional Government, which to this end will send delegates to Paris".

Although the report of the Extraordinary Commission was dated March 6th, 1923, it comes next in the order of this discussion.³ The Commission found that the truth in the Memel Affair had been "deliberately obscured or distorted by Lithuanian diplomacy and propaganda". The ". . . rising of January 10th was conceived, prepared, and carried into effect by the Kovno Government," and the details of the plans were formulated in that city. Budrys was a pseudonym. The leader's real name was Polowinski and he was an officer in the Lithuanian army. "Much of the money came from Lithuanians in America." The Taryba, for which a

¹ He says that thirty-two local committees had voted for a union (*ibid.*, p. 60).

² *Ibid.*, p. 61.

³ *Ibid.*, p. 69.

membership of thirty thousand had been claimed, had never exceeded ten thousand. An honest investigation would have revealed that the "volunteers would not be supported by the majority of the population". Memel had never belonged to the Lithuanians, but the Lithuanians, Latvians, and Prussians belonged to the same racial group, but were not all Lithuanians. The German frontier about Memel had not been changed for five hundred years, and the eastern boundary of Memel was really the boundary between Asia and Europe. It was clear, sharp, and distinct. On this side lay culture, cleanliness, roads, and all the marks of western civilization. On the other were poverty, illiteracy, and mud. Furthermore, it was a religious boundary between Catholicism and Protestantism.

"Many Lithuanians fear . . . annexation will mean military service, heavy taxes, and an increase of 400 per cent in the cost of living (partially due to . . . extremely high customs dues), the disorganization of economic life, and that system of bribery and concessions which is common to all countries formerly included in Russia." The Commission found that a majority of the people wanted a Free State, and in confirmation thereof not a single member of the Taryba could be found who wanted a plebiscite. The Commission smashed the Lithuanian economic argument by showing that before the war only twenty per cent of the lumber trade of Memel came from Lithuania. The pious solicitude for the economic welfare of Memel was belied by

the Lithuania lumber felling, which continued to remain as indiscriminate in 1923 as during the war. The contention that the port of Memel was not profitable was belied by the fact that it had operated profitably for several months on an independent basis. ". . . If by union with Lithuania Memel loses its customs autonomy . . . there is every reason to fear that the port, left to itself, will rapidly become silted up." Lithuania is highly protectionist. Memel is free trade. Lithuania is hopelessly beset by a never-ending mass of red tape. All of these facts militated against a union of Memel with Lithuania.

The Commission said that while it realized that Clemenceau's answer to Brockdorff-Rantzau was a virtual promise to Lithuania, nevertheless the Commission pleaded for a Free State. It said ". . . it is the duty of the Allies as Trustees of the Territory under the Treaty of Versailles, to see that the union so operates as to enable the port to continue to fulfil its important mission as the outlet to the Niemen Basin". The Commission realized that on the 25th of January the Sejm in Kovno had received the enthusiastic request of the Taryba for a union with Lithuania subject to guarantees of legislative, judicial, educational, religious, agrarian, social, public welfare, and domestic autonomy. However, nothing was said about customs, nationality, and officials. "These questions should be dealt with in the Organic Statute of the Territory and in the convention to be concluded with Lithuania in conformity with the

Conference's decisions. . . ." The Commission thought as follows:—

- (1) The transfer of sovereignty did not mean a customs union. The Territory should administer its own customs; but if Lithuania refused to agree, then a part of the customs should be allotted to the area. The Danzig-Polish arrangement might be followed.
- (2) If Lithuanian nationality was to be given, then the inhabitants should be given Lithuanian passports issued by the authorities of Memel.
- (3) Forests and the German public property could only be saved by being given to Memel Territory, because Kovno was lacking in foresight.
- (4) Memel officials should keep their positions, because to allow the Lithuanians to hold official positions in Memel would require a reciprocal right to be granted to the Memellanders to hold office in Lithuania, which would strengthen the German hold on Lithuania.

Then it added significantly, "The Commission has been in contact with the Lithuanians long enough to know that negotiations with them is exceedingly difficult. They are impervious to reason and recognise no argument but force. Obstinate and defiant they pursue their immediate aims with an eagerness which makes them blind to their true interests."

Mr. Fry warned Lithuania that the sovereignty had not yet been transferred and until it was transferred, no innovation might be made in the customs,

monetary, postal and other systems of the territory. No one was to be expelled except for the most serious offences.¹

§ 12. *The Note of February 16th, 1923.* On February 16th the decision of the Conference of Ambassadors was sent in a Note to Lithuania. It read in part as follows:

The British Empire, France, Italy, and Japan, signatories with the United States of America, as the Principal Allied and Associated Powers, of the Treaty of Peace of Versailles on June 28th, 1919; . . .

Decide to transfer to Lithuania the sovereign rights over the Territory of Memel upon the following conditions:

- (1) The Allied Powers renounce in favour of Lithuania all rights and titles over the territory defined in Article 99 of the Treaty of June 28th, 1919;
- (2) The establishment in Memel Territory of an autonomous government and popular representation, together with institutions officially recognising the two languages in common use and respecting the principle of the equality of all inhabitants of whatever race, language or religion, and of equality of treatment as between nationals and foreigners in the exercise of civil rights and in commerce;
- (3) Organization of sea, river, and land transit, due regard being paid to the interests of the Lithuanian and Polish districts for Memel as

¹ He says that thirty-two local committees had voted for a union (*ibid.*, p. 72).

the natural outlet; the port of Memel to be placed under an economic administration which will contribute to its development of a free zone and by the appointment of duly qualified representatives, that the Lithuanian and Polish districts concerned will be given at the port the necessary commercial facilities;

- (4) The Memel Territory to refund, under the guarantee of Lithuania, the expenditure incurred on account of its administration and occupation and not yet recovered;
- (5) All goods and property situated in the Territory and formerly belonging to the German Empire or to other German States to be transferred to Lithuania or to the Territory, provided that Lithuania take over for herself and for the Territory the charges laid down in Articles 254 and 256 of the Treaty of Versailles;
- (6) As soon as Lithuania accepts sovereignty over the Memel Territory upon the foregoing conditions, the Conference of Ambassadors with the assistance of representatives of Lithuania and of the Territory concerned, will draw up at Paris an Organic Statute for the Memel Territory and will conclude a Convention with Lithuania in conformity with the present decision.¹

There could be no mistake that these were the conditions upon which the transfer of the sovereignty would rest. They were the *quid pro quo* upon which Lithuania should receive Memel. They were absolute

¹ *The Quas.*, pp. 62-63.

regulations and not transition regulations. It is logical to conclude that technically, at least, a wilful violation of these conditions—once sovereignty had been transferred—would raise the serious question of whether Lithuania had thereby forfeited sovereignty and her rights in Memel.

Lithuania had expected a better bargain and she found the arrangement unacceptable. Simonaitis resigned, as had been agreed upon. Then in spite of the fact that the Allied conditions had not been accepted, a provisional Lithuanian Government under Gailius was set up. His colleagues were Birsskus, Borchert, Falk, and Pannars;¹ Budrys or Polowinski remained in command of the army, while Smetona was named "Oberster Bevollmächtigter" for Lithuania in the Memel Territory.² From now on Budrys and Smetona signed the official proclamations as Petisné had done before. The Lithuanian occupation might not be recognized in law; but it was a fact. The Conference had to smile and put the best face on matters. On February 19th the Commission and the French troops left Memel.³

Lithuania acknowledged the receipt of the Note on the 19th of February and Galvanauskas said that he would notify the Conference of the delegates selected as soon as the local Government had been consulted.⁴ But nothing happened. On the 7th March Poin-

¹ ABt, 1923, pp. 166 ff. The note of the 16th, the resignation of the old Directorate, and the appointment of the new were announced on March 1st, 1923.

² *Ibid.*

³ Blotizewski, p. 159.

⁴ *The Quest.*, p. 63.

caré instructed the French representative in Kovno to hurry Lithuania, because the Conference had no intention of transferring sovereignty over the Territory except upon the six conditions given in the Note of February 16th.¹ Lithuania, however, objected to Paragraph 3, because it required her to recognize special Polish interests in Memel, which she did not agree existed there.² On the 8th Galvanauskas answered Poincaré in the negative,³ whereupon the Conference of Ambassadors informed Lithuania that it expected a written affirmative answer by the 11th, because "The sovereignty over Memel Territory is not yet transferred and it cannot be outside the conditions of the decision of February 16th." On the following day Poincaré gave the French representative in Kovno instructions to break off diplomatic relations with Lithuania if no answer was forthcoming by the 11th.⁴ He added that it was useless for Galvanauskas to come to Paris before an answer had been given; ". . . it . . . would without doubt constitute a dilatory manœuvre."

On the 10th Lithuania had come to the conclusion that she must yield.⁵ She notified the Allied representative; but P.O. de Peretti della Rocca on March 11th said that the Conference of Ambassadors wanted Galvanauskas' communication in writing, and that they wanted it signed. He said he must have an unqualified acceptance; and furthermore, when the

¹ *The Ques.*, p. 64.

² *League of Nations Documents*, C. 664, M. 295, December 1st; pp. 3-6.

³ *The Ques.*, p. 64.

⁴ *Ibid.*, p. 65.

⁵ *Ibid.*, p. 96.

Lithuanian representative came to Paris, he should be armed with full powers to act.¹ Lithuania seemingly yielded. She agreed, blamed the local government for the delay, and asked for an extension of time in order to prepare her delegates. The latter she was refused.² On analyzing Lithuania's answers the Allies found them evasive, and on the 13th secured her statement that, "By the terms of its communication of March 10th, the Lithuanian Government in no way meant to reserve its *adhesion to the principles* of the decision of February 16th."³ On the 14th the Conference of Ambassadors resolved, "to inform the Lithuanian Government that the Conference considers the declaration of M. Galvanauskas . . . as an acceptance (i.e. unreserved) of the decision of the Conference. . . ."⁴ On the same day Lithuania informed the Allied representative at Kovno that she was sending a delegation to Paris to assist in drawing up a statute for Memel Territory and to conclude a "Convention contemplated in conformity with the decision of February 16th, *the principles of which it accepts without reserve.*"⁵ The Conference considered "that this declaration constituted an acceptance," without reserve of its decision of February 16th.⁶ Lithuania's request for an extension of time was granted, and M. Galvanauskas was instructed to take with him to Paris: the First Mayor of Memel, the chairman of the Chamber of

¹ *The Ques.*, p. 58.

² *Ibid.*, p. 65.

³ *Ibid.*, p. 67. The italics were not used in the note.

⁴ *Ibid.*, p. 68.

⁵ *Ibid.* Again the italics were not used in the communication.

⁶ *Ibid.*

Commerce, and the chairman of the Chamber of Agriculture of Memel.

A close examination of the documents and correspondence of the period between February 16th and March 14th reveal that the two parties pursued their own respective courses. There never was a meeting of minds. Lithuania knew what the Ambassadors wanted and she never intended to yield. The Conference understood the Lithuanian attitude and tried to circumvent it, but hardly succeeded. There is no purpose served in condemning the Conference for slipshod negotiations, but the fact remains that Lithuania accepted only *the principles* of the note of February 16th without reservation. She never accepted the note as a whole. The unilateral note of M. Poincaré, dated March 14th, cannot be construed as a meeting of minds. It did, of course, say that the Conference understood that Lithuania had accepted its point of view.

Russia took this opportunity to notify the Allied and Associated Powers on March 13th that she had already sent a wireless to them on the 22nd of February in which she said that any final disposition of Memel could not leave her out of consideration. Now Tchitcherin repeated that unanswered warning. He contended that the Russian territory was economically affected and "If by the Treaty of Riga Russia and Ukraine have renounced their rights to the territories situated to the west of their new Polish frontiers that in no wise implies that the fate of those territories is indifferent to them".¹

¹ *The Ques.* Again the italics were not used in the communication, p. 73.

CHAPTER VI

DRAFTS AND COUNTER-DRAFTS

§ 13. *The First Draft Convention proposed by the Conference of Ambassadors, March 25th, 1923.* The way was cleared for the final act in the transfer of sovereignty over Memel, namely the framing and acceptance of a Convention and Statute. The Commission headed by Laroche, and created by the Conference of Ambassadors for the purpose of drawing up these instruments, held a sitting in Paris on the 24th of March, 1923. Laroche, Galvanauskas, and Gailius were present. Galvanauskas repeated that Lithuania accepted in principle the conditions of the Note of February 16th, but Laroche took Lithuania to task for failing to withdraw her troops as she had promised, and for what might almost have been termed bad faith. Galvanauskas explained that these misunderstandings resulted from divergencies of opinion. He was then told that the conditions in the Note of February 16th were not "imposed for interested ends; they resulted from historical, geographical, and economic considerations". Moreover, Memel was to remain under the Allied and Associated Powers, and sovereignty over it would not pass until the Convention had been

framed and agreed to. The Powers complained that there was a new Directorate in power in Memel; Lithuanian money had been introduced; the old customs arrangements were suppressed, and Lithuanian customs were put in their place. These acts were *ultra vires*. The pretensions of Lithuania disregarded the fact that it would take a special convention to transfer the railways, post, telegraph, and telephone. All of these aggressions did not give Lithuania a particle better claim to Memel than she had had before she committed them.

Galvanauskas replied that Lithuania received the sovereignty under the Note of February 16th. Concerning other complaints, he added that the Polish consul had been expelled from Memel because there were no Poles in Memel. Laroche, on his side, answered Galvanauskas' arguments and observed that if Lithuania had lost soldiers in the war with Russia, that did not give her any right to claim compensations in Memel. Lithuania should never forget that had Russia remained an Ally, Lithuania would still be a Russian province. Furthermore, there was no purpose served in pretending; a plebiscite in Memeland would never have favoured Lithuania, and she knew it.

The minutes read, "The régime of autonomy, which the Allied Powers wish to see instituted at Memel is justified by the existing circumstances. M. Laroche hoped that it might disappear on the day when the fusion had been realized between the Memel Territory

and Lithuania. The Conference hoped that it would be the next day. But this fusion was not yet effective. It was, therefore, necessary to provide a special régime for the Memel Territory, a régime established not only in the interests of Memel but also in the interests of the neighbouring regions, consequently of Lithuania herself. He had in view only the protection of minorities and certain precautions indispensable for permitting Memel to play the rôle to which her geographical situation called her". These were significant words. Obviously the Commission had no intention of making the autonomy provisions permanent. They intended to incorporate Memelland in Lithuania. Furthermore, in the same sitting Laroche said, ". . . the Powers had preferred . . . to seek stable and serious guarantees for the population".¹

Two days after this sitting Laroche received Galvanauskas' suggestions for an organic statute. They included a Diet based on democratic principles by means of equal, universal, direct, and secret suffrage for both men and women. Its functions were to include legislation on local administration, finance, public institutions, religion, justice, social welfare, and labour. All legislation not specifically ascribed to the Diet was to be exercised by Lithuania; and in no case could the acts of the Diet violate the Lithuanian constitution. Wherever uniformity was necessary, the Lithuanian Seimas would legislate, as for instance in the matters of public welfare,

¹ *The Ques.*, p. 76.

security, and protection of the public order. Lithuania would collect taxes as far as was necessary to prevent possible damage to receipts, or to commercial relations of the Lithuanian State, or from double imposition, or from excessive charges on means of communication and toll establishments, or from fiscal injury from imported goods, or to bounties on exportations, and to the safeguarding of commercial interests. Control over the legislation of the Diet was to be exercised by the Governor appointed by the President of Lithuania. All laws would be presented to him and he might veto them in whole or in part within a fixed period of time. He would be entitled to return the Bills with suggestions to the Diet. Final appeal lay with Lithuania. The Governor would appoint a Directorate to help with administrative functions and to act in an executive capacity. This Directorate would be responsible only to the Diet.¹

§ 14. *The First Draft Convention of the Conference of Ambassadors.* These suggestions had much in common with the broad lines upon which the subsequent proposals and counter-proposals were built. The first definite form was given to them in the "First Draft of Memel Convention with Lithuania, proposed by the Conference", and dated March 25th, 1931.² These draft proposals may be simply summarized as follows.

The Allies transferred the Memel Territory to Lithuania (Art. I), Memelland was to constitute an autonomous area under Lithuanian sovereignty (Art.

¹ *Quer.*, p. 77.

² *Ibid.*, pp. 78 ff.

2), and Lithuania was to be represented in Memel by a resident Commissioner. Foreigners were to be guaranteed protection (Art. 3) while in the area. The local Government was given the power to administer local affairs (Art. 4) and these included the right of creating a customs régime. Commercial treaties were to be jointly negotiated by the Lithuanian and the Memel Governments (Art. 5). The old laws should continue to remain in force and could only be changed when the proposed convention had entered into effect (Art. 6). The old judicial organization was to be continued and judges could be dismissed only by the supreme court of the Territory sitting as a disciplinary tribunal (Art. 7). A bicameral legislature was proposed (Art. 8), the first house to be constituted by direct suffrage (Art. 9), and the second to consist of representatives of the economic interests in the Territory (Art. 10). The sessions were to be simultaneous and convoked by the Directorate (Art. 11). Each body was to set up its own rules and elect its own chairman (Art. 12). Ordinary legislative immunities were conceded to members while performing their duties (Art. 13). The executive power was to be exercised by a Directorate consisting of seven members (Art. 14). The immunities could be altered only by a two-thirds vote of the Chambers; and the Convention itself could only be changed during the next ten years with the consent of the League of Nations (Art. 15). Memel was to send delegates to the Lithuanian Sejm (Art. 16).

Former German citizens were allowed to opt to retain their German citizenship, while all those who did not exercise the right of option became Lithuanian subjects (Articles 17 and 18). Further provisions dealt with the citizenship of those who removed to Lithuania (Art. 19), with that of married women (Art. 21), and with the acquisition of Memellandish citizenship in the future (Art. 20). The age of majority for elections was placed at twenty years (Art. 22). Equality before the law was provided for all citizens (Art. 23) and they were not to be subjected to military service (Art. 24). Equality of languages was prescribed and both Lithuanian and German were to be taught in school (Art. 25). Liberty of meeting, conscience, Press, and instructions were all guaranteed (Art. 26). Private property was declared immune from confiscation (Art. 27); foreigners were to have equal rights with citizens to carry on commerce (Art. 28); and no citizen of Memel could be disturbed because of his political beliefs prior to June, 1914 (Art. 29). Articles 30 to 37 inclusive dealt with the port and river, and do not fall within the scope of this work.

All public properties, with the exceptions of post, railway, telegraph, and telephone services, were to be transferred to Memel subject to reparations payments (Art. 38). Lithuania and Memel were to agree upon the buildings to be allotted for public use (Art. 39); and tariffs of all sorts were to be maintained on the same levels in both Memel and Lithuania (Art. 40). Old officials were to be allowed to retain their

offices (Articles 41-42). Judgments delivered in Lithuanian courts were to be respected in Memel and vice versa (Art. 43), while the citizens of Memel were to possess equal rights with the citizens of Lithuania while in the latter (Art. 44). Memel was to re-imburse the Allies for their occupation (Art. 45), and the dates for the coming elections to the two Chambers were fixed (Art. 46). Lithuania could not alienate her rights in Memelland. If the political status of Lithuania was changed, the League of Nations Council should decide what was to be done with Memelland (Art. 47). All disputes between Memel and Lithuania, which could not be settled amicably, were to be submitted to the League Council for a settlement (Art. 48). Article 49 read, "The provisions of the present Convention are placed under the guarantee of the Council of the League of Nations; subject to special stipulations of the present Convention they may not be altered save with the consent of the said Council and in agreement between the Government of Memel and the Lithuanian Government". Article 50 stated the Convention would go into effect with Lithuanian ratification.¹

A number of comments must be made upon this draft. (1) It laid down the broad outlines for the future régime of Memel. A long series of negotiations followed, but the fundamentals of this draft were seldom altered. (2) The Allies in Article 49 made themselves, through the League of Nations, positive—

¹ *The Quest.*, pp. 77 ff.

and not implied—guarantors for the maintenance of the autonomy of Memel; and (3) Laroche's previous suggestions that the Statute was of a transitory nature were belied by the specific wording of the proposed instrument, for the integrity and permanency of the Statute seemed to be firmly entrenched in Articles 15, 47, 48, and 49. (4) A constitution was to be set up for Memel based on Articles 7 and 13, and it could not be changed except by a two-thirds vote of the Chambers. (5) There can be no question but that this draft meant to secure the inhabitants of Memelland as far as possible in all their, up to January, 1923, respected personal, social, and commercial rights; and it aimed at protecting these people from any possible high handed acts. (6) It continued in a very broad general way the government already in effect, which consisted of a directory, a legislative body composed of representatives of various economic interests in the Territory, and the old German judicial system.¹

Three days later (March 28th, 1923) Poincaré addressed a note to Galvanauskas telling him that the Conference of Ambassadors very seriously disapproved of the most recent acts of the Lithuanian Government in Memelland; and they wished to remind Galvanauskas that sovereignty over Memelland had not passed as yet and would not pass until the Treaty and Convention under discussion were signed and ratified.²

¹ Schirenberg, pp. 113 ff.

² *The Quas.*, p. 84.

Lithuania by this time had become accustomed to the unsupported threats of the Conference of Ambassadors and bided its time without fear. On the 5th of April it declared through the chairman of its delegation, which was taking part in the sittings of the Statute Commission, that it was not prepared to accept the proposed draft and commented upon it. The Commissioner, who Lithuania believed should really be a Governor, would be neither a legislator nor an executive under the proposed scheme. This did not correspond with the Lithuanian idea as to what his function should be. Next, the Allied proposal made Memelland more a State than a territory, and that Lithuania would not tolerate. There were many other weaknesses. There was no saying how many disputes would be carried to the League of Nations, or the Permanent Court of International Justice, or would have to be settled by arbitration because the Memel courts would exceed their jurisdiction. The proposed Statute would make Memel and Lithuania equal and as a result the Lithuanian sovereignty would be impaired. Lithuania had accepted the idea of autonomy without reserve, "But it (was) not in any way whatever obliged to accept, in regard to its relations with this territory, a form of actual union which would deprive the Lithuanian Government of the exercise of part of its sovereign rights. The Lithuanian Government (would) never forget that it (was) a democratic Government, respecting the principles of self-government to the

highest degree, and anxious to live in the best possible relations with the Memel citizens."¹ Comments on the port indicated that Lithuania considered the proposed provisions impossible to accept. Furthermore, Lithuania had only agreed to Articles XIII and XXIII of the Convention of Barcelona, which the Conference of Ambassadors wished to exceed. Finally, Lithuania wished that all German property should be ceded to her and not to Memel. In short, the draft convention was unacceptable.²

§ 15. *Draft Convention proposed by Lithuania, April 11th, 1923.* Clearly the next move was Lithuania's.³ Its delegation presented their counter-proposals on April 11th. The broad outlines of the Allied draft were not changed. Lithuania suggested that the Commissioner should be changed to a Governor appointed by Lithuania. Memel should be represented in the Lithuanian Cabinet by a minister without portfolio. The list of the powers granted to local government were given in greater detail; but while it seemed longer than that contained in the previous draft, it was in actuality narrower. It was proposed to make the lower Chamber, which was elective, the legislative body; while the upper, consisting of the chairmen of the various economic groups, should act as an advisory council. The veto power was to rest with the President of Lithuania. The Directorate should be responsible to the lower or legislative House.

¹ *The Quest*, p. 86-87.

² The analyses of the separate articles below, only an outline pointing out the sources of greatest contention is necessary here.

³ *Ibid.*, pp. 88 ff.

The provisions dealing with option of citizenship were practically unaltered. The most significant changes were proposed in the regulations, dealing with the harbour board, and the control of the river. Instead of having the questions which could not be settled submitted to the Council of the League of Nations, as proposed in the first draft, Lithuania suggested turning them over to the Permanent Court of International Justice for final adjudication. No references were made to the judges and the courts, while the military service restrictions were limited to January 1st, 1933, after which Lithuania could conscript the Memellanders into her army.¹

That such modifications called for considerable discussion the sub-commission for the drafting of the Convention soon learned, and reported the results of its deliberations on April 13th, 1923, in a meeting where Lithuania was represented by Galvanauskas and Sidzikauskas, assisted by Mandelstam, while Memel was represented by Gailius, Grabow, Kraus, von Dresler, and Dr. Mayer.²

§ 16. *Positions of Lithuania and the Powers on April 13th, 1923.* When the sub-commission of the Powers compared the positions of the various parties in its report at this juncture, it found them confused. The Memel delegation thought that the minister without portfolio from Memel to the Lithuanian cabinet should be a citizen of Memel. There were

¹ The analyses, p. 88 ff.

² This commission consisted of Massigli (France), Hudson and Fry (England), Pilotti (Italy), and Miyakoshi (Japan).

differences as to which powers belonged properly in the list of local powers. Considerable controversy raged over the conditions under which foreigners could acquire immovable property in Memel. The Allied Powers refused to agree that the autonomy should be exercised in conformity with the Lithuania constitution (Art. 5). They believed that the autonomy should be real and not a cloak for Lithuanian aggression. Disagreements existed over provisions dealing with the port, financial clauses, the free zone for Poland, and customs regulations. The Allies proposed a new preamble, which included a reference to the letter of the President of the Peace Conference to the German Delegation in Paris on July 18th, 1921. In addition they believed that the local officials should issue passports; that the legislative body should have a three years' term of office; and that the Economic Council should remain in practically unchanged form. But the assembled delegates could not come to any agreement on the president's veto power, or on options, or on local competence. The Allies continued to insist that the Bill of Rights should remain unaltered. This included the provision for the equality of the two languages.

Both the Lithuanian and Memel delegations realized that their drafts needed more thorough study, and they requested a recess which was granted upon the condition that Lithuania should not change the juridical situation in Memel.

§ 17. *The Unilateral Lithuanian Declaration of Autonomy*

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of May 7th, 1923. Meanwhile the Lithuanians were working busily on schemes whereby they might circumvent the Conference of Ambassadors. It was obvious that the greater power lay with the Allied and Associated Powers and that in the long run an intractable Lithuania might lose everything. In hopes of achieving a political *coup* comparable to the physical one of January 9-15th, 1923, Galvanauskas proclaimed on May 7th, 1923, that Lithuania had decided to give Memel its autonomy.¹ He called Memel "Lithuania Minor," as was Lithuanian custom. The conditions of autonomy, which Galvanauskas announced, practically embodied the Lithuanian draft convention with some few modifications.

The Powers were not quite as helpless as they had been in January, 1923. Obviously the autonomy declaration was a plain contradiction of Point 6 of the Note of February 16th, wherein the organic statute and the convention were to be negotiated by the interested parties and not proclaimed by Lithuania. On the 9th of May, Poincaré informed the Allied representatives in Kovno that the Conference of Ambassadors considered the proclamation "as null and void".² On the 12th Piacentini, the Italian representative in Latvia, informed the Lithuanian Chargé d'Affaires in Riga to the same effect.

The draft commission began its labour again. It proposed an elective council, a Directorate consisting of three members, a divided jurisdiction, a common

¹ *Ibid.*, p. 107.

² *The Quest.*, pp. 104 ff.

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supreme court, and a granting of complete representation to Memel everywhere.

On the 15th of June it suggested a modification of the harbour regulations and a ninety-nine years' lease to Poland of an area in Memel port.¹ Naturally Lithuania balked.

In order to forestall any further untoward incidents, the Conference of Ambassadors notified the Universal Postal Union on June 28th that Memel had not been transferred to Lithuania and would not be until the current negotiations had come to an end. Therefore the Lithuanians had no right to take charge of the mails in Memel. This was repeated on the 30th,² and on August 18th a similar notice was sent concerning the railways in Memel.³ Lithuania protested, but to no avail. On the 11th of July she offered further amendments, which were not accepted.

§ 18. *Draft Convention proposed by the Powers, July 13th, 1923.* Events were moving so quickly and chaotically in the Memel affair that the lethargy of the Conference of Ambassadors seemed all the more pronounced. It was not until July 13th that the Conference was ready with a new draft convention.

The Governor was to be the representative of the President of Lithuania. Memel was to continue to have its own special flag in the same way as hitherto. Foreign affairs were to be carried on by Lithuania. The elective Chamber of Representatives, the Economic Council, and the Directorate were all to be

¹ *The Ques.*, p. 109-112. ² *Ibid.*, p. 229; *The Ques.*, p. 143. ³ *Ibid.*, p. 144.

retained. All three were to have the right of initiative in legislation. Judges were to be appointed by the Directorate and the policing was to be in local hands. Memel was to have its own supreme Court and regulate its own inferior court organization and procedure. The harbour regulations were again altered. The public property in Memel was to be transferred to Lithuania, which State would guarantee the costs of occupation and reparations. A part of the customs receipts collected by Lithuania for Memel should be allotted to the latter. Any amendment of the Statute would have to be made by a two-thirds vote of the Chamber of Representatives, and ratified by the Lithuanian Seimas. No amendment would be possible until five years had elapsed after the signing of the Convention. The most interesting change was the introduction of Article 28 (2) at the insistence of Lithuania. It stated that "the programme of instruction of the schools of Memel Territory shall not be inferior to the programme in force in the corresponding schools of the rest of Lithuanian Territory".¹ No one had any idea as to the significance of the apparently harmless provision.

§ 19. *Amendments proposed by Lithuania, July 16th, 1923.* These provisions were not satisfactory to Lithuania, and on July 16th she submitted several amendments to Laroche. Most of these were detailed

¹ *The Ques.*, p. 117. One was not able to understand this innovation which seemed so ridiculous and out of place because the schools in Memel were infinitely superior to the Lithuanian. It was not granted to Memel as an act of graciousness by Lithuania. Recent acts show that a far deeper purpose lay behind this innocent-looking article than was at that time suspected.

suggestions as to phraseology containing some power or right, which Lithuania wished to acquire. But a few changes were more significant than the rest. The Memel flag was to be discarded. The local powers were to be more narrowly circumscribed. Lithuania was to have all residuary powers beyond those specifically ascribed to Memel. Finally, the amendment procedure was to consist of: first, a proposal by the Lithuanian Government; and, second, an acceptance by the League of Nations whenever Articles 31 to 37 were to be changed. As for Articles 2 to 30 the methods of amendment already proposed were acceptable to Lithuania.¹

§ 20. *Answer of the Allied Delegations to the Lithuanian Suggestions, July 16th, 1923.* On the surface Lithuania and the Great Powers were approaching some form of compromise on all questions except those relating to the port. But fundamentally Lithuania had always in her mind the ultimate and complete absorption of Memelland into the Lithuanian State as an integral part thereof. The Allied Powers, spurred on by Poland, were equally insistent upon the continuing autonomy of the area.

The Lithuanian proposed amendments, simple as they were, revealed a vast difference in attitude and purpose separating Lithuania from the Powers. There was nothing to do but to send a reply. Wherever they could, the Powers yielded. But they could not do so on several matters. They asked why

¹ *The Ques.*, pp. 122 ff.

Lithuania proposed to place all residuary powers in her own hands. They rejected the Lithuanian proposals for the government of the port and retained their own original suggestions. Modifications were made in matters relative to citizenship.¹ Some changes in personal rights were also made to the advantage of Lithuania. In matters which reflected any advantage to Poland, the Powers remained adamant. In short the Allied answers revealed that the two opposing parties were no nearer a final solution than before the Lithuanian proposals. They also revealed that Lithuania was carefully playing for time. She had adopted the dilatory tactics pursued by France and the Conference of Ambassadors prior to January, 1923.

§ 21. *Draft Convention proposed by Lithuania, July 23rd, 1923.* Lithuania presented still another draft convention on July 23rd; but scarcely altered any of its positions.² In his note accompanying the draft³ Galvanauskas said that his country noted the insistence upon Polish interests and because of its conciliatory nature Lithuania was willing to yield to the extent that freedom of lumber-rafting on the Niemen would be permitted. This draft differed from previous ones only in one respect. It proposed to set up the Lithuanian court of cassation as a tribunal for Memel. Its articles were longer and

¹ *The Ques.*, pp. 126 ff.

² *Ibid.*, p. 20 ff. *The Ques.*, p. 132, gives the date as July 13th, 1923, but Galvanauskas' accompanying letter is dated July 23rd, 1923.

³ *Ibid.*, p. 131.

more detailed, but its purpose was only to hold fast to all the claims which Lithuania had developed.

The Lithuanians were supported by a request by a Memel delegation headed by Gailius. They sent a letter to Laroche asking the Conference of Ambassadors to adopt the Lithuanian draft. Obviously the delegation was under Lithuanian influence.

Two days after the Lithuanian delegation had presented its last proposal, the Commission, headed by Laroche, reported in despair to the Conference.¹ It said that it was impossible to reach any settlement with the Lithuanians, who insisted upon confusing Memel with Vilna. "The President of the Lithuanian delegation has declared that Lithuania is in a state of war with Poland and that the Lithuanian Government cannot agree to any act which might be interpreted as a recognition even indirect or implicit, of Polish sovereignty over the Vilna district." And the report significantly added, "Its (the Lithuanian Delegation's) object is clearly to obtain by the signature of the Convention a deed legally conferring upon Lithuania the sovereignty over the Territory of Memel. It doubtless imagines that if, subsequently, the clauses of the Convention were not observed by Lithuania, she would, whatever protests might be made or whatever action might be taken, keep the legal right she desires. . . . The Commission has come to the conclusion that it would be very dangerous . . . to countenance this manœuvre." More

¹ July 25th, 1923. (*The Ques.*, pp. 141 ff.)

significant still was the observation that the Memel Commission included only one representative from the Territory of Memel, and he was for the most part silent. Hence the Commission found it impossible to obtain the views of the people of Memelland. The Commission therefore submitted the best plan it could devise under the circumstances, adding, “. . . The Commission has obtained a definite impression that the Lithuanian Government will invoke all possible pretexts in order to avoid the obligations which the Convention imposes upon it. . . .”¹ Therefore the Commission proposed giving Lithuania a month in which to come to terms, and if it still refused, the whole question should be submitted to the Council of the League of Nations for settlement.

This report revealed some important facts. (1) The Lithuanians were recalcitrant because they wished a complete and unqualified title to Memel. (2) The Allies, who had possession of the sovereignty, never intended to grant Lithuania what she wanted. (3) Tactically the negotiators were exactly at the same point as on February 16th, 1923. (4) In view of subsequent developments Lithuania was fighting for the footholds, which would permit her to gradually bring such changes into Memel as to fuse that area into the Lithuanian State. The Allies were equally determined that this should not occur.

§ 22. *Draft Convention and Protocol accompanying the*

¹ July 25th, 1923. (*The Quas.*, pp. 141 ff.)

Letter of August 8th, 1923. The Conference of Ambassadors drew up a five-point resolution in which it incorporated the Laroche Commission's proposal. (1) The draft Convention and Protocol of the Commission were accepted, and (2) these were to be presented to Lithuania, (3) which should have one month in which to sign them without modification or reservation, (4) Poland was to be notified of paragraphs 1, 2, 3; and (5) if Lithuania refused to yield, the matter was to be submitted to the Council of the League of Nations for adjudication.

Generally speaking there were comparatively few changes in the Allied positions. The new draft was somewhat longer. Of course it did not meet with the Lithuanian approval. The weeks slipped by and the month of grace had long passed before the Lithuanians sent the awaited reply to the Conference of Ambassadors on the 21st of September.¹

§ 23. *The Lithuanian Reply of September 21st, 1923.* Galvanauskas' reply was a defence of the Lithuanian position. In an elaborate appendix he tried to show the Ambassadors that Lithuania had conformed to every one of the six points contained in the Allied Note of February 16th, 1923. Point by point he showed why Lithuania could not accept the Allied draft. The chief difficulties had to do with the possession of real property by foreigners in Memel, the freedom of transit on the Niemen River, the economic administration of the port, the reparations

¹ July 25th, 1923. p. 155.

payments to be exacted of Lithuania, the customs régime for Memel, the disposition of the public property which had formerly belonged to Germany, and the qualifications upon the transfer of sovereignty to Germany.¹ (1) Lithuania refused to grant Poland the freedom of transit on the Niemen because the Barcelona Convention was drawn up for peace times. Poland and Lithuania were at war with each other.² (2) Lithuania refused to accept Poland as a participant in the economic supervision of the port. She believed that Memel should have a stronger representation on the harbour board. (3) Not an inch of territory would be leased to Poland. Furthermore, Lithuania considered the appointment of an arbitrator to settle questions which might arise in the harbour, and to which she would be a party, as an infringement upon her sovereignty. (4) The demands of the Allies contained in Article 51 for a reparations payment from Lithuania were too indefinite for acceptance, and until they were more clearly defined they would not be agreed to by Lithuania. (5) Finally Lithuania demanded that she should be given the same right to make assessments and payments in Memel as had been granted to other recipients of territory from the Allied and Associated Powers. Exceptions were recognized in the cases of France, in Alsace and Lorraine, and of Belgium.³

¹ July 25th, 1923. pp. 155 ff.

² Terms are given in Rogge, *Kommentar*, pp. 153 ff.

³ *Ibid.*, also Hatvany and Kellor.

The draft was communicated from Kovno by Padovni. He told the Conference of Ambassadors that Galvanauskas considered the misunderstandings to be due to differences in interpretation of the Note of February 16th, 1923. Galvanauskas was right. There had never been a complete meeting in minds between the Four Powers and Lithuania on the Note of February 16th. How could there be anything but a difference of interpretation now? Added to that, both sides were intent upon carrying their points to the last. Fortunately as it happened, the broad lines for the Statute had been agreed upon from the very beginning, because they grew out of the past Governments in the Memel area. This meant that a substantial nucleus existed around which one could build a good Convention and a proper Statute.

CHAPTER VII

THE APPEAL TO THE COUNCIL OF THE LEAGUE OF NATIONS. THE CONVENTION AND STATUTE

§ 24. *The Matter before the Council of the League of Nations.* Direct negotiations had failed. A third party was necessary in order to achieve results. On the 25th of September the Conference of Ambassadors decided that:—

“Considering that, from these facts results a situation which is of a nature to affect international relations and which consequently threatens to disturb peace and good understanding between the nations, upon which peace depends;

“Considering Article 11 of the Covenant of the League of Nations;¹

“Therefore call the attention of the Council of the League of Nations to the situation created by the attitude of the Lithuanian Government.”²

The information was sent to the Secretary-General of the League of Nations on the 28th of September³ by Poincaré, acting for the Conference of Ambassadors.

¹ “. . . It is also declared to be the friendly right of each member of the League to bring to the attention of the Assembly or of the Council any circumstances whatever affecting international relations which threaten to disturb international peace or the good understanding between nations upon which peace depends” (Treaty of Versailles, Article 11, paragraph 2).

² *Le Statut de Territoire de Memel.* L.N. Doc., C. 159, M. 38, 1924, p. 6.

³ *Ibid.*

Under the same date Lithuania was notified of this action by the Conference of Ambassadors.¹

During the next three months several turns occurred in the Memel affair. On the 4th of October the pro-Lithuanian Memel Directorate, consisting of Gailius, Borchert, Birszkus, Falk, and Pannars, sent a letter to the Conference of Ambassadors supporting the Lithuanian cause.² It was forwarded by Galvanauskas. Shortly thereafter Lithuania unqualifiedly pledged herself to respect the rights of minorities within her territories.³ The interesting part there, the Memellanders to-day contend, was that the German element was, and still is, the preponderant one in Memelland.⁴ Therefore this pledge never applied to them but to the Lithuanians resident in Memel, who are the minority.

On the 24th of November Galvanauskas, as president of the Lithuanian ministry, sent a Memorandum and letter to the Secretary-General of the League asking that its contents be communicated to the members of the Council. It stated that the Lithuanian delegates at the Peace Conference had originally asked for a large strip of East Prussia, but they had been refused. Now, Galvanauskas went on to say, Lithuania wanted to control the stock exchange, credit arrangements, and insurance establishments of Memel. Lithuania did not wish to consult Memel before enacting any legislation which it

¹ *The Ques.*, p. 169.

² O.J.L.N., 1923, p. 154.

³ *Ibid.*, pp. 332-333.

⁴ Behrendt, p. 42.

might see fit to adopt. Under no condition would Lithuania agree to a Polish zone in Memel. Furthermore she had faithfully observed Articles 254 to 256 of the Treaty of Versailles, which internationalized the Niemen River. Finally the Lithuanian Government did not believe that Article 11 of the Covenant was applicable in the present case.¹

This Memorandum was followed by a second in which Galvanauskas challenged the Clinchant, Fry, Aloisi Report. The date was December 11th, 1923.² Galvanauskas stated that the uprisings in Memel had been general, the inhabitants were to a very large per cent Lithuanians, and that the Territory had been badly administered under the Allies. Finally, the Lithuanians were not as barbarous as the Clinchant Commission had made them appear.

On the same day Skirmunt addressed the Council for Poland. He reviewed and repeated the old arguments asking for a Polish outlet to the sea. He said his Government was a conciliatory one, and would willingly yield on many points if only Lithuania would guarantee freedom of navigation on the Niemen.³ He added many other arguments, but none of them indicated any important change in the Polish attitude.

On the 15th of December, 1923, the Council of the League of Nations met in Paris. In spite of all Lithuania's protests the question of Memel was introduced. Lithuania was not a member of the Council,

¹ *Le Statut*, p. 38; also Publ. Of L.N., C. 727, M. 297, 1923, VII.

² *The Ques.*, p. 178.

³ *Ibid.*, p. 180.

but was permitted to send a representative to protect her interests and to plead her cause. Galvanauskas opened the meeting contending that there was no need to invoke Article 11 of the Covenant, as if to bring Lithuania before the bar of justice. Lithuania had not disturbed the peace of the world. Both Hanotaux and Lord Robert Cecil stated that the invoking of Article 11 was no criticism of Lithuania. The Powers were only seeking a solution of the Memel problem and it was as yet impossible to pronounce a decision on the question of whether Article 11 applied or not. To settle the matter Guani was appointed rapporteur to prepare a report to be submitted at a later meeting of the Council.¹

The Secretariat of the League had prepared a short analysis of the draft Convention drawn up by the Conference of Ambassadors and of the Lithuanian counter-proposals. This was read to the Council. It began with the thought that of the one hundred and fifty thousand people in Memelland the "large majority . . . speak the Lithuanian tongue, the German population being centred mainly in Memel City." Then it reviewed the Note of February 16th and stated how the existing dispute had arisen. This was followed by a review of the essential differences between the disputing parties.²

The ninth sitting took place in Paris on Sunday, the 17th. In the morning Guani said that the arguments were so lengthy in the case that he proposed

¹ *Le Statut*, pp. 45-46.

² *Ibid.*, pp. 46-49.

that a Commission should be set up. It should consist of two members chosen by the Commission for Communications and Transit. These two appointees would choose their own chairman.¹ Their work would consist of an examination of the proposals and the counter-proposals of the two parties. Galvanauskas, however, took exception to the report. He wished the resolution to state that the Commission was set up to study the problem and to bring in a report at the next session of the Council in the form of an organic statute based on the Note of February 16th, 1923. An adjournment to the afternoon was declared. It was plain that Galvanauskas feared that the influence of the Conference of Ambassadors would make itself felt on the Council of the League, and he sought in every way to safeguard Lithuanian interests, mostly in the form of reservations.

Before going further a word is necessary about the specific Polish proposals. They demanded a High Commissioner, who should be responsible to the League of Nations. The League was to have a mandate over Memel, which would necessitate only a few modifications in the Government as it had been under Odry. A customs autonomy could be arranged, and special economic provisions would easily care for the major problems of Memel. The harbour board could be made to consist of a Pole, a Memellander, and a Lithuanian. Poland should be granted a free zone in Memel and a ten-year period would

¹ *Le Statut*, p. 49.

have to elapse before any amendment could be made in the Statute.¹ Poland said that an economic union of Memel with Lithuania could only bring suffering to Memel, and in spite of the Barcelona Convention Lithuania continued to keep the Niemen closed. Lastly, Poland quoted figures to show that the Lithuanian commerce which flowed through Memel was much less significant than the Polish commerce which flowed through that same port in normal times.

At the afternoon meeting of the Council on the 17th of December, Skirmunt and Galvanauskas engaged in a spirited debate. Guani made his report,² and after some discussion a resolution was adopted, the conclusion of which read:—

“The Council of the League of Nations . . .

“ . . . Decides that a report shall be submitted to it at its next session by a Committee composed as follows:

“Three members belonging to nations other than those at present holding sovereignty over Memel, two of which members shall be appointed by the Chairman of the Committee for Communications and Transit in consultation with the President of the Council and the member of the Council entrusted with the duties of Rapporteur, and the third, who shall be the Chairman of the Committee, shall be appointed by the Council.”³

This committee was to draw up a draft convention and statute based on the Note of February 16th, 1923.⁴

¹ Annex to Publ., L.N., C. 817, M. 305, 1923, VII.

² Publ. L.N., C. 769 (I), 1923. ³ *Le Statut*, p. 52.

⁴ *Ibid.*, pp. 51-52. At the insistence of Galvanauskas.

On the 9th of February, 1924, the Secretary-General of the League announced that the Commission had been constituted of Norman Davis, ex-Under Secretary of State of the United States, M. Kroeller of the Netherlands, and Mr. Hoernell of Sweden.¹ The commission had decided to begin its studies on the spot and would leave for Memel, expecting to arrive there on the 10th of February. The Commission had already held its first meeting on the 5th, four days before its appointment was announced.²

At this point the Conference of Ambassadors, partly as a matter of prestige and partly as the result of the promptings of France and Poland, found it necessary to challenge some of the Lithuanian statements. On the 4th of February Poincaré wrote to the Secretary-General of the League in the name of the Conference of Ambassadors saying that that body protested against inserting anything about the Note of February 16th, 1923, into the resolution adopted by the Council.³ The only function of the new Commission, according to the view of the Conference of Ambassadors, was to find a solution for the specific problem which arose when Lithuania refused to accept the draft agreement with the Allies. The Conference of Ambassadors therefore included its observations on the Lithuanian memorandum of November 24th and on Galvanauskas' letter of December 11th, 1923.⁴

¹ The chairmanship was a severe problem to decide. France and Poland wished to appoint a neutral friendly to themselves. Mr. Davis was decided upon after considerable discussion (C. 35, M. 19, 1924, VII.)

² C. 116, 1924, VII. ³ C. 32, M. 17, 1924, VII. ⁴ *Ibid*; *Le Statut*, p. 68 ff.

These observations opened with a remarkable statement, namely, “. . . jusqu'à la guerre, les sentiments allemands prédominaient à Memel”.¹ The Conference of Ambassadors in its anxiety to respond to Lithuania gave the lie to M. Clemenceau's answer to Brockdorff-Rantzau. The observations added “. . . mais les premières negotiations qui ont eu lieu à la Conférence des ambassadeurs ont prouvé sur abondamment que les notables ne voyaient pas sans inquiétude l'installation à Memel du régime lituanian”.² This was a serious accusation not only of Lithuania but also of the Powers themselves, who in spite of such considerations permitted the establishment of the new régime in Memel. The rest of the Note analyzed the differences between the Ambassadors and Lithuania,³ showing that the Lithuanians were very difficult to deal with.

Meanwhile Galvanauskas and the Lithuanians were getting along very well with the Davis Commission, and they waited three weeks before replying to the Ambassadors' charges. This reply contained only generalities.⁴

On March 10th the Polish Government sent a note to the secretary of the Council⁵ saying that Poland protested against the draft text of the Davis Commission, because it left Poland entirely out of consideration.

The written report of the Davis Commission told of the developments in Memel affairs between December 17th, 1923, and March 12th, 1924, the

¹ C. p. 68.

² *Ibid.*, p. 69.

³ *Ibid.*, 108, M. 31, 1924, VII.

⁴ *Ibid.*

⁵ C. 121, 1924, VII.

date on which the Commission reported to the Council.¹ Paragraph 3 read in part:

“The Allied and Associated Powers had separated the Memel district from the German Empire for a definite purpose—that the port of Memel might serve as an outlet to Lithuania and all the territory of the Niemen basin—and therefore there was a specific moral responsibility on the Allied Powers to see that it was used for this purpose. . . .”

The Note of February 16th, 1923, was the basis for the Commission's recommendations. The report went on to say, that having been notified of his appointment, and having accepted it, Mr. Davis came to Geneva on January, 28th 1924, to begin his duties. On February 5th, the first session of the Commission had taken place.² It had been agreed there that the Commission should go to Memel, which was visited on the 11th. It heard all those who wished to come to the Rathaus between the 11th and the 13th of February. On the 13th the Commission left for Kovno, where it remained until the 15th, and then left for Warsaw. Here it remained for two more days and was back in Geneva on the 19th, having returned with the Lithuanian delegation.

In general the report said that the question was super-charged with passion. After hearing the various sides the Commission had decided to draw up a short general convention to regulate the relations between

¹ C. 116, 1924, VII.

² The verbatim report in *Le Statut*, p. 89.

Lithuania and the Allied and Associated Powers. Annexes were added to this in order to cover the autonomous government of the Territory, the administration of the port, and the freedom of transit. The Convention itself was composed of two parts; first, the Convention proper, and second, the three annexes.

This report was presented at the 28th session of the Council of the League of Nations, held in Paris on the 12th of March.¹ Mr. Davis said that an agreement had been reached with Lithuania on the matters of the port, the navigation of the Memel River, and the supervisory Commission. Mr. Davis added that his Commission had avoided as far as possible any reference to the question of the transfer of sovereignty. They had tried to separate the Vilna and the Memel questions and so had received the promise that the Niemen River would be opened to freedom of traffic without any political obstacles being placed in the way. Mr. Davis added that his Commission was not satisfied with the draft, but it was the best they could do. "There seems to be no escape from the conclusion that the present intolerable situation in the territories involved must not continue longer; that the proposed settlement would bring an immediate and important improvement; and that a failure to accept it would result in a continued stagnation in the port of Memel, discontent, uncertainty and hardship among the people in the Territory of Memel; paralysis of commerce on the River Niemen;

¹ *Le Statut*, pp. 77 ff.

and a more threatening political situation which may get beyond control. . . ."¹

Briefly summarized the Davis suggestions meant that Poland would have to give up all ideas of immediate freedom of transit on land, sea, and river in Memel. She would have no member on the harbour board. She would obtain no sites in Memel for her commerce, nor was there any promise of an immediate re-establishment of commerce and trade between Poland and Memel. Lithuania on her side had to pay reparations, accept a member of the League of Nations on the harbour board, and open the Niemen River to the districts in Poland claimed by Lithuania. The instruments were to go into effect as soon as ratified. "The transfer of sovereignty and creation of clear title is, however, automatically reserved until the Treaty has been consummated by ratification of all parties."² All infractions of the instruments were to be reported to the Council of the League of Nations.

It is not hard to imagine what the Polish views of this instrument were. Skirmunt, Poland's representative, arose and pointed out that the new plan: (1) did not open any river, sea, and railway passage between Poland and Memel. (2) The Council of the port was now advisory and not supervisory. (3) The commercial interests of Poland were injured, and (4) certain guarantees had been violated. The most injurious consequences would result from the

¹ *Le Statut*, p. 79.

² L.N.D., C. 159, M. 39, 1924 VII, p. 86.

changes in Articles 38, 42, and 47 of the accord of August 6th, 1923. The free zone had been eliminated and Poland was deprived of a representative on the harbour board.

Davis answered that he wished to hear the Lithuanian side before answering Skirmunt. Besides, he added, Poland had never been a party to any of the pacts preceding the proposed draft convention and therefore really had no equitable rights; but he (Skirmunt) might be sure that if Poland had any real interest in Memel affairs it would be properly safeguarded.

On the 14th of March the Council met again for its eighth sitting of the twenty-eighth session in Geneva.¹ Davis explained Article 4 of the Convention, showing that under it Lithuania was obliged to make payments when an agreement had been reached on the amount and method of payment. He said he did not blame Lithuania for not wishing to pay until she knew the exact amount and time. A question arose as to the necessity of exchanging letters before signing the Convention. Galvanauskas did not consider it to be necessary. Mr. Davis proposed adding Article 18 in answer to Mr. Hanotaux's question whether the Statute and Convention were transitory in character. Mr. Davis said they were not. Skirmunt protested again, but was silenced by Galvanauskas. The committee's report was accepted by France, Italy, Japan, and Great Britain.² The Commission was duly thanked and discharged.

¹ L.N.D. pp. 92 ff.

² L. N. Publ., C. 116, 1924, VII.

Three factors contributed to the Lithuanian success: (1) England refused to allow force to be used against Lithuania; (2) the Allies could not very well use arms to prevent the fulfilment of their own promises; and (3) the Lithuanian currency was stronger than the Polish and German currencies; which fact gave for the moment financial and economic stability to Lithuanian rule.¹ The last steps were now taken in the adoption of the Convention. Lord Parmoor came to the Conference of Ambassadors with full powers to accept the Convention for England. France was at first obstructionist, but eventually accepted the arrangements. The Conference of Ambassadors finally adopted the Council of the Convention and Statute. On May 17th, 1924, the League's recommendation,² namely to adopt the Kovno cabinet and Sejm approved the Convention and Statute, and on the 30th of July the Lithuanian Sejm ratified them. On August 25th ratifications were exchanged in Paris, and on October 4th the instruments were registered with the League of Nations. These were the steps by which the present Statute came into being.

§ 26. *The Statute.* While the Statute will be taken up article by article, it is essential to view it as a whole. The instruments accepted by the Powers were four. They consisted of a "Draft Convention Concerning the Transfer of the Memel Territory";³ and its three annexes: Annex I, the "Statute of the Memel Terri-

¹ Hatvany and Kellor, *supra cit.*, give a very lucid review of these three points.

² Schirenborg, p. 120. ³ *Le Statut*, pp. 98-103.

tory";¹ Annex II dealing with the administration of the "Port of Memel";² and Annex III on "Transit Traffic".³

The subject of this work is Annex I, the Statute. It was an integral part of the Convention (Art. 2) as were the other two Annexes (Art. 3). It required Lithuania to pass a law incorporating its provisions into the Lithuanian legal system, and it was to be the Constitution of Memel Territory. Its provisions prescribed the following.

Memel Territory was to be autonomous in legislative, judicial, administrative, and financial affairs, subject to the provisions of the Statute (Art. 2). The legislative branch was to be a Diet (Art. 10) whose deputies were to be chosen according to Lithuanian law (Art. 3). Lithuania was to conduct the foreign affairs for Memel (Art. 4), while Article 5 listed under fifteen headings the subjects which were to come within its competence if it wished to do so (Art. 5). In general the local authorities had to exercise their powers in accordance with the Lithuanian Constitution (Art. 6), and all powers not granted to the local Government were specified as belonging to Lithuania (Art. 7). Provisions were laid down governing citizenship in Memel (Articles 8 and 9).

The Chamber of Representatives was to be elective (Art. 10), its members holding office for three years (Art. 11). Its adjournment and meetings were provided for (Art. 12) and it was given the right

¹ *Le Statut*, pp. 102-113. ² *Ibid.*, pp. 112-115. ³ *Ibid.*, pp. 116-117.

to draw up its own rules of procedure (Art. 13). The existing Economic Council was to continue as an advisory board until dissolved by the Diet (Art. 14). Usual legislative immunities were accorded to both Chambers while in the pursuit of their offices (Art. 15). The Governor was granted the right of veto over legislation on certain specified grounds (Art. 16).

The executive function was to be exercised by a Directorate consisting of not more than five members, the president of which was to be appointed by the Governor. This body was responsible to the Diet (Art. 17). It had the right to initiate legislation (Art. 18). Elections to communal and district assemblies were to be regulated by the laws of Memel Territory (Art. 19). Local order was subject to local police while frontier, customs, and railway police belonged to Lithuania (Art. 20). Sentences pronounced by the Memel courts were to be respected in Lithuania and *vice versa* (Art. 21). The Supreme Court of Lithuania was also to be the Supreme Court of Memel with a special division consisting of three Memel judges to deal with Memel affairs (Art. 24). The judges of all inferior courts of Memelland were to be appointed by the Directorate (Articles 22 and 23).

The curriculum of the public schools was not to be of a lower standard than that in the schools of the same standing in the other parts of the Lithuanian territory (Art. 25). The Minorities Treaty provisions were to be applicable in Memel (Art. 26), and the Lithuanian and German languages were to be equally

official languages in Memel (Art. 27). Officials and employees were to be allowed to remain at their posts after the adoption of the Statute (Articles 28 and 29), but these rights could not be invoked if the officials opted to retain their German nationality (Art. 30). Up to January 1st, 1930, the educational authorities of Memel had the right to employ teachers of alien nationality as far as was necessary (Art. 31). Private property was to be respected (Art. 32), while freedom of meeting, Press, conscience and teaching were all to be guaranteed (Art. 33). The Directorate was to issue Lithuanian passports to Memellanders (Art. 34).

The Memel and Lithuanian Governments were to negotiate the share of the customs, taxes, and duties to be allotted to Memel (Art. 35). The tariffs applied to railways, ships, telegraph and telephone could not be higher in Memelland than in Lithuania itself (Art. 36).

It was provided that the first elections to the Diet were to take place six weeks from the date the Statute went into force (Art. 37). Finally the method of amendment was laid down in Article 38. It was provided that no change could be made in the Statute until three years had elapsed from the time of ratification.

Such, in outline, were the provisions of the Statute. They did not on the whole vary to any tremendous degree from the original terms which were proposed in the first draft. However, very significant changes had been made, as will later be seen.

PART III
THE EVOLUTION OF EACH SEPARATE
ARTICLE OF THE STATUTE

CHAPTER VIII

GENERAL ARTICLES

HAVING now examined the draft Convention in their chronological development, there remains to be reviewed the separate Articles of the Statute in the same manner. In view of the chronological order thus far followed these articles will be briefly traced from their origin to their final form. Since the Statute is an integral part of the Convention that, too, will be included, however, Appendices II and III; lying outside the scope of this work, will be omitted.

§ 26. *The Transferring Article.* Article I of the first draft, namely that of March 25th, 1923, stated that the Four Powers transferred to Lithuania, "subject to the conditions hereafter stipulated all the rights which they hold from Germany by virtue of Article 99 of the Treaty of Versailles. . . ." over the Territory of Memel. The Lithuanians did not approve of this text and suggested that they should be given "all rights and titles" instead of merely the rights (draft of April 11th, 1923; Art. I). When the Draft Commission of the Powers had examined the Lithuanian proposal, they not only decided to accept it (April 13th, 1923), but also decided to make further correction by stating that they granted the

Territory to Lithuania as it was described in Article 28 of the Treaty of Versailles, "and as it results particularly from the letter addressed on July 18th, 1921, by the President of the Conference of Ambassadors to the German Embassy at Paris" . . . But on July 13th, the Ambassadors returned to their original text and deleted "and titles" after "all the rights". The Lithuanians demanded its re-incorporation into the draft Convention, to which the Allied Powers consented (July 16th). Article 1, of the Convention was thus made to read:

"The British Empire, France, Italy, and Japan, signatories with the United States of America as the Principal Allied and Associated Powers to the Treaty of Versailles transfer to Lithuania, subject to the conditions contained in this Convention, all the rights and titles ceded to them by Germany in virtue of Article 99 of the Treaty of Versailles over the Territory lying between the Baltic Sea, the north-eastern frontier of East Prussia (as described in Article 28 of said Treaty, and as defined in particular by the letter sent on July 18th, 1921, by the President of the Conference of Ambassadors of the Allied Government at Paris to the German Embassy at Paris), and the former frontier between Germany and Russia, the said territory being described in the present Convention as the Memel Territory."

§ 27. *No Alienation of Sovereignty without Consent of High Contracting Parties.* The Allied Powers prescribed in their first draft that Lithuania should not alienate

any of the rights which she would receive under the Convention (Art. 47). If the political status of Lithuania should change, the Council of the League of Nations upon the demand of one of the signatory powers would have the right to decide what should be done with Memelland. Lithuania took a firm stand against this Article and presented a substitute draft simply saying that Lithuania would not alienate any of the rights which it had received under the "present Convention" (Art. 46 of April 11th). The Allied agreed conditionally on April 13th, saying that they would take up paragraph 2 of Article 47 of the draft of March 25th at a later date. When the new article appeared, it was much shorter and simply stated that sovereignty over Memel could not be alienated without the consent of the High Contracting Parties (Art. 46 of draft of July 13th).

After a series of word changes the final draft appeared as Article 15 of the Convention stating that, the

"Rights of Sovereignty over the Memel Territory or the exercise of such rights may not be transferred without the consent of the High Contracting Parties."

§ 28. *The Convention and Statute go into Force.* Article 50 of the draft of March 25th stated that the Convention should go into force when Lithuania ratified it. No important change in this statement occurred until July 13th when it was provided that ratifications of the Convention should take place at Paris according to a prescribed form. In addition a protocol to

be signed at the same time as the Convention was attached (Art. 51). Later the Allied Powers wished to include a statement that in spite of Lithuanian ratification the Convention should not go into effect before Lithuania had opened traffic on the Niemen in accordance with the terms of the Treaty of Versailles (July 16th, Art. 51). Article 64 of the draft of August 8th elaborated even further upon the form for ratification and extended the meaning of the protocol. Lithuania was willing to accept the suggested method of ratification but refused to agree to the protocol (September 21st, Art. 51).

When the Davis Commission reported, the protocol had disappeared. Only the slightest trace of it might have been seen in the preamble to the Statute; but in terms which had already been stated in previous drafts and in other connections. Article 18 of the Convention read:—

“The present Convention, of which the French and English texts are both authentic, shall be ratified and the ratifications shall be deposited at Paris. It shall come into force as soon as the ratifications have been deposited.

“It shall be registered with the Secretariat of the League of Nations as soon as it has been ratified by Lithuania.

“In faith whereof the undersigned have signed the present Convention.

“Done at . . . on . . . in . . . a single copy,

which will remain deposited in the archives of the French Republic and of which authenticated copies will be transmitted to each of the Signatory Powers and to the Secretary-General of the League of Nations."

This Article presents an interesting problem which has never been settled. It provides that the Convention shall go into effect with the deposit of ratifications. But Article 18 of the Covenant of the League says that "no such treaty or international engagement shall be binding until so registered." *Query.* When did the Convention and Statute go into effect—at the time of deposit of ratification or at the time of registration?

§ 29. *Public Property and the Payment of the Costs of Occupation.* It was especially difficult to agree upon the disposition of the public property which belonged to Germany in Memel. Article 38 of the Allied draft transferred all such property to Memel Territory except for the State railways and properties attributed to the postal, telegraph, and telephone services. These latter were to be transferred to Lithuania. In return both Memel Territory and Lithuania had to assume the reparations obligations contemplated in Articles 264 to 265 of the Versailles Peace Treaty (Art. 38 of March 25th). These arrangements did not please Lithuania and it demanded in its draft of April 11th that all such properties without exception should be transferred to Lithuania, which would in

its turn guarantee the reparations payments. The Lithuania draft added that, "The charges which arise from these articles shall be covered by the revenues of the autonomous Territory in proportion of the property attributed by the Convention to the autonomous Territory of Memel". The quoted sentence would have meant exactly nothing because the Lithuanian proposals contemplated giving Memel Territory no property. However, the Allied delegations (draft of April 13th, Art. 38) stated that they would present a special proposal later for Articles 38 and 45 of the Lithuanian draft.

From this point on both Articles 38 and 45 appeared in decidedly altered forms. Therefore a reference to Article 45 is necessary before proceeding. Article 45 of the March 25th draft stated that Lithuania would guarantee the payment by Memel Territory of the costs of the Allied occupation and "delimitation". The second paragraph was not communicated but the Allied delegations stated that they would subsequently communicate the terms upon which the reimbursements should take place. These terms set up Memel Territory as a unit with international responsibilities. Naturally the Lithuanians rejected all Memel responsibilities and demanded that Lithuania should be made not only the guarantor for the payment in question, but also the payer (Art. 45 of the April 11th draft). The Allied Powers agreed but were at a loss momentarily as to the amount and mode of payment. Therefore, the

Convention of April 13th omitted the second part of the Article dealing with the conditions of payment. It was at this juncture that the Allied delegations decided to treat with Articles 38 and 45 at the same time, and to present an entirely different organization of the texts for Lithuanian consideration.

The new texts appeared on July 13th, as a new Article 38, divided into five separate parts. Each of these parts ultimately became a separate Article of the Convention, except for the last one which disappeared. Therefore each part will be traced separately.

The first part of the new Article 38 of the Allied draft of July 13th stated that public properties in Memel which on January 10th, 1920, belonged to the German Government were to be transferred to the Republic of Lithuania. All of this property with the exception of railways, posts, telephone, telegraph and customs houses should be retroceded by Lithuania to the Memel Government under an agreement which should be drawn up between the two. Lithuania must accept the responsibilities under Article 256, paragraph 2, of the Treaty of Versailles for the Territory of Memel. The Lithuanian counter draft objected to the use of the words "Memel Government", demanding that "Memel authorities" should be substituted for them; but the Allied delegations refused to yield at first (Drafts of July 13th and 16th). Lithuanian perseverance won, however, for in the draft of August 8th the desired substitution of "authorities" for "government" took place (Art. 49).

As Article 5 of the Convention the terms were formulated as follows:—

“Subject to the provisions of Articles 6 and 7, property situated in the Memel Territory and belonging on January 10th, 1920, to the German Empire or a German State, as defined in Article 256, paragraph 2, of the Treaty of Versailles, shall be transferred to the Lithuanian Republic.

“Such property, with the exceptions of railways, posts, telegraphs, and telephones, customs houses, and property constituting the port and its equipment, shall be transferred by the Lithuanian Government to the authorities of the Memel Territory subject always to the provisions of Article 7.

“An agreement shall be concluded between Lithuania and the authorities of the Memel Territory in regard to the transfer of the property specified in the previous paragraph on the basis of the charges assumed by Lithuania and Article 6 in respect of such property”. The exception of the port property was a very important alteration of terms by the Davis Commission, and it had no precedence in any of the previous drafts.

The second part of Article 38 (Article 38 [2]) of the Allied draft of July 13th stated that Lithuania accepted the charge of meeting the obligations under Articles 254 to 256 of the Treaty of Versailles as far as they applied to the Memel Territory. The Reparations Commission was to fix the amount of

the payments to be made and the Allied delegations reserved the final wording of this Article until the Reparations Commission had reported its decision. Lithuania wished to insert that the amounts of the payments to be required should take "into account the losses and damages endured by Lithuania during the war of 1914-1918" (drafts of July 13th and 16th). The Allies considered this to be an introduction of a new element, and rejected it (July 16th) because "The claims which Lithuania may have to formulate against Germany have not to be formulated *à propos* of the cession of the Memel Territory". The draft of August 8th found the two sides as far as ever from agreement (Art. 50). On the 21st of September Lithuania tried to circumvent the Allied Powers by recommending an amendment giving her the right to the same treatment in property evaluation and payments in Memel as other Powers were granted elsewhere upon receiving German Territory, with the exceptions of France and Belgium.

The Davis Commission did not agree entirely with Lithuania in this respect. The new Article 6 of the Convention read:—

"Lithuania agrees to assume, both as regards herself and as regards the Memel Territory, the obligations incurred by the Powers to which German Territory is ceded, under the provisions of Articles 254 and 256 of the Treaty of Versailles of June 28th, 1919, and to ensure the application

of the said provisions under conditions to be *determined by the Reparation Commission in conformity with the stipulations of Part VIII of the Treaty of Versailles.*"

The third part of Article 38 (Article 38 [3]) of the Allied draft of July 13th provided that Lithuania should pay the costs of the Allied occupation and half of the costs for the delimitation of the territory within a year from the notification of the amount. Naturally the Lithuanians wanted to know how much they would have to pay before signing such an Article, but the Allies "maintained their drafting" (July 13th and 16th drafts). On August 8th the Allied Powers continued to insist upon their original draft (Art. 51). The Lithuanians, however, proposed that the payments should be fixed by a special Commission on which they were to have delegates, which Commission should take into account Lithuania's capacity to pay.

The Davis Commission openly stated its sympathy with the Lithuanian cause and recommended the following Article 4 of the Convention, which was accepted:—

"The expenses of occupation, administration and half the expenses of delimitation of the Territory shall be repaid by the Lithuanian Republic to the Powers which have advanced them.

"The exact amount of such expenses properly chargeable to Lithuania, as well as the methods and periods of payment, shall be determined by a

Commission composed of one representative appointed by the Powers and one by Lithuania. In case such Commission cannot reach an agreement, it shall apply to the Chairman of the Economic and Financial Committee of the League of Nations to designate an arbitrator."

The fourth part of Article 38 stipulated that the Allies were to hold a first mortgage on the property in question to guarantee the payments which Lithuania was to make. At first Lithuania demanded that this Article be struck out (July 16th), but the Allies refused (Art. 52 of the draft of August 8th). And on September 21st Lithuania accepted the Allied terms. These found their way into the final Convention as Article 7, which reads:—

"To ensure payment for the property transferred to it in virtue of Article 5, the Lithuanian Government consents on its own behalf and on that of the Memel Territory to an immediate first mortgage in favour of the Reparations Commission on the property and premises specified in that Article."

The fifth and final part of Article 38 set aside the customs of Lithuania first for the expenses contemplated in Article 38 (3) "and the balance for the fulfilment of the obligations assumed by Lithuania in terms of Article 38 (2)". The Lithuanian demand that this Article be struck out seemed to have been successful, because it did not appear in the draft of July 16th. But it was revived in a slightly different

form as Article 53 of the Allied draft of August 8th. The Lithuanians repeated their former demand for its deletion (Art. 53 of the draft of September 21st), which the Davis Commission heeded, and all trace of it disappeared from the final Convention and Statute.

§ 30. *Retention of Officials and Employees.* One of the most serious questions was what to do with officials and employees of railways, posts, telephone, and telegraph services when the Convention and Statute should go into effect. The Allied Powers proposed that they should be retained at their posts (Art. 41 of March 25th). Lithuania had no objections to this provided they were Memel citizens (Art. 41 of April 11th). The Allies agreed, but insisted that the employees should have been citizens of Memel on January 1st, 1923, to which amendment Lithuania attached a reservation. By July 13th a substantial agreement had been reached. Instead of listing the services, as was planned originally, the right to continue in employment was extended to "officials and employees of the public services functioning in the Memel Territory". It was added that the stipulations might not be invoked by those who had already opted for Germany. Finally the officials and employees in question were to have the same advantages and be subject to the same rules as the employees and officials of the rest of Lithuania.

The Davis Commission changed the date in question and some of the wording. Article 28 of the Statute read:—

“The Lithuanian Government will recognize the acquired rights of the officials and employees in the public services who are under its own authority but who perform their duties in the Memel Territory, and will retain those who possess the status of citizens of the Memel Territory and who were in the service on January 1st, 1924.

“The officials and employees in the service of the Lithuanian administration who are citizens of the Memel Territory shall be subject to the same rules and shall enjoy the same privileges as the officials and employees of the other parts of Lithuania.”

The Government of Memel was forced by the Allied Powers to recognize the rights acquired by the officials and employees on duty in the territory on January 1st, 1923 (March 25th, Art. 42). It was further provided that in the future officials and employees should be recruited as far as possible from among the citizens of the Territory. However, here again Lithuania objected to making Memel responsible for any international obligation and succeeded in making the Allied Powers change the statement of the Article so that Lithuania guaranteed that the Memel authorities would observe the provisions of the Article in question (July 13th draft, Art. 42). It is therefore important to notice that the Davis Commission refused to agree with Lithuania and returned to the original draft which shifted the

responsibility to Memel. Article 29 of the Statute reads:—

“The authorities of the Memel Territory shall recognize that acquired rights of all the officials and employees in the Memel Territory on January 1st, 1923.

“In future the officials and employees in the service of the Territory shall be recruited as far as possible from among the citizens of the Territory.”

Article 30 of the Statute added:—

“The provisions of Articles 28 and 29 may not be invoked by officials who have availed themselves of their right to opt in favour of German nationality.”

31. *Changing of the Laws in Force before January 1st, 1923.* Article 6 of the draft of March 25th stated that the laws in force in Memelland prior to January 1st, 1923, could only be changed after the legislative, executive, and judicial organs contemplated in the Convention had entered upon their duties. Lithuania made the counter-proposal that all laws which had been introduced since January 1st should be submitted for approval to the Chamber of Representatives (Article 50 of April 11th draft), thus making quite a different procedure of the matter. It was not accepted, and from this period on this Article disappeared from all subsequent drafts. A new Article was added saying that the judicial, legislative, and

executive powers of the Territory had to be exercised in conformity with the Constitution of Lithuania (Art. 5).

On the 13th of April the wording was changed; but even so the Allied delegations would not accept the new text, and the drafting of Article 5 (as it was then numbered) was reserved. The Allied draft of July 13th contained a provision stating that the afore-mentioned powers must conform with the specific Chapters 5, 8, 9, 10, 11, and 13, of the Lithuanian Constitution. Since the text had been inserted at the request of the Lithuanian delegation, the Allies did not feel satisfied with it and reserved *their observations*. The Lithuanian draft of the same date appeared with a new wording but with no change in spirit. The Lithuanian proposals of the 16th omitted the Article entirely; but it returned in a form acceptable to both sides in the Allied draft submitted to the Council of the League of Nations (August 8th, 1923).

When the Davis Commission reported, this became Article 6 of the Statute:—

“In the absence of provisions to the contrary in the present Statute, the local authorities of the Memel Territory in exercising the powers conferred upon them by the present Statute shall conform to the principles of the Lithuanian Constitution.”

CHAPTER IX

ALLOCATION OF POWERS

§ 32. *Autonomy Statements, Governor, Commissioner.* Article 2 of the first draft of the Allies stated that Memel was to constitute an autonomous territory under Lithuanian sovereignty. A Commissioner representing Lithuania was to be appointed to settle all questions "simultaneously affecting Lithuania and the Territory of Memel." The Commissioner did not satisfy Lithuania. It proposed a Governor, to be appointed by Lithuania, and a Minister for Memel, without portfolio, to be included in the Lithuanian cabinet (Art. 2, April 11th, 1923 draft). These terms were agreeable to the Allied drafting commission but not to the Memel delegation, which demanded that the Minister without portfolio should be a citizen of Memel (April 13th, 1923 draft). This Article underwent some drastic changes in the July 13th draft, in which the Allies defined autonomy more clearly as "legislative, judicial, financial and administrative autonomy within the limits provided by the present Convention." The clause concerning the Minister described him not as "without portfolio," but as "specially charged with the affairs of Memel." The Allied draft of the 16th added that

the Governor should be appointed by the President of the Republic." But the Lithuanian Government insisted that the Minister should hold his office without portfolio. It did not capitulate on this point until the 21st of September, when it felt obliged to accept the wording of the Ambassadors' draft.

When the Davis Commission made its report, this Article became Number 2 of the Convention. It read:—

"The Memel Territory shall constitute under the sovereignty of Lithuania, a unit enjoying legislative, judicial, administrative, and financial, *autonomy within the limits prescribed by the Statute set out in Annex 1.*"

The same Article with two changes was inserted as Article 1 of the Statute. It read:—

"The Memel Territory shall constitute under the sovereignty of Lithuania, a unit, organised on democratic principles, enjoying legislative, judicial, administrative, and financial, *autonomy within the limits prescribed in the present Statute.*"

Article 2 of the Statute read;—

"The President of the Lithuanian Republic shall appoint a Governor of the Memel Territory."

The Commissioner, originally proposed, had been replaced by a Governor, while the Minister with or without portfolio had completely disappeared from the Statute and Convention.

§ 33. *The Powers granted to the Local Government.* One of the most difficult problems to adjust was that of the powers to be granted to the local Government. On March 25th, 1923, the Laroche Commission suggested that they should include; regulation of religion; public instruction, public assistance and hygiene; social welfare; ways of communication with the exception of State railways; admission and sojourn of foreigners; maintenance of public order; civil, commercial, and criminal legislation; justice; customs duties; exploitation of the products of the public domain; regulation of the waters in Memel; registration of merchant vessels (Art. 4). The Lithuanians added: the administration of communes and districts; the protection of labour and labour laws; taxes collected in the territory, direct and indirect, with the exception of consumption taxes; and veterinary regulation (April 11th). On July 13th agrarian and forestry legislation were added. The Allies and the Memel delegates wished to restore "and the maintenance of public order," which Lithuania had deleted, but the question was reserved (Art. 3).

On July 13th the Conference of Ambassadors increased the list already given to include; public works of local interest; the régime of the stock exchanges; establishment of credit and insurance, on the subject of which the Lithuanian Government should nevertheless be consulted beforehand by the Government of Memel; acquisition of citizen rights, subject to the provisions of Article 23; judicial

organization subject to provisions of Articles 19 (2) (3), and (4); and direct and indirect taxes, with the exclusion of customs and excise duties and consumption taxes, Memel should be given a special flag of its own decided upon by Memelland and Lithuania and communicated to the Powers (Art. 3). On the 16th Lithuania proposed that the word "authorities" be used for "local Government" when speaking of Memel. It did not wish to grant the local authorities the regulation of stock exchanges and insurance, but wished to retain their regulation in its own hands. Finally it added that the provision concerning an independent flag for Memel should be suppressed.

The Conference of Ambassadors granted all these requests except the one dealing with the stock exchanges and insurance, which it wished to retain for the local Government (Art. 3). Lithuania remained firm in its demands. It now proposed to add, "Lithuanian laws may extend the competence of the authorities of the Memel Territory to other matters" (Draft of July 13th). The two drafts kept drawing nearer and nearer together, but the difference regarding the stock exchanges and insurances was carried for a final adjustment to the Davis Commission.

When the Statute appeared the new Article 5 differed very much from the original Article 4 of the draft of March 25, 1923. Article 5 of the Statute read:—

“Subject to the provisions of the preceding Article, the following matters shall be within the competence of the local authorities of Memel Territory:

- (1) *Organization and administration of communes and districts.*
- (2) *Public worship.*
- (3) *Public education.*
- (4) *Public relief and health, including veterinary regulations.*
- (5) *Social welfare and labour legislation.*
- (6) *Local railways, except those belonging to the Lithuanian Government, roads, local public works.*
- (7) *Regulation of the sojourn of foreigners in conformity with the laws of Lithuania.*
- (8) *Police subject to the provisions of Articles 20 and 21.*
- (9) *Civil legislation (including proprietary rights) and criminal, agrarian forestry and commercial legislation (including weights and measures), it being understood that all operations effected by the credit and the insurance institutions and the exchanges shall be subject to the general law of the Republic: the regulations governing organizations officially representing the economic interests of the Territory.*
- (10) *The acquisition of rights of citizenship, subject to the provisions of Article 8.*

- (11) Organization of the judicial system, subject to the provisions of Articles 21 to 24.
- (12) Direct and indirect taxes levied in the Territory, with the exception of customs duties, excise duties, commodity taxes, and monopolies on alcohol, tobacco and similar articles of luxury.
- (13) Administration of public property belonging to the Memel Territory.
- (14) Regulation on Memel Territory on timber-floating and navigation on the rivers other than the Niemen, and the canals within the Memel Territory, subject to agreement with Lithuanian authorities in case such water courses are utilizable outside the Memel Territory for timber-floating.
- (15) Registration of trading vessels in accordance with the laws of the Republic of Lithuania.

“The Laws of Lithuania may extend the competence of the authorities of the Memel Territory to other matters.

“Nothing in this Article shall prevent the legislative bodies of the Republic of Lithuania and the Territory of Memel from enacting legislation to effect a unification of laws and regulations.”

§ 34. *Residuary Powers and Competence.* The first draft said nothing about which party should exercise

the competence and powers not specifically mentioned in the Statute. Lithuania noted the absence of such a provision and introduced an article on April 11th, 1923, allocating such powers to herself (Art. 4). This was changed by the Allies to read, "all matters which . . . are not amenable to the authorities of Memel Territory" shall belong to Lithuania (April 13th, 1923, Art. 4). Later the Allies changed it again so as to read, "all matters . . . not dependent upon the authorities of Memel" (July 13th, 1923, Ambassadors' draft), which was again changed by Lithuania to "all matters which in terms of the present Convention, are not within the province of the authorities of the Territory of Memel shall be within the exclusive province . . ." of Lithuania (July 16th draft; Art. 4). The Allied delegations demanded an explanation of the Lithuanian motives for such an amendment. Evidently the Lithuanian answer, which is not a matter of record, was satisfactory, because the draft which was submitted to the Council of the League was agreed upon by both parties (Art. 4).

Article 7 of the Statute read:—

"The affairs, which under the present Statute, are not within the jurisdiction of the local authorities of the Memel Territory shall be within the exclusive jurisdiction of the competent organizations of the Lithuanian Republic."

§ 35. *Maintenance of Public Order.* Four drafts had passed without a word being uttered relative to

the maintenance of public order. Finally the Allies added a new Article to their proposals of July 13th (Art. 18 [2]) saying that public order should be assured by the local police, but in case of necessity the Memel authorities might appeal to Lithuania for help. Frontier, railways, and customs police were placed directly under Lithuania. Lithuania asked that the port police should also be placed under its direct charge (Art. 18 [2] of July 13th), but this adjunction was rejected by the Allied Powers (July 16th). Lithuania persisted in its demands (Art. 18 [2] of July 23rd) until the draft of August 8th was presented, when it acquiesced in the Allied wording (Sept. 21st, Art. 21).

Article 20 of the Statute read:—

“The maintenance of public order in the Territory of Memel shall be assured by a local police force responsible to the authorities of the Territory; in case of need, the latter may apply to the Lithuanian Government for assistance.

“The necessary police force for the protection of the port shall be detailed by the Memel authorities for service under the Lithuanian authorities.

“The frontiers and customs police and railway police shall be furnished by, and be under the direct authority of, the Lithuanian Republic.”

§ 36. *Use of Buildings for Public Services.* Article 39 of the draft of March 25th provided that an agreement should be drawn up between Memel and

Lithuania. This agreement should govern the use of buildings by Lithuania for such public services as it might choose to instal in Memel beyond those contemplated in Article 38. Lithuania suggested some minor alterations in the wording, which the Allied delegations accepted (April 11th and 13th draft). On July 13th the Allied Powers, in an awkwardly worded paragraph, proposed to extend the terms of the above mentioned agreement so as to cover the transfer to Lithuania of such public buildings as had been built at the cost of Memel Territory since January 10th, 1920. Lithuania demanded the deletion of the new paragraph (July 16th), but the Allied delegations did not understand what prompted this demand and were at first opposed to the deletion. Finally they agreed, and on August 8th the new article appeared without the second paragraph (Art. 54). Thereupon Lithuania agreed to the terms on September 21st (Art. 39). However, this Article was killed by the Davis Commission and does not appear in the final Convention and Statute.

§ 37. *Division of Customs Receipts.* At first the Allied Powers lost sight of the fact that the customs receipts collected in Memel would probably amount to a considerable sum. With nothing said about them in the draft of March 25th, the Lithuanians naturally preferred to remain silent in their draft of April 11th. However, the Allied Powers noted the omission and on April 13th included an Article, which required that Lithuania and Memel should

draw up an agreement to regulate the matter within one month "from the putting into force of this Convention" (36D). The Lithuanians rejected the proposal while the Memel delegation insisted upon its adoption. The Allied reply was to expand their Article to include in addition to customs duties also excise and consumption taxes. The percentage, it was stated, should be based on the average "values of imports and exports *per capita* of the inhabitants respectively in Lithuania and the Memel Territory during the years 1921 and 1922" (Art. 36 [4] of the draft of July 13th).

The Lithuanians agreed in principle but refused to fix the percentages in the manner the Allies suggested (Art. 36 [4] of the draft of July 13th). The Allied Powers maintained their text (July 16th, Art. 36 [4]). Thereupon Lithuania agreed with the Allied text but proposed to add that the percentages agreed upon should also take into account the expenses passed to the Lithuanian State "from the fact of the union of Memel Territory with Lithuania" and "the charges burdening the tax payers in Memel Territory and in other parts of Lithuania." Lithuania wished to reserve the opportunity to revise the percentages in agreement with the local authorities as might be necessary (draft July 23rd, Art. 20 [2]). On August 8th the Allied draft included the Lithuanian amendments, except that which made the percentages depend upon the tax burdens levied "in Memel Territory and in other parts of Lithuania." (Art. 8). Lithuania agreed with the Allied text.

When the Statute appeared, it contained the lengthy Article 35 which read:—

“Within a period of one month from the coming into force of the present Statute, negotiations shall be entered into between the Lithuanian Government and the local authorities of Memel Territory for the purpose of determining the percentage of the net yield of the customs duties, excise duties and commodity taxes, including revenues from monopolies dealt with in Article 5, paragraph 12, which shall be assigned to the Memel Territory. In determining this percentage, account shall be taken: (1) of the average value of imports and exports per head of the population in the Memel Territory and in other parts of Lithuania respectively during the years 1921 and 1922, special circumstances which may have influenced the returns for those years being allowed for; (2) of the additional revenue and expenditure which the transfer of sovereignty over the Memel Territory involves for the Lithuanian Government.

“The percentage thus determined may be revised from time to time by the Lithuanian Government in agreement with the local authorities of Memel Territory.”

§ 38. *Legislation.* Article 8 of the first proposed draft placed the legislative power in two Chambers giving the Directorate the power of promulgating the laws. The initiative was to be exercised equally

by both Chambers (March 25th). This proposal did not please Lithuania, which preferred to place the legislative power in the Chamber of Representatives, and to entrust the Governor with the promulgation of the laws. These would have to be countersigned by a member of the Directorate (Art. 9 of draft of April 11th), within fifteen days after submission. On July 13th the Governor was given the right to veto the laws during the fifteen-day period of grace (Art 9). This period was made amenable to extension to one month in case of urgency (July 16th, joint draft; Art. 9). The veto power, however, the Allied Powers thought should be given to "The President of the Republic" instead of to the Governor. The next suggestion from Lithuania changed the spirit of the whole Article. It set the time limit for promulgation at one month, reduceable to fifteen days in case of urgency (joint draft, Art. 9). The Chairman of the Directorate was given the right to appoint a substitute to countersign the laws. The Allies accepted these proposals. There were several disagreements as to the wording to be used, but the sense of the Article remained essentially the same from July 13th until the finished Statute. Article 10 read:—

"Legislative power in the Memel Territory shall, within the limits of this Statute, be exercised the Chamber of Representatives, elected by universal equal, direct, and secret suffrage.

"Laws passed by the Chamber must be pro-

mulgated by the Governor within a period of one month from the date on which the law has been submitted to him, unless within this period he shall have exercised his right of veto under Article 16. This period shall be reduced to fifteen days in the case of laws the promulgation of which has been declared urgent by special vote of the Chamber.

"The laws shall be countersigned by the President of the Directorate provided for by Article 17 or his substitute."

§ 39. *The Chamber of Representatives.* It was provided in the draft of March 23rd, that the first Chamber should be made up of deputies "elected for four years by universal, direct, and secret suffrage, on the basis of proportional representation and in the ratio of one deputy for every 5,000 inhabitants." The first Chamber was subject to dissolution by the Directorate after a vote of the second Chamber (Art. 9). The Lithuanian answer to this draft was to cut down the term of the deputies to three years, to omit the dissolution clause, and to make the election subject to the Lithuanian electoral law (Art. 10 of the draft of April 11th). The Allies accepted this and beyond a few changes in wording the draft reached the Council of the League of Nations, whereupon the final Statute carried an Article 11, reading:—

"The members of the Chamber of Representatives shall be elected for three years by the citizens of the Memel Territory in conformity

with the Lithuanian Electoral Law, in the proportion of one deputy per five thousand inhabitants or for any fraction exceeding two thousand five hundred inhabitants.

“Only citizens of the Memel Territory shall be eligible.”

Another Article (46) of the March 25th draft provided that the elections should take place for both Chambers (the second being provided for in Art. 10) within six weeks from the date when the Convention came into force. All persons over twenty years of age, who were subjects of Memel on January 1st, 1923, were eligible to vote. The Lithuanian proposal changed this to read simply that the elections to the Chamber of Representatives should take place within six weeks from the coming into force of the Convention and that the Chamber should convene “15 days after the elections” (Art. 51 of draft of April 11th). The Allies accepted the Lithuanian amendment, but restored the clause defining those who were eligible to participate in the elections (Art. 50, April 13th); to which amendment Lithuania agreed. The age of majority was raised to twenty-one years in the Allied draft of July 13th. Article 50 went on to say that no one who had opted for German nationality was qualified to vote. Both sides agreed. Article 63 of the draft of August 8th provided that “the Economic Council, like the Chamber shall meet fifteen days after the elections.” Lithuania agreed.

The finished Article 37 of the Statute read:—

“The first elections to the Chamber of Representatives shall take place within six weeks from the date of the coming into force of the present Statute. The Chamber will meet fifteen days after the election.

“Only the inhabitants of the Memel Territory over twenty-one years of age may take part in these elections, provided:

(1) That, having acquired Lithuanian nationality on the conditions specified in Article 8, paragraph 1, of the Convention referred to in the preamble of this Statute, they do not opt for German nationality before the date of the elections.

(2) That at least fifteen days before the elections they opt for Lithuanian nationality on the conditions specified “in Article 8 (a) and (b) of the said Convention.”

§ 40. *Convocation of the Chamber of Representatives.*

The two Chambers, which were at first suggested, were to hold simultaneous sessions (Draft of March 25th, Art. 11). As has been noted Lithuania rejected the idea of a bi-cameral legislature and was perforce required to change this provision in its draft Convention. It paid attention to the Chamber of Representatives and proposed that it should meet fifteen days after its election. After the first year it should convene annually on the fourth Monday of January, but nothing was said as to who was to preside. The

Governor could call an extraordinary session in agreement with the Directorate. The Chamber had to be convoked by the Governor on demand of one-third of its members while the dissolution was placed in the hands of the President of the Republic in agreement with the Directorate (draft of April 11th, Art. 11). The draft of April 13th specifically gave the Governor the power over "the closing and adjournment of extraordinary sessions" (Art. 11) when the Directorate agreed. In all drafts the elections for a new Chamber had to take place within six weeks from the adjournment of the old. Nowhere was it stated that the Governor had the power or duty to convoke or adjourn regular sessions.

The Statute, Article 12, read:—

"The Chamber of Representatives shall meet fifteen days after each election of its members. During the succeeding years of its term, it shall meet in ordinary session on the fourth Monday in January. Ordinary sessions shall have a duration of not less than one month.

"The Chamber may also be convoked in extraordinary session by the Governor in agreement with the Directorate.

"The closure or adjournment of extraordinary sessions shall be declared by the Governor in agreement with the Directorate.

"The Chamber must be convoked by the Governor when at least one-third of its members demand it.

“The Chamber may be dissolved by the Governor in agreement with the Directorate. The elections shall take place within six weeks from the date of dissolution.”

The last clause was new and a part of the introduction of parliamentary government into Memeland. Since the Directorate, like the executive in any parliamentary government, was to have the power to appeal over the legislative body to the people, it was a necessary complement of that power to provide a means for the dissolution of the Chamber. That means was found in an agreement between the Governor and Directorate to dissolve the legislature.

§ 41. *Rules of the Chamber of Representatives.* The draft of March 25th stated that both Chambers should set up their own rules and elect their own officers and chairmen (Art 12). With the elimination of the second body Lithuania proposed that this draft should apply to the Chamber of Representatives alone (Art. 12 of April 11th). The word “rules” was changed in the draft of April 13th to “standing orders”; but was again restored on August 8th. This article represented a decided narrowing down of powers as it developed and as Article 13 of the Statute read:—

“The Chamber of Representatives shall draw up its own rules of procedure; it shall elect its President and its officers.”

§ 42. *The Economic Council.* The draft of March 25th set up a second Chamber, which was to be "elected for five years by the district administrations and by the representatives of the economic interests of the territory" (Art. 10). Lithuania refused to agree to any such second house, dropped this Article (10) and proposed a scheme for a body of an entirely different character (April 11th). Lithuania wanted an Economic Council composed of the chairmen of various important economic organizations in Memel-land (Art. 14). This Economic Council would elect its own chairman and officers (Art. 15). The Allies agreed and the whole proposal was compiled into a single Article (Art. 14). On August 9th the ordinary legislative immunity was extended to the members on Lithuanian Territory. The course of these negotiations was marked by an indiscriminate use of certain terms and an emasculation of the original proposals.

Article 14 of the Statute was finally made to read:—

"The present Economic Council of the Memel Territory shall continue until the Chamber or Representatives shall otherwise decide. Subject to such decision of the Chamber, the Council shall be consulted by the Chamber upon all fiscal and economic legislation before it is finally voted."

The same privileges were granted to the Economic Council while in the pursuit of its office as were granted in Article 15 to the Chamber of Representatives.

§ 43. *Legislative Initiative.* Originally nothing was said about legislative initiative. However, on April 11th Lithuania suggested that this be given to the Chamber of Representatives, the Directorate, and the Economic Council equally (Art. 16). Before a Bill could be discussed by the Chamber of Representatives it would have to be submitted to the Economic Council, which would have to pass on it within an interval of one month (Art. 17). These proposals were agreed to by the Allied delegations and no essential changes were made in them until the final Statute was proposed. The Statute, however, reduced the rôle of the Economic Council to insignificance, and described its functions in Article 14. Article 18 of the Statute read :—

“The right of initiating legislation shall belong equally to the Chamber of Representatives and the Directorate.”

The Economic Council had thus lost the important function of initiating legislation. The survey of the course of these negotiations leaves a strong impression that Lithuania did not really want a powerful Economic Council; but preferred that it should remain either a weak and advisory body, or else disappear entirely.

§ 44. *Immunities.* It was agreed that members of the Chamber of Representatives should be free from prosecution for speeches, opinions, and votes, which they might give in the course of their legislative duties (Art. 13). The first draft had suggested that this privilege be applied to both Chambers, which

proposal was of course modified with the elimination of one of them. No deputy was to be arrested or prosecuted before a repressive tribunal save with the consent of the Chamber, unless that deputy was apprehended in *flagrante delicto*. Both sides were in agreement on this matter and on August 8th the terms were extended so as to prevent any sort of molestation of the deputies while on Lithuanian territory (Art. 13).

This was one of the very few Articles which grew as it was discussed. As Article 15 of the Statute it read:—

“No member of the Chamber of Representatives or the Economic Council of the Memel Territory may be made the object of any form of criminal proceedings, or be in any way molested, in any part of the territory of Lithuania in consequence of any act performed or opinion expressed by him in the discharge of his duties as such member. No member of the Chamber may during a session be arrested or prosecuted without the consent of the Chamber, except he is apprehended in *flagrante delicto*; a corresponding immunity shall be enjoyed by the members of the Economic Council during the session of that body.”

The addition of the Economic Council was new. These terms appeared only in the final draft of the Statute and represented an expansion of local prerogative not at first contemplated.

§ 45. *Eligibility to Elections.* The Allied draft of March 25th stated that only citizens of Memel over twenty years of age could participate in elections to the Chambers and to the communal and district assemblies (Art. 22). When the Lithuanian proposals appeared, the original draft had been completely changed. It was recommended that the Chamber (singular) of Representatives should set up the laws for elections to communal and district assemblies, and that such laws should be inspired by democratic principles (Art. 25 of the April 11th draft). The Allies agreed. No change occurred until August 8th when it was stated that the aforementioned elections should take place in accordance with the laws of the Memel Territory. This generalization was evidently a purposely adopted obscurity, which substituted an inferior draft for a good one.

The Davis Commission recommended the Article as it was given to them and numbered it 19 of the Statute.

“Elections to the Communal and District Assemblies shall be held in accordance with the laws of the Memel Territory.

“The electoral laws shall be drawn up on democratic principles.”

The words sound well, but the laws of Memel Territory are of both Memellandish and Lithuanian origin, especially as they apply to elections. Which did this draft mean?

§ 46. *Representation of Memelland in the Lithuanian Sejm.* On March 25th it was provided that Memelland should be represented in the Lithuanian Sejm by deputies chosen in accordance with an agreement to be drawn up between Lithuania and Memel. These deputies were to have the right to participate in the deliberations over all questions other than those listed within the powers solely given to the autonomous Government (Art. 16). On the 11th of April Lithuania proposed that this Article should simply state that the elections must be conducted in accordance with Lithuanian law (Art. 20). The Allied Powers agreed to this drastic reduction (April 13th). And in such form it reached the Davis Commission, which recommended the innocuous Article 3 of the Statute which follows:—

“The election of deputies for the Memel Territory to the Lithuanian Diet shall take place in conformity with the Lithuanian electoral law.”

Thus the original effort to give the Memellanders representation in Kovno was so changed as to promise nothing, because nowhere else in the Statute or Convention can one find any provision stating that they shall have representation. Article 3 means that if the Memellanders are to be given legislative representation at Kovno, it shall be in conformity with Lithuanian law; which provision is worse than useless for all purposes of autonomy guarantee.

§ 47. *The Veto Power.* The first draft of the Allied Powers carried no provision for the exercise of a

veto power over undesirable legislation. This was, however, an important function in the eyes of the Lithuanian delegates, who therefore proposed the adoption of a new Article (Art. 18) in their draft of April 11th, stating that the President of the Lithuanian Republic should have the right to veto the legislation of the Chamber of Representatives: (1) if it should exceed the competence of the local authorities; (2) if it were contrary to the principles of the Lithuanian Constitution; and (3) if it contradicted important social interests. The Allied Powers stated their acquiescence on April 13th (Art. 17) provided Lithuania would withdraw the third condition and make the whole Article subject to Article 5. On July 13th the Allied Powers presented their new draft stating that the President was to have the veto power if the new laws exceeded the competence of the local authorities fixed in Article 3, or if they ran counter to the provisions of Article 5 (Art. 17). No essential changes were made in the subsequent drafts until the last one.

Then appeared Article 16 of the Statute which substituted the Governor for the President, and read as follows:—

“The Governor shall, within the time-limit prescribed in Article 10, have the right to veto laws passed by the Chamber of Representatives of the Memel Territory if these laws exceed the competence of the authorities of the Territory

as laid down by the present Statute, or if they are incompatible with provisions of Article 6 or with the international obligations of Lithuania."

§ 48. *Executive.* The executive went through some very interesting changes. On March 25th (Art. 14) the Allied Powers proposed to set up a Directorate of not more than seven members, the chairman of which was to be appointed by the two united Chambers with the power to select the other six members. It was to be responsible to the Chambers, and was to be entrusted with the appointment of officials. This did not please the Lithuanians and their draft of April 11th advocated a Directorate consisting of the same number of members, who would have to be citizens of Memel. The chairman, however, was to be appointed by the President of the Republic; and no provisions were made for the branch of the Government to which the Directorate was to be responsible (Art. 19). On the 13th of April the two sides had accepted the terms which Lithuania had proposed; and in addition had agreed upon the legislative responsibility of the Directorate. The Allies later changed their draft to read, "The Directorate and each of its members are individually required to tender their resignation if the Chamber refuses them its confidence" (draft July 13th, Art. 18). The provision requiring the members of the Directorate to be Memel citizens disappeared in the April 13th draft. It was reinserted in the draft of August 8th.

The history of this Article was that of a struggle for greater control by Lithuania. The new Article 17 of the Statute read:—

“The Directorate shall exercise the executive power in the Territory of Memel. It shall consist of not more than five members, including the President, and shall be composed of citizens of the Territory.

“The President shall be appointed by the Governor and shall hold office so long as he possesses the confidence of the Chamber of Representatives. The President shall appoint the other members of the Directorate. The Directorate must enjoy the confidence of the Chamber of Representatives and shall resign if the Chamber refuses it its confidence. If, for any reason, the Governor appoints a President of the Directorate when the Chamber of Representatives is not in session it shall be convened so as to meet within four weeks after the appointment to hear a statement from the Directorate and vote on the question of confidence.

“The members of the Directorate shall have the right of entry both to the Chamber of Representatives and to the Economic Council. They shall have the right to be heard by the Chamber and by the Council when they request it.”

The changes were many in this Article. The most significant was that it made the Chamber of Representatives the real guardian of Memel autonomy.

It was a guarantee that the wishes of the people with respect to their government would be obeyed, provided the article was faithfully carried out.

§ 49. *Judicial Organization.* The original purpose of the Allied Powers was to retain the old legal system in Memel and to organize the functioning of justice on such lines as the local authorities would agree upon (Article 7, draft of March 25th, 1923). Lithuania however, omitted all reference to this matter from her counter-proposal of April 11th. On the 13th of April it appeared in a completely new and harmless form stating that the judges were to hold their offices permanently, and were only removable by the highest judicial instance (Art. 9). It soon became evident that a more positive stand was necessary if any beneficial results were to be achieved. Therefore drastic changes were made by the Allied Powers in the proposals of July 13th. Under these the judges were to be appointed by the Directorate, and were only removable by the Lithuanian Court of Cassation (Art. 19), which was to have a panel of judges belonging to the Memel bench, and would have jurisdiction over all Lithuanian territory (19 [2]). Further the Court of Appeal and the High Court for Memel were to be composed of two chambers. When a judgment of one of these tribunals had been annulled by the Lithuanian Court of Cassation, it should be returned for a re-hearing to the Chamber which had not ruled on the case (19 [3]). These Articles remained essentially un-

changed until they reached the Davis Commission. Of the few changes which were made the most important was that of August 8th, which substituted "the Lithuanian Court of Appeal" (Art. 22 and 23) for the Court of Cassation.

The Statute in its final form incorporated these changes in Articles 22 to 24, inclusive. Article 22 read:—

"The organization and competence of the tribunals of the Memel Territory shall be determined by a law of the Territory, subject to the provisions of Article 24.

"Pending the enactment of such law, the existing organization of the judicial system shall continue in operation."

Article 23 stated:—

"The judges of the tribunals of the Memel Territory shall be appointed by the Directorate. They shall be appointed for life and may only be dismissed on the motion of that section of the Supreme Court of Lithuania which is competent to deal with the affairs of the Memel Territory, and which will pass sentence in such cases in the capacity of Supreme Disciplinary Council of Magistrates."

Article 24 said:—

"The jurisdiction of the Supreme Court of Lithuania shall extend over the whole territory of the Republic, including the Memel Territory.

"It shall comprise a special section for the

affairs of the Memel Territory; this section shall be mainly composed of judges drawn from the magistrates of the Memel Territory and it may hold its sessions in the town of Memel."

§ 50. *Judgments and Warrants.* The need for a co-ordination between the legal system of Memel and that of Lithuania was recognized in the Allied draft of March 25th. Article 43 provided that judgments "rendered respectively by the Memel tribunals and the Lithuanian tribunals shall be executory respectively in Lithuania and in the Territory of Memel." The same respect was to be given to warrants of arrest. The Lithuanians had no objections to these terms (Art. 43 of April 11th draft), but the Applied Powers found their first wording clumsy and changed it on July 13th. Another revision was necessary on August 8th (Art. 58) which was accepted by Lithuania on September 21st and adopted as Article 21 of the Statute by the Davis Commission. It read:—

"The sentences pronounced respectively by the Courts of the Memel Territory and by the other Lithuanian Courts shall have the force of law in the whole territory of Lithuania including the Memel Territory.

"The same shall apply to warrants of arrest delivered by the authorities of the Memel Territory and by the authorities of the other parts of Lithuania respectively."

CHAPTER X

ARTICLES DIRECTLY AFFECTING PERSONS AMENDMENTS

§ 51. *Acquiring Lithuanian Nationality and Citizenship of Memel.* Article 17 of the first draft provided for the acquisition of Lithuanian nationality. In the main it was subject to very little alteration in the various drafts except that the date, January 10th, 1920, was substituted in paragraph 1, for January 1st, 1923 (Lithuanian draft proposal of April 11th, accepted by Allied Powers on April 13th). The Convention wording was essentially that of the previous drafts.

Article 8 read:—

“Former German nationals over eighteen years of age on the date of ratification of the present Convention by Lithuania, who have actually been domiciled in the Memel Territory at least since January 10th, 1920, shall *ipso facto* acquire Lithuanian nationality.

“The following may opt for Lithuanian nationality within a period of six months from the date of ratification of the present Convention by Lithuania, on condition that they renounce all other nationality:

(a) All persons over eighteen years of age on the date of ratification of the present Convention by Lithuania, if they were born in the Territory and have resided therein for more than ten years.

(b) All persons over eighteen years of age on the date of ratification of the present Convention by Lithuania, who were granted a permanent permit of residence by the Inter-Allied Administration, provided that such persons shall have taken up their residence in the Territory not later than January 1st, 1922.

"Persons acquiring Lithuanian nationality through the operation of this article shall *ipso facto* acquire the status of citizens of Memel."

This Article made it possible to acquire Lithuanian nationality and Memel citizenship in two ways: (1) German nationals, who fell under the Article, merely remained passive; (2) while foreigners who had lived in Memelland the required length of time had the privilege of opting.

§ 52. *Opting for German Citizenship.* The draft of March 25th gave the citizens of Memel two years to opt for German nationality. Having so opted these persons had to remove their residence to Germany within the subsequent two years; but they might retain possession of their immovable property, and take their movable property with them (Art. 18). On April 11th Lithuania substituted the words "domicile" for "residence" (Art. 22), "real estate" for "immovable property", and "personal property" for "movable property". The Allied Powers agreed to these changes (Art. 22 of the draft of April 13th). Due to Lithuanian urgings the wording used in Article 91 of the Treaty of Versailles as it applied

to option within Poland was in part adopted. The drafts of July 13th and 16th were changed so as to include all of the terms which had so far been provided, but also so as to add some new terms. The period of option was reduced to six months for officials who were domiciled in Memelland only because of their work. Officials, who were regarded as such and subject directly to the Lithuanian Government or to the Directorate, were limited to the six months period of option (Art. 22). The wording but not the sense of the Article was changed on August 8th (Art. 27) and Lithuania agreed to it on September 21st (Art. 26).

Article 9 of the Convention was made to read:—

“The persons specified in the first paragraph of Article 8 may opt for German nationality within a time limit of eighteen months from the date of ratification of the present Convention by Lithuania.

“The duration of this time-limit shall, however, be reduced to six months in the case of persons who were domiciled in the Memel Territory only in their capacity of government officials and who acquired Lithuanian nationality in consequence of such domicile.

“The term Government Officials within the meaning of the previous paragraph shall be taken to mean officials who were regarded as such by the German legislation and who are under the direct authority either of the government of the Lithuanian Republic or of the Directorate of

the Memel Territory provided for in Annex I (Unmittelbare Staatsbeamte).

"Persons exercising the above right of option must transfer their domicile to Germany within the succeeding two years.

"They shall be free to retain the immovable property which they possess in the Territory and may export their movable property of all kinds. They shall be exempt from all export duties or taxes in this respect."

In this same connection another of the Articles proposed on March 25th met its demise in the April 11th draft. It was proposed to insert an Article 19 stating that, "Within the same period and under the same conditions the citizens of Memel may renounce the status which they possess in this capacity if they remove their residence to Lithuania". This did not meet with the approval of Lithuania because obviously it wished to regulate such matters as domestic affairs.

§ 53. *The Nationality of Married Women and Minor Children.* With very minor changes in wording it was agreed from the beginning that women and minor children should be regarded in the same light as Article 10 of the Convention provided.

"Married women shall take the nationality of their husbands, and minor children under eighteen years of age shall take the nationality of their parents for the purposes of the application of the provisions of Articles 8 and 9 above."

§ 54. *Citizenship of Memel.* The draft of March 25th proposed to give the local authorities the right to fix within the Lithuanian law the conditions under which the citizenship of Memel could be acquired (Art. 20). On the 11th of April, Lithuania added that for all Lithuanian subjects other than Memel citizens the length of domicile required to acquire the capacity of citizens of Memel should be the same as that fixed in Lithuania for the exercise of public rights (Art. 23). On July 13th the words "and political" were added after the word "public" so as to make the phrase read, "public and political rights" (Art. 23, par. 2).

The final draft of this provision became Article 8 of the Statute.

"The original citizens of the Memel Territory shall be the persons who acquire that status through the operation of Articles 8 and 10 of the Convention referred to in the preamble to this Statute.

"Subject to the provisions of the Lithuanian law on the acquisition of Lithuanian nationality, a law of the Memel Territory may be acquired in the future.

"For Lithuanian nationals other than citizens of the Memel Territory, the conditions on which the said status may be acquired shall be the same as those laid down in Lithuania for the exercise of all public and political rights."

§ 55. *Political Beliefs between 1914 and the Date of the Convention not Punishable.* Article 14 of the Convention was altered only in wording but not in intent

and meaning from the first draft where it appeared as Article 29. It was self explanatory and read:—

“No citizen of Memel Territory may be interfered with on account of his political attitude between July 28th, 1914, and the ratification of the present Convention by Lithuania.”

§ 56. *Mutual Respect for Civil Rights.* Among the other rights which the Allied Powers wished Lithuania to promise to the citizens of Memel was that their civil rights should be respected in Lithuania on the same basis as those belonging to other Lithuanian subjects. A reciprocal respect was to be given in Memel to the civil rights of Lithuanian subjects, who were not citizens of Memel (Art. 44 of March 25th). The changes in wording (Art. 43 of July 13th and Art. 58 of August 8th) improved the text until Article 9 of the Statute read:—

“The citizens of the Memel Territory shall have throughout Lithuanian territory all the recognized civil rights enjoyed by the other nationals of Lithuania.

“Lithuanian nationals, who are not citizens of the Memel Territory shall have in the said Territory all the recognized civil rights enjoyed by the citizens of the Memel Territory.”

§ 57. *Equality before the Law and Protection of Minorities.* Inspired by the democratic laws in force for the moment in most of their countries, the Allies recommended that all the citizens of Memel without

distinction of race language or religion should be equal before the law; especially should they have equal rights of access to public office (Art. 23 of March 25th draft). The Lithuanians accepted the proposals (Art. 26 of April 11th draft). On the 13th of July the Allies made extensive additions, guaranteeing both civil and political rights to "subjects of Memel", as well as safeguarding them in the exercise of their various professions (Art. 26). The Lithuanians substituted the word "citizens" for that of "subjects" of Memel, and the Allies agreed (July 13th and 16th, Art. 26 in both drafts).

The interesting part is that this Article disappeared in the Davis proposal and Article 11 of the Convention and Article 26 of the Statute appeared in its place. Article 11 read:—

"The declaration relating to protection of minorities made by the Lithuanian Government before the Council of the League of Nations at its meeting of May 12th, 1922, applies to minorities within the Territory of Memel, with the exception of paragraph 4 of Article 4 of the said declaration, which is only excluded in view of the provisions of Article 27 of Annex I (on equality of the two languages in Memel).

"The procedure adopted by the Council of the League of Nations for dealing with petitions concerning the protection of minorities shall be *ipso facto* applicable to petitions concerning the protection of minorities in the Memel Territory."

Article 26 of the Statute read:—

“The authorities of the Memel Territory shall carry out and cause to be carried out in the Territory the provisions contained in the Declaration concerning the protection of minorities made by the Lithuanian Government before the Council of the League of Nations at its meeting of May 12th, 1922, with the exception of paragraph 4 of Article 4 of the said Declaration.”

No subterfuge or legal nicety can explain away the obvious in this connection. The Davis Commission in substituting these two Articles for 26 of the previous draft did not mean to deprive the citizens of Memel of guarantees thereby. If anything, the minorities guarantees meant to go farther than the original proposals of the Memel draft conventions. If it is argued that these two Articles apply to the Lithuanians and not to the Germans in Memel, because the Lithuanians are the minority; that makes very little difference because the Germans are a minority within Lithuania, which is bound by the minorities restrictions within her whole domain. The guarantees of personal rights apply to the Germans, whether they happen to be considered as a minority or the majority population in Memel.

§ 58. *Further Rights and Liberties.* The first draft of the Allies guaranteed to the Memel citizens liberty of meetings and of association, liberty of conscience, liberty of the Press and of instruction subject to the demands of public order (March 25th, Art. 26).

The counter proposals of Lithuania went farther and after substituting the word "freedom" for "liberty" proposed to use the word "inhabitants" for "citizens." However, this counter proposal included the very significant qualifying clause that all these rights could be exercised only subject to the "security of the State" (Art. 29 of April 11th draft). Finally it added to the other rights the "liberty of instruction and the right to open schools". The wording of this Article in the drafts of both sides was very clumsy. It was decided on July 16th to add that these rights might be enjoyed "without distinction of nationality, language, race, or religion" (Art. 29). With some few changes in wording the Article was agreed upon on September 21st.

It emerged from the Davis Commission as Article 33 of the Statute.

"The freedom of meeting and association, the freedom of conscience and the freedom of the Press shall be guaranteed to all the inhabitants of the Memel Territory without distinction of nationality, language, race, or religion, subject to the observance of the laws and regulations necessary for the maintenance of public order and the security of the state.

"The same shall apply to freedom of teaching and the right of opening schools."

§ 59. *Private Property.* The March 25th draft stated that private property must be respected and could

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not be expropriated except for public utility in conformity with the laws and the Convention. Associations, including religious and charitable ones, were to have the right to own property (Art. 27). Lithuania agreed (Art. 30 of April 11th draft). The Allies added that expropriation could be made only after "a just and previous compensation" (Art. 30 of July 13th), to which Lithuania also agreed. In its final form Article 32 of the Statute read:—

"Private property shall be respected. Expropriation shall only take place for reasons of public utility and in return for the payment of equitable compensation in advance, in conformity with the laws, and provided that the provisions of the present Statute are not infringed.

"The right of companies and associations, including religious and charitable organizations, to own property shall be recognized in principle."

§ 60. *Equality of Languages.* The problem of what to do about the language question apparently should have been easy to solve; but upon framing the articles, the drafting parties found it far more difficult to adjust than they had at first anticipated. Article 25 of the March 25th draft stated that both Lithuanian and German should be regarded as official languages, and that no restrictions could be enacted against the free use of either in private life, commercial relations, religion, Press, public meetings or before the courts of law. The same facilities were to be given

for the teaching of both languages. The Lithuanian proposal was to make the last clause read, "Both languages shall be taught in the public schools" (Art. 28, April 11, draft). However, the Allied Powers saw in this wording the possibilities of introducing measures which might injure the teaching of German and they insisted upon their original text (Art. 28 of April 13th draft), to which Lithuania eventually agreed. Lithuania objected to speaking of German as "the Memel language" (draft of July 13th, Art. 28). On the 16th the Allies extended the scope of their text and Lithuania proposed a rewording of the same text which it had already suggested. Both parties agreed to place "any other language" on a plane of equality with German and Lithuanian in Memel, while the original Lithuanian wording was adopted for the clause dealing with the teaching of the two languages.

These provisions in their fullest form became Article 31 of the draft of August 8th, and both parties were in full agreement with its terms on the 21st of September. It would have been reasonable to expect that the Davis Commission would report this Article as it had been agreed upon. However, what did happen was that it was pared down and the local rights were completely cut off, including the guarantees for equality before the courts. The framing of this Article in its final form left the door to administrative restriction of rights wide open—a door which had been closed under the proposed Articles of every

preceding draft. These changes certainly cannot be explained away by any alleged fear of Poland. Article 27 of the Statute read:—

“The Lithuanian and German languages shall be recognized on the same footing as official languages in the Memel Territory.”

It was unquestionably an open and frank cutting down of local privileges and rights.

§ 61. *Education.* Of all the other Articles dealing with education, in part or in whole, found elsewhere in the Statute, Article 25 is the most interesting. Its history was unique. Absolutely no sign of it appeared before July 13th. Then at the suggestion of Lithuania the Powers inserted an Article 28 (*a*) stating that the programme of instruction in the Memel Territory should not be inferior to that in force in the corresponding schools in the rest of the Lithuanian Territory. Everyone considered this amusing because of the well known superiority of the Memellandish schools over those of Lithuania; and in this spirit the article was allowed to remain in the subsequent drafts without challenge. The word “curriculum” was later substituted for “programme”, and Article 25 of the Statute stated:—

“The curriculum adopted in the public schools of the Memel Territory shall not be of a lower standard than the curriculum followed in schools of the same standing in other parts of Lithuanian territory.”

In the light of subsequent events it is now evident that the Lithuanian purposes in inserting this article were not as frivolous as at first supposed. They meant to give a legal basis for introducing more education in the Lithuanian language in Memelland—for Memelland was and still is to-day admittedly inferior to the rest of Lithuania in the use of, and instruction in, Lithuanian.

Another surprise in educational matters was Article 31 of the Statute, which appeared without antecedents in the Davis draft.

“Until January 1st, 1930, the educational authorities of the Territory of Memel shall be free to employ teachers of alien nationality to the extent deemed by them to be necessary for the proper maintenance of education in the Territory.

“The Directorate shall not, however, be entitled to retain in the Territory under the above provision any person against whom the Governor adduces proof that he is engaged in political agitation contrary to the interests of Lithuania.

“On the expiration of the above-mentioned period, foreign teachers may be engaged by the authorities of the Territory with the consent of the Lithuanian Government.”

While Article 31 is self-explanatory, it indicates a wider expansion of the Governor's power than hitherto mentioned. By implication at least he is to watch over the interests of Lithuania in education,

when any question of political agitation may arise. Also restrictions could be placed on the local authorities after January 1st, 1930, and then the use of foreign teachers would depend upon the decisions of Kovno.

§ 62. *Military Service.* The Allied Powers stated first that the citizens of Memel should not be subjected to any compulsory military service (Art. 24 of March 25th draft). The Lithuanians would not agree to this and fixed a limit to the time of exemption, namely January 1st, 1923 (Art. 27 of April 11th draft). The Allies did not object and this provision was adopted and later presented in unmodified form to the Davis Commission. Strange to say this Commission took the final step of attrition in wearing down the article by fixing the date at January 1st, 1930, Article 13 of the Convention reading:—

“Persons acquiring the status of citizen of Memel under Articles 8 and 10 shall be exempt from military service until January 1st, 1930.”

§ 63. *Equality of Tariffs.* The Allied Powers wished to guarantee an equal application of railway, post, telephone, and telegraph tariffs in Memel which should not differ from those exacted in Lithuania. They proposed to give the Commission of the port the right to report all infractions to the Council of the League of Nations (March 25th draft, Art. 40). Lithuania agreed to the first conditions, but struck out the right to report violations to the Council of

the League (April 11th). The Allies agreed (April 13th). The wording underwent some subsequent changes, but the main sense of this Article was maintained until it appeared as Number 36 of the Statute.

“The tariffs applied on railways and ships to passengers and goods, and the postal, telegraphic, and telephonic charges in the Memel Territory, shall not be higher than the tariffs applied and the charges made for the same purposes in the other parts of Lithuania.

“The tariffs applied on the Lithuanian railways to passengers and goods coming from or destined for the Memel Territory shall in no case exceed those applied to passengers and goods in respect of any other journey of the same length in another part of the Lithuanian railway system.”

Thus another local right was reduced to a promise. The guarantee that it would be fulfilled had been rejected with the deletion of the original paragraph, too.

§ 64. *Treaties, Customs Régime, and International Obligations.* The draft of March 25th gave Memel the right to set up its own customs régime. It stated that commercial treaties were to be negotiated by Lithuania in collaboration with the Memel Government (Art. 5). However, these were too generous powers for Memel to suit Lithuania, and the customs régime provision disappeared in the Lithuanian counter-draft of April 11th. On April 13th it turned

up again as Article 36c of the Allied draft and provided that customs regulations would be legislated by Lithuania, which should in due course transmit them to the Memel Territory through the local authorities. Lithuania rejected this provision, but the Memel delegation demanded it. This was the last seen of the customs provision. It disappeared permanently from all subsequent proposals and drafts.

The regulation concerning commercial treaties was also drastically altered. In the April 11th draft, Article 6 stated that the Lithuanian Diet was to be permitted to legislate in order to achieve uniform regulation throughout the State as a result of an international treaty. In the draft of the 13th of April it was stated that the legislative provisions adopted by Lithuania in order to put an international treaty into effect should be applicable to the Territory of Memel (Art. 6). The local authorities were to be entrusted with the enforcement of the treaty within the scope of their powers. The Allies accepted this proposal.

The next step was taken on July 13th when the Allies proposed to begin Article 6 with the words, "External relations being within the province of the Lithuanian Government. . . ." Otherwise they kept essentially the same wording as before. On July 16th the Allies proposed giving the local authorities an even wider measure of power in carrying out treaties, which should be drawn up by Lithuania, and which

should be applicable to Memel Territory (Art. 6). Lithuania demanded the right to legislate all regulations from Kovno in order to have treaties apply uniformly throughout the Lithuanian State; and to this purpose it tried to keep the rights of the local authorities at a minimum (July 13th, Art. 7). A compromise was reached which gave Lithuania the right to legislate for Memelland in matters involving the carrying out of a treaty, as long as such legislation did not operate against the Convention. However, where the local authorities should be competent to act under Article 3 Lithuania had no right to interfere with their freedom of action. This was a considerable reduction in the demands of Lithuania.

This Article became Number 4 of the Statute, and read as follows:—

“The measures taken by the Lithuanian legislature in execution of international treaties and conventions shall be applicable to the Memel Territory in so far as the said treaties and conventions are not contrary to the present Statute; nevertheless in the event of their applying to affairs which by virtue of Article 5 come within the competence of the local authorities of the Memel Territory, it shall be for the latter to take the necessary measures for the application of the said international agreements.”

§ 65. *Rights of Foreigners in Memel.* The Powers insisted from the very beginning that “subjects of

foreign Powers" should "enjoy" the same treatment as citizens of Memel as regards civil and commercial rights (Art. 28 of March 25th). Lithuania, however, proposed that their possession of immovable property should depend upon the decision of the Directorate. The Lithuanian Government reserved to itself the ultimate right to reverse the action of the Directorate in this respect within twenty days after it had been taken (Art. 31, April 11th). The Allied delegations objected particularly to the wording of the second paragraph. Lithuania then reserved for herself control over the coasting trade (Art. 31, draft of July 13th) and maritime fisheries. On July 16th the clause relative to the possession of immovable property was changed so as to permit the local authorities to prevent all acquisitions for speculative purposes, "particularly in favour of the rate of exchange". Lithuania was willing to drop the clause concerning the right of the central Government to intervene, but otherwise it adhered to its original text of paragraph 2. On August 8th and September 21st (both texts numbered the disputed Article 36) both sides were as far apart as ever.

Article 12 of the Convention read:—

"The nationals of foreign Powers—both private and corporative—shall have the same rights and receive the same treatment in Memel Territory as the citizens or corporations of Memel and Lithuania in all that concerns the use of the port and its

facilities and the purchase, lease or use of property for legitimate purposes.

“Lithuania retains, however, the right to reserve for her own flag the coasting trade and fisheries in her territorial waters.”

This was a complete and absolute victory for Lithuania. It carried every point to the utter rout of the Allied drafts. It is notable that this victory meant that Lithuania at one stroke shook off a number of qualifications and conditions which would have seriously hampered her freedom of action.

§ 66. *Passports.* The draft of March 25th provided in Article 3 that Lithuania was to guarantee the safety of Memel citizens while abroad. Lithuania was also to grant the exequaturs to foreign consuls after consulting the local authorities. This article was somewhat vague, but undoubtedly it had reference to the consuls located in Memel Territory. The Lithuanian draft of April 11th adopted (as Article 7) the provisions regarding the exequatur. However, they changed the clause guaranteeing the Memel citizens completely and (Article 8) provided that passports should be delivered to citizens of Memelland by the local authorities in the name of the Lithuanian Republic. The Ambassadors accepted these amendments and retained them with some slight changes in wording and paragraphing until the Davis Commission undertook its study.

When the Statute was presented, all reference to the delivery of exequatur had disappeared. Lithuania

did not need to consult the local authorities any longer in the matter. Article 34 of the Statute read:—

“Passports shall be delivered to the citizens of the Memel Territory by the Directorate on behalf of the Lithuanian Republic and in accordance with the regulations established by the Lithuanian Government. .

“In the passports shall be mentioned both the Lithuanian nationality of the bearer and his status as citizen of the Memel Territory.”

§ 67. *Amendments.* The first draft provided that the Convention, which it called “The Constitution of Memel”, could be amended by a vote of two-thirds of both Chambers; and any amendment adopted within the first ten years after the Convention had gone into effect had to be “assented to” by the League of Nations (Art. 15). Lithuania did not like this provision. It proposed that amendments to Articles 2 to 27 of the “Constitution of Memel” should be made by a majority vote of two-thirds of the House of Representatives; and that they should be ratified by the Diet of Lithuania (Art. 47 of April 11th draft). Articles 34 to 37, dealing with the port, could be changed only with the agreement of the League of Nations (Art. 48). The Allies agreed to both of these amendments; but the Lithuanians changed their minds. In the drafts of April 13th and July 13th they suggested that the first provision should apply to Articles 2 to 30 instead of 2 to 27 (Articles 47 and 48

in both drafts). The Allies did not yield, and both sides remained firm in their respective demands. The unyielding attitude of Lithuania caused the Allied Powers on August 8th to suggest the return in a *modified form of the original ten year period* within which amendments could not take place. They reduced it to five years. Otherwise the Allied drafting remained the same as before (Art. 61). On September 21st, Lithuania demanded the deletion of the first paragraph, which prescribed this five-year period of grace, but yielded to the Allied views on the other points (Art. 61).

The Davis Commission reported a four-fold instrument, as had been noted. No way of amending the Convention was given. Article 14 of Annex II permitted the amendment of the harbour provisions after five years by Lithuania, after it had consulted the Directorate and harbour board, and when it had received the consent of the Council of the League of Nations including the Four Great Powers. Many of the same conditions were laid down for amending Annex III on Transit Traffic in Article 4. However, that which was of most significance for this discussion was that Article 38 of the Statute read:—

“The provisions of the present Statute may be modified after three years from the ratification by Lithuania of the Convention of which the said Statute forms a part. The Procedure of amendment shall be the following:

“The Chamber of Representatives of the Memel

Territory must pass the bill modifying the Statute by a majority representing three-fifths of the votes of all the members.

"The modifications, after being adopted by the Chamber, must be submitted for the approval of the citizens of the Memel Territory by way of referendum, if not less than one-quarter of all the members of the Chamber so demand within the three months following the adoption of the modification by the Chamber.

"If the modification is approved by two-thirds of the citizens participating in the referendum, it shall be submitted without delay for approval of the Legislative Assembly of Lithuania. It shall not come into force unless it is approved by the said Assembly within one year from the date of its submission thereto."

The development of the amending process was a struggle in which Lithuania tried to take what may be called the "Bill of Rights" of the Statute out of the proposed control by the League of Nations. That she succeeded in doing so may readily be seen from the fact that these rights logically found their way into the Statute, the amendment of which was provided for in accordance with the Lithuanian wishes.

Up to the very last draft each convention was spoken of as the constitution for the Territory. All such references were dropped under the Davis plan. Finally it will be noted that the Governor was never once mentioned in any respect as a party to the

process of amendment. His name did not occur once in this connection in a single one of the many drafts.

One word is necessary on a matter closely related to the amending process. Article 49 of the draft of March 25th provided that the Convention should be placed under the guarantee of the Council of the League of Nations. It could not be altered except with the consent of the Council. In answer to the host of uninformed critics of the League it must be pointed out that Article 49 became either an emasculated part of Article 48 of the next draft, or else it disappeared entirely from all subsequent negotiations. The inescapable conclusion was that Lithuania did not wish the Council to act as a guarantor for Memelland autonomy, and the Allies agreed that it should not be such a guarantor. At every turn in subsequent negotiations Lithuania has continued to deny all rights of the Council to inject itself into disputes over the autonomy of Memelland. Such is still the case to-day.

§ 68. *Settlement of Disputes.* The atmosphere surrounding the Memel question from its beginning made it apparent that the disputes might arise in the future and some means of adjusting them had to be found. The Allied draft of March 25th proposed to make the chairman of the Port Commission a mediator in disputes between Memel and Lithuania in questions involving the Statute. If either side was dissatisfied with the decision it had the right within thirty days to appeal to the Council of the League for a final "definitive" decision (Art. 48). If the chairman

did not intervene, either party was free to appeal directly to the Council. Lithuania objected to this procedure and presented a substitute Article (49) placing the settlement of such disputes within the jurisdiction of the Permanent Court of International Justice (April 11th). The Allied answer was another substitute Article stating that any member of the Council of the League was to have the right to report any infraction of the Convention to the Council. Any difference of opinion concerning fact or law, when it had to do with the Convention, was to be regarded as a difference possessing an international character subject to the terms of Article 14 of the Covenant of the League of Nations. Any difference of opinion of this sort could be submitted to the Permanent Court of International Justice whose decision would be without appeal and would possess the same force and value as a decision rendered by virtue of Article 13 of the Covenant (Art. 49 of the draft of April 13th).

The Allied delegations demanded that the Article in question should begin, "Lithuania agrees that the authorities of the Territory of Memel and any member of the Council of the League of Nations or any interested State. . . ." The Memel Delegation agreed with this proposal, but naturally Lithuania maintained its draft (April 13th) and refused to consent to such a generous creation of interested, and from her point of view meddling, parties. Thereupon the Allied delegations reserved their adhesion

to the entirety of this Article. Finally, on August 8th, the Allied Powers returned to their draft of April 13th (Art. 62).

These steps in the development of Article 17 of the Convention are extremely important because it has been necessary to determine its meaning upon at least three different occasions when the Memel question has appeared before the Council of the League and before the Permanent Court of International Justice. Article 17 read:—

“The High Contracting Parties declare that any Member of the Council of the League of Nations shall be entitled to draw the attention of the Council to any infraction of the provisions of the present Convention.

“In the event of any difference of opinion in regard to questions of law or of fact concerning these provisions between the Lithuanian Government and any of the Principal Allied Powers Members of the Council of the League of Nations, such differences shall be regarded as a dispute of an international character under terms of Article 14 of the Covenant of the League of Nations. The Lithuanian Government agrees that all disputes of this kind shall, if the other party so requests, be referred to the Permanent Court of International Justice. There shall be no appeal from the Permanent Court’s decision which shall have the force and value of a decision rendered in virtue of Article 13 of the Covenant.”

PART IV
THE LEGAL NATURE OF THE STATUTE

CHAPTER XI

THE LEGAL NATURE OF THE STATUTE

AN examination of the legal nature of the Statute may be divided into two parts: (1) What is the Statute, and (2) Which form of political organization did it create?

§ 69. *What is the Statute?* The Treaty of Versailles in Articles 28 and 99 took the Memel Territory from Germany. To complete this transaction the agreement of January 9th, 1920, was drawn up, and its terms provided for the German evacuation of Memelland.¹ This was followed by General Odry's acceptance of the power over Memelland from Count Lambsdorff on February 15th, 1920. However, the decision as to the final disposition of the Memel Territory was delayed until the Lithuanian invasion forced the Powers to send the Note of February 16th, 1923.

Point 2 of that Note guaranteed the autonomy of the Memel Government, including therein freedom of speech, popular representation, equality of race, and religion.²

¹ Rogge, pp. 29-31.

² *The Ques.*, p. 62.

Point 6, the last point in the Note, read:

“As soon as Lithuania accepts sovereignty upon the foregoing conditions, the Conference of Ambassadors, with the assistance of representatives of Lithuania and of the Territory concerned, will draw up at Paris an Organic Statute for the Memel Territory and will conclude a Convention with Lithuania in conformity with the present decision.”

It is hard to reconcile the wording of Point 6 with the Allied contentions that sovereignty did not pass to Lithuania until the Convention had been signed. It would seem that the Note of February 16th passed the sovereignty over Memel to Lithuania as soon as she accepted it upon the stated conditions including Point 2, but the Allied Powers who granted the sovereignty said it did not.

So many impassioned pleas have been written on this matter that it is hard to obtain a correct view of it. From an objective standpoint the matter resolves itself as follows. The Allied Powers offered Lithuania a qualified sovereignty over Memel, when Lithuania should choose to accept it. This she did to the satisfaction of M. Poincaré and the Ambassadors on March 13th, 1923. The qualifications were seemingly therefore integral parts of the transferring instrument. If the Powers took back their offer, Lithuania was free to observe or to disregard the qualification as she liked—which of course was *reductio ad absurdum*.

But the corollary was more significant. If Lithuania violated the qualifications, the Allies in their turn were, according to commonly accepted principles of international law, free to regard the agreement as still in force or as terminated, just as they chose, i.e., they could revoke the transfer of sovereignty.

Assuming that this reasoning is correct, certain significant facts follow: (1) Lithuania in accepting the sovereignty had to do so on the terms of the note of February 16th, 1923. (2) The Statute and Convention, which were subsequently framed, merely elaborated upon and put into final form the agreement already reached between the Powers and Lithuania. (3) The autonomy of Memelland was guaranteed in the instrument of transfer and bore an equally important part in that instrument with the transferring clause. In fact, Point 6 was made to depend for its validity upon the observance of Point 2. (4) On the other hand there is nothing in the Note of February 16th, 1923, to prove that if Lithuania observed the conditions in the first five points, the transfer of sovereignty was not already completed. (5) All of these conditions were created before the Convention and Statute came into being.

The torturous negotiations by which the Statute eventually came into existence have been followed above. The resulting convention was a treaty between Lithuania, on the one hand, and the four Powers, on the other. The first Annex contained the Statute. Article 2 of the Convention read:—

"The Memel Territory shall constitute, under the sovereignty of Lithuania a unit enjoying legislative, judicial, administrative, and financial autonomy within the limits prescribed by the Statute set out in Annex I." ¹

Article 1 of the Statute was essentially the same.² Both of these re-echoed Point 2 of the Note of February 16th, 1923. Article 16 of the Convention read:—

"The Annexes I to III of this Convention shall be considered for all purposes as constituting an integral part thereof."³

The conclusion to be drawn from these was that the Statute was an integral part of an international Treaty. But this was not clear as the counsels for the two sides in the Böttcher case pleaded before the Permanent Court of International Justice.⁴

Sir Malkin contended that the Treaty and Statute—which was an integral part of the Treaty—were both anchored in international law. Sovereignty over Memelland was a delegated power protected by the Great Powers and Lithuania could not change the Statute unilaterally. The source of Lithuania's powers might be found in the Treaty and its annexes. Sidzikauskas said that there were two sides to the Statute, one was the Memellandish and the other was

¹ *Le Statut*, p. 99.

² *Ibid.*, p. 105.

³ *Ibid.*, p. 103.

⁴ Publ. de la Cour permanente de Justice internationale Série A/B, no. 49.

the Lithuanian.¹ The Statute was Lithuanian law by the very terms of its preamble. Vacancies in the Statute were many and they were to be filled by analogy. The Lithuanian sovereignty was absolute in every respect except where it was positively limited. Where there were no provisions in the Statute, the Lithuanian Constitution applied. He went on to say that it was not certain whether or not the Powers wished eventually to incorporate Memelland in Lithuania, or to make it a member State in a Bundesstaat giving the larger State the power to legislate for the smaller.²

The Permanent Court of International Justice did not follow either view entirely. It classified the Convention as a treaty which aimed to set up real autonomy for Memelland. On the other hand the framers did not intend to leave Lithuania helpless. The Lithuanian sovereignty was limited only by the terms of the autonomy. Autonomy could be exercised only within the prescribed limits of the Statute.

The legal nature of the Statute, in view of its antecedents and the decision of the Permanent Court of International Justice, therefore seemed to be as follows. It is an integral part of an international convention, the essential conditions of which had already been agreed upon before it was framed. Lithuania was required to enact the Statute into law. Thus, in addition to being an international treaty,

¹ The omission of the Great Powers was very significant.

² See Leo Gross, *Der Memel Fall*, pp. 518-532.

the Statute became a part of the law of the land for Lithuania and for Memelland.¹ It is a framework of government and an instrument of allocation of powers. It sets out specifically the fields of activity where Memelland may exercise its autonomy. Beyond these specific grants the local Government may not take action without the agreement of Lithuania, whose laws shall take effect where the Statute does not apply. By the terms of the Convention and Statute, the Statute wherever it applies is the highest law for Memelland, not to be transcended even by the Constitution of Lithuania itself. In spite of Robinson's vehement protests,² the Statute must therefore be regarded as the Constitution of Memelland. This is strengthened by the fact that every draft prior to the Statute spoke of that Convention as a Constitution for Memelland in direct words. While ordinarily a constitution presupposes a State, the Statute is different. In granting the sovereignty to Lithuania the Powers did so on the specific condition that Lithuania should continue the autonomy as they willed it. The *quod erat demonstrandum* is that the Powers gave Lithuania sovereignty over Memel on the condition that the autonomy be preserved, i.e. that the Constitution of Memelland should be retained as the Powers had prescribed it. All efforts to argue this conclusion away are legal sophistries. The last vestige of hope of reasoning away this con-

¹ A similar situation is found in the United States where the Constitution makes all treaties a part of the law of the land.

² *Kommentar*, p. 254.

clusion was dissipated when Lithuania was required to enact the Statute into law and so make it binding upon her citizens individually as well as upon herself.¹

It must, however, not be forgotten that the Permanent Court of International Justice decreed that the Convention and Statute could not be construed so as to leave Lithuania helpless in matters of vital importance, such as, for instance, in checking activities in Memelland which might endanger the safety of the Lithuanian State. Lithuania was given sovereignty over Memelland, and she was entitled in the eyes of the Court to protect herself. Of course here, as in the free speech cases in the United States during the World War, the question is, where do the rights of one party end and those of the other begin. It is a case where the rule of reason must apply. Undoubtedly vagueness on this point is one of the greatest weaknesses of the Convention and Statute. The conflict between the autonomous rights of Memelland and the asserted political needs of the Lithuanian State have given rise to a condition in Memelland to-day, which many foreign statesmen contend is a violation of the autonomy provisions of the Statute; to which accusation Lithuania answers that it is a purely domestic affair in which she is acting within the limits of the Statute.

§ 70. *The Political Organization created by the Statute.*
The second phase of the question under discussion is:

¹ This technicality may be found admirably discussed in Friesencke, pp. 53 ff; J. B. Moore, *Digest of International Law*, Vol. V, secs. 757-760.

Which form of political organization did the Statute create? Here, too, much has been written on the subject. Most of the works make the very serious mistake of beginning with definitions and trying to fit the Memel Government into one or another class of existing political phenomena. This is a very acceptable method when one deals with a well standardized State or colony, but Memelland, like Danzig of to-day, and the Saar of yesterday, is peculiar unto itself. One must begin with the Statute which created it and describe the organization in terms of that Statute.

When Germany ruled over the area, which is now called Memelland, it was a part of East Prussia and was ruled as a part of the Kingdom of Prussia and of the Empire. It consisted of Kreises Memel, Heydekrug, and of a part of Kreis Ragnit, and Kreis Tilsit. A provisional government was set up over it after the World War, under an Oberkommissar, Count Lambsdorff, who used a Landesdirektorium and a Staatsrat consisting of twenty members to help him in governing. This rule lasted until General Odry took over the power. He continued Lambsdorff's local Government until the reforms of May 1st, 1921, which have been described above.¹ For the most part these changes left the old system of government intact, while the French took over foreign affairs, administration and the caring for needs inherent in the occupation. There has been

¹ Karl Strupp, *Wörterbuch des Völkerrechts und der Diplomatie*.

some doubt expressed as how to classify the form of rule Memelland was under during the French occupation. Schätzel¹ and Strupp² consider it to have been a *condominium* or a *co-imperium*. The arguments they give are convincing. However, it must be remembered that in a condominium, such as that for instance in the New Hebrides Islands, the ruling powers generally share in the government. This was hardly the case in Memel. Odry and Petisné, either individually or jointly, had absolute power to institute such governmental changes as they saw fit in Memelland; and to rule as they thought best. It would therefore be more accurate to say that while sovereignty rested jointly in the Four Great Powers until such time as they should make a final disposition of Memelland, the French Government through its agents acted as the trustee for the Powers. It was an international trusteeship revocable at will, but while it lasted France ruled.

When Lithuania invaded Memelland, the French failed to perform their trusteeship, but the location of sovereignty did not change. The Lithuanians assumed the jurisdiction over Memelland, which usurpation the Allies either could not or would not terminate. This state of affairs continued until March 13th, 1923, when Lithuania, as a result of her acceptance of the terms of the Note of February 16th, was legally installed as the ruling power possessed of all the rights and privileges of sovereignty qualified

¹ *Der Wechsel der Staatsangehörigkeit*, pp. 80-81.

² *Supra cit.*, p. 38.

by the autonomy guarantees. This grant of sovereignty was consummated only when the Convention had been agreed upon, signed, ratified, and registered. The French trusteeship terminated on March 13th, 1923. The autonomous territory of Memelland came into existence on the same date. It was a qualified autonomy depending for its final form upon the subsequent Convention and Statute.

It has already been said that the Statute was the Constitution for the autonomous Territory of Memelland.¹ What type of political organization did it create?

Langer² described Memelland as a member state in Lithuania. Rogge³ was inclined to agree with that view saying that Lithuania was a Staatenstaat. Boehmert⁴ said, "Das Memelgebiet ist also ein Unterstaat mit republikanischer Direktorialverfassung innerhalb des litauischen Oberstaates und nicht eine litauische Provinz mit international garantierter Selbstverwaltung." Others might be added, but this list shows that the view that Memelland is a State has been seriously advanced. An analysis of the constituent elements of a State shows them to be the following: (1) a definite territory, (2) a given population, (3) a political organization, (4) a common consciousness among the people that they constitute the State, and (5) the highest political power or sovereignty. Memelland can claim to have the first

¹ Boehmert, *Zum Memel-Urteil*, p. 1099. ³ pp. 261 ff. See also Thoma.

² p. 395.

four, but not the last. Sovereignty was specifically given to Lithuania in the Convention of which the Statute is a part. And there is no such thing as a nicht souveräner Staat.¹ Therefore the Statute cannot have created a state in Memelland.²

Jellinek's *Allgemeine Staatslehre*, third edition, contains a little different version of the above view.³ It is supported by Meyer and Hatschek. The theory is that any political organization which possesses some, but not all, of the elements of a State, is a Staatsfragment.⁴ The old Grossherzogtum of Odenburg according to Jellinek was an example of such a fragment. So is Canada. Memel is said to belong to this classification.⁵ The difficulty is to find the line demarcation between States, quasi States, and staatsfragments. It may be a convenient way of disposing of the Statute, but the classification of Memelland is not helped thereby. It is the same as saying that Memelland would be a State, if it had sovereignty, which it does not have; therefore it is not a State, but a fragment of a State,—which is to reason in circles. Rogge⁶ goes even farther with his thesis. He advances the interesting view that Davis had in mind the Dominions of the British Empire, when he drew up the Convention. In the first place Davis did not draw up the Convention. Its contents and

¹ Rogge, p. 268, and Langer, p. 395, advance this view.

² See R. Kjellen, *Der Staat als Lebensform*, especially pp. 99 ff.

³ Georg Jellinek, *Allgemeine Staatslehre*, pp. 647 ff.

⁴ Friesicke, pp. 53 ff.

⁵ *Ibid.*, p. 647 ff.

⁶ p. 2, especially footnote 2.

general arrangement had been very largely worked out before Mr. Davis ever appeared on the scene. In the second place Rogge had an imperfect understanding of the Dominions, for their powers are far greater than those granted to Memel. They have their own diplomatic agents, draw up their treaties, and for the most part govern themselves quite independently of England; the greatest single bond uniting them being their loyalty to the British crown. There can be no doubt that none of the parties to the Convention ever contemplated a dominion status for Memel. By no stretch of interpretation can the dominion idea be deduced from any of the proposed drafts. Memelland was to come under Lithuanian sovereignty much farther than the dominions were under British sovereignty in 1928 when Rogge's *Kommentar* appeared.

The view has also been advanced that Memel is a province of Lithuania.¹ The other is that Memel lies halfway between a province and a State. To speak of an autonomous province is to name an anomaly. A province is a subordinate division ruled over by a paramount State. It may be an administrative sub-division of a State. In either case an autonomous province is not a subordinate division in the respect that it is autonomous. To speak of Memel as being halfway between a province and a State is to say nothing; for then it might be a mandate, a dominion, a territory, or a number of other things.

¹ Hesse, p. 40; Rouzier, pp. 245-246; Josef L. Kunz, pp. 232-245.

Memel possesses an autonomous Government and rights. It is not a province of Lithuania, because its Government was established by the Statute and not by Lithuanian law.

Friesecke¹ describes Memel as possibly having a status like an American territory before it is admitted into statehood. This theory also does not hold water. There are several steps in the rise of a new American territory until it reaches the growth necessary for statehood. Progressively they might be listed as the Supreme Court gave them in the Insular Cases. First, when the territory is acquired a military rule is set up. This is followed by an executive rule; which in its turn is replaced by Congress, when it chooses to step in and administer. Congress then extends the Constitution to the territory as it sees fit. The next step is for Congress specifically to "organize" the Territory. Finally comes statehood. Examining Friesecke's views in the light of these steps, it is apparent that he must have been speaking of an "organized territory". His words are, "*Das Memelgebiet zeigt in seinem staatsrechtlichen Aufbau grosse Aehnlichkeit mit den Institutionen, welche die Territorien der nordamerikanischen Union in ihrem vorgeschrittenen Stadium erhalten hatten*". If he did not mean an "organized territory", his statement has no significance, because prior to this step in development American territory is nothing more than a colony.

¹Friesecke, p. 53 ff.

If Friesecke meant an "organized territory", he understands the American system of government imperfectly. The Governor of an organized territory is appointed by the President and that appointment is ratified by the Senate. The Governor has no cabinet or directorate such as is found in Memel. Yet in many respects he possesses far greater powers than the Governor of Memelland. The bulwark of the Memel autonomy and rights is the Statute. But in the organized territory of the United States, Congress can do anything short of repealing or violating the federal Constitution. There are no guarantor States which have a right to insist before an international tribunal that certain conditions shall be lived up to in an American territory; but there are the Four Powers and the Council of the League of Nations to guard over Memel. Furthermore the organization of each American territory differs to some extent from that of every other. Finally, there is nothing in American territories which corresponds to the responsibility of the Directorate in Memel or the Diet. There are a score of other differences, but enough have been given to show that one cannot correctly speak of the organization set up by the Statute in Memelland as being similar to that which is found in the "organized territory" of the United States. Nor is Memelland like a state in the American Union, because the American States created the Federal Government, while Memelland was created by the Great Powers with no sovereignty of its own.

The view has also been advanced that the rule of Lithuania in Memel has some of the characteristics of a mandate. This is to some extent true, just as the views hitherto examined all contain some truth.¹ However, when the question is raised: "Is the Lithuanian interest in Memelland that of a mandatory State" the answer is categorically, "No". First Memel was not included in the mandated areas in the Treaty of Versailles (Art. 22). Second, the mandates have to be exercised on behalf of the League of Nations, while Memelland is governed by the Statute and the Lithuanian law. Third, Memel cannot be made to fit into any of the mandate categories as an A, or B, or a C, mandate. Fourth, the rule in Memelland is not a trust; it is a right limited only by the Statute and Convention. Fifth, Lithuania does not have to make an annual report to the Permanent Mandates Commission in the case of Memel. Sixth, Lithuania was given sovereignty over Memelland, but in the mandates "The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council."² It is not necessary to go any further to show that the Statute did not set up a Lithuanian mandate over Memelland.

Robinson³ is right when he says that Memelland is not a State, that it is neither a State on terms of

¹ See Rogge, p. 179.

² Article 22 of the Covenant of the League of Nations.

³ Jacob Robinson, *Kommentar der Konvention über das Memelgebiet*, pp. 286 ff.

equality with Lithuania nor a member State of a Lithuanian Bundesstaat, nor an Unterstaat, nor a vasa State. It can neither be classified in the same category with a territory nor a State of the United States, nor with the British dominions, nor with the mandates. To call it a fragment of a State is useless, and to say it is a partner with the Lithuanian State is also unsatisfactory. It is not a colony, nor is it a Free State.

Several other ideas have been expressed about the political status of Memelland. Some of them have called it a protectorate, others a quasi-sovereign State. The trouble with these definitions is that they presume some degree of sovereignty in Memel, which it does not have. Memel is not a person in international law.¹ Redslob² and Hatschek³ both speak of it as belonging to the group of "abhängige Länder". This view also is based on the principle that Memelland is a person in international law.

One other view, which is commonly advanced, is that Memel is an autonomous territory. Leisewitz says⁴ that an autonomous territory is one which has "Fähigkeit eines nichtstaatlichen Verbandes zur Regelung der eigenen Angelegenheiten durch Aufstellung von Rechtsnormen". Memelland is a provincial subdivision of Lithuania with wide powers of self-government and autonomy. In this relationship Lithuania is the master, but must respect her international obligations in regard to the autonomy.

¹ Fricsecke, pp. 56-60.

² p. 125.

³ p. 9.

⁴ p. 56.

Dörge has about the same opinion as Leisewitz. Hallier¹ says, "Das Memelgebiet ist ein autonomes Land, d.h. ein mit umfassendsten Zuständigkeiten in Normgebung und Normdurchsetzung ausgestatteter, wenn auch der Verfassungsautonomie entbehrender Staatsteil Litauens, dem die Kompetenzen in Unabhängigkeit von der litauischen Staatsgewalt zustehen und ihm nicht ohne seinen Willen entzogen werden können."

The view that Memelland is an autonomous territory is correct. There can be no arguing away the words of point (2) of the Note of February 16th, 1923, which says that the sovereignty over Memel shall be transferred to Lithuania on the condition that "an autonomous government and popular representation" be established in Memelland.² Article 2 of the Convention describes "Memel Territory" as a "unit enjoying legislative, judicial, administrative and financial autonomy".³ The identical words are used in Article 1, of the Statute. Added to this is the opening clause of the Statute, "Realizing the wisdom of granting autonomy to the Territory of Memel and of preserving the traditional rights and culture of its inhabitants. . . ." If further conclusive proof is desired that the Powers meant to make Memelland autonomous, they may be found in the diplomatic correspondence and draft conventions preceding the Convention and Statute. Ample support

¹ *Die Rechtslage des Memelgebiets*, p. 156.

² *Supra cit.*

³ *Supra cit.*

may be found in almost all works for this view. Robinson, for instance, discusses it in some detail.¹

Next the question arises, what is meant by the autonomy of Memelland? Various writers have examined the autonomy provisions for the Aaland Islands, the Carpathian Russians, Eastern Carelia, East Galicia, Silesia, Catalonia, Imbros and Tenedos.² They have gone to some trouble to find points of similarity and difference with the hopes of being able to discover the nature of Memel's status. But it is perfectly obvious that the only place to look for the nature of the autonomy of Memelland is in the Statute itself. That instrument makes Memelland a political and legal unit,³ which derives its rights and powers not from Lithuania, but from the Convention and the Statute. Whatever rights Lithuania has over Memel come directly from the Statute, Convention, and the Note of February 16th, 1923.

However, writers are not agreed on the meaning of autonomy in Memel. The most serious discussion has come from Robinson, who maintains that autonomy in general is not an institution of international law, but a public law applicable to the State. Only a State can be sovereign and only a non-state can be autonomous.⁴ This leads him to

¹ *Supra cit.*, p. 251.

² Robinson gives all of the provisions for these in his *Kommentar*.

³ Leisewitz, p. 49.

⁴ The whole discussion may be found in the *Kommentar*, pp. 251-267.

the next step that one must not confuse autonomy and self-administration. They are not the same thing, and because Memel has been promised one of these it does not follow that it is also entitled to the other. The trouble with Robinson's idea is that it proceeds from definitions rather than from the Statute itself. In reading the Statute one discovers that the autonomy is prescribed for Memelland. Then the Statute describes and defines how that autonomy shall be exercised. Only where the autonomous privileges end, do Lithuanian laws, Constitution and rights begin. Finally, the observation of the autonomy is made subject to an optional guarantee by the League Council and the Great Powers. Had Lithuania granted the autonomy to Memel without entering into engagements and promises involving other powers Robinson's views might have been correct. The Statute is an international law¹ as a general rule, but it certainly is in the case of Memel. The Lithuanian sovereignty over Memel can only be exercised in international conditions. The Statute and Convention must be construed as two parts of an obligation in international law.

§ 71. *Summary.* The Statute may now be seen to be an integral part of an international convention, the observance of which is guaranteed by the Great Powers and the Council of the League of Nations.

¹ This assertion is open to very grave doubts, which cannot be examined here.

It is a constitution for Memelland, which gives it an autonomy which is guaranteed in international law and in the municipal law of Lithuania by specific enactment. The nature of the autonomy of Memel can only be found by consulting the Statute.

PART V

THE APPLICATION OF THE
STATUTE TO THE PRESENT DAY

CHAPTER XII

THE APPLICATION OF THE STATUTE TO THE PRESENT DAY

CONSIDERED as an instrument by itself the Statute seems to be reasonably clear, but like all constitutions its meaning and value depend upon the way in which it is interpreted. There are parts of it which are obscure, and there are parts which are conspicuous for their omissions. Coupled with these technical problems are the Lithuanian national emotions and ideals, local protests against the Government set up in Memelland, and the interests of foreign Powers which are constantly injected into Memel affairs. The effect of all these forces is to engender passions to a tremendous degree over these problems. Scarcely a year has passed since the inauguration of the Statute when the League of Nations has not been either officially or unofficially addressed with a charge that Lithuania was violating the Statute. On at least three occasions the Council of the League had considered these charges in its official meetings,¹ and in 1932 one of the questions was appealed to the

¹ Official Journal of the League of Nations:

1925, pp. 316-317.

1926, pp. 1226, 1271 ff, 1424 ff, 1407, 1436.

1930, pp. 1516-1538, 1618 ff.

1931, pp. 232, 1131-1132, 1467-1473.

Permanent Court of International Justice for adjudication.¹ It would be impossible to give a detailed account of these charges, but a brief survey of the main contentions is essential for the conclusions contained in the final chapter.

The first great difference of opinion concerns the preamble to the Statute, because it states that the Memel Territory shall have "the status of an autonomous unit." It is the same problem which is contained in Article 1, which defines the nature of the autonomy. The debate rages over the meaning of the word "autonomy." One group of writers state that it grows out of international law;² another insists that it arises from "Staatsrecht."³ The difference is fundamental, because if autonomy is an institute of international law, the family of nations is legally interested in the fate of Memel even without the Convention. If, on the other hand, autonomy is a matter of municipal law, as the Lithuanians contend, the governance of Memelland is in the main a domestic affair and the interference of foreign states in Memel constitutes a gratuitous intermeddling in the local affairs of Lithuania. The latter is far fetched in view of Article 17 of the Convention, but nevertheless it is seriously advocated. This difference of opinion goes to the heart of the whole Statute and affects the "legislative, judicial, administrative, and financial autonomy." If the Lithuanian con-

¹ Publ. de la C. per. de Justice int. Série A/B no. 49.

² A. Hesse, *Mittheilung der Deutschen Gesellschaft für Völkerrecht*, Vol. 10, p. 41.

³ Robinson, *Kommentar*, p. 251.

tention is correct, then indeed the Statute is the transition instrument which Mr. Davis specifically said it was not.¹

A second set of charges accuse the Governor, appointed under Article 2, of being guilty of the dereliction of his office. Both parties agree that the Governor is the representative of the Lithuanian Government. *He convokes and dissolves the Chamber of Representatives subject to certain restrictions; vetoes legislation, and appoints the president of the Directorate.* These are all provided for in the Statute.² The charges arise out of the methods which the various Governors have adopted in order to carry out their duties. Thus among other things it is complained that the Governor has violated the Statute by the misuse of his right to veto laws,³ by unlawfully interfering in the order of the day in the Chamber of Representatives, and by unlawfully dismissing the Directorate. These charges are especially severe in the case of Governor Navakas; and of course, in the Böttcher case the Permanent Court of International Justice stated that the Governor had exceeded his powers in dissolving the Chamber of Representatives. Probably the greatest difficulty arises out of the fact that the Governor's duties were not clearly defined in the Statute. The Lithuanians wish to make up the deficiency by extending his powers, while the defenders of autonomy insist that

¹ For alleged violations see O.J.L.N., 1930, pp. 1618 ff.

² Rogge, p. 220; Robinson, p. 319.

³ R. Meyer, *Complaint*, p. 124 ff.

any extension must be strictly within the Statute. The results are bitter accusations by the Memellanders and dogged determination to make the Governor a more powerful officer by Lithuania, which unquestionably has led at times to violations of the Statute, as will be noted in other connections.

Probably the most frequently disputed Article of the whole Statute is Number 5. A study of it alone would fill several volumes. The main differences have to do with what are called "Lithuanian violations of the autonomy" with respect to worship, education, the sojourn of foreigners in Memel, police, finance, and the judicial system, which by no means exhausts the list of charges. The most bitter criticism comes as a result of interferences under martial law, which has been in force in Memel since 1926.¹ As early as September, 1929, complaints reached the Council of the League that Lithuania was violating Article 5 in her dealings with the insurance companies, by freeing her own officers from local taxation, by the failure to furnish or to allow the furnishing of adequate police protection, and by preventing the freedom of entry and exit to foreigners.² On August 28th, 1930, the Council of the League was told that the Governor was using his veto power to negative the autonomy, and that the administration of justice was constantly being hampered.³ Similar charges

¹ Meyer, *Supplement*, No. 1, p. 45. *Ibid.*, p. 131.

² Hallier, p. 158. For the Lithuanian answer see L.N.O.J., 1926, pp. 1273 ff.

³ *Ibid.*, p. 168.

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are being made to-day of interference in religion
and in education.

It is not the purpose of this discussion to accuse
or to defend either side; but merely to learn the
truth. In connection with Article 5 it would seem to
be that there is a vast difference of opinion as to:
(1) What Article 5 means, (2) How it should be
interpreted, and (3) Whether its present adminis-
tration is correct or not.¹

Article 6, which requires the local authorities to
conform to the Lithuanian Constitution in exercising
their powers, unless the Statute prescribes to the
contrary, makes the Lithuanians the complaining
party. They contend that the Memel Government
misinterprets the meaning of the word "autonomy"
and therefore is constantly trying to enact legislation
which does not conform to the Lithuanian Con-
stitution. However, the Governor possesses the veto
power which he uses as the occasion requires, and no
harm is done. Otherwise more might be heard of the
Lithuanian side of the matter. But the Memel-
landers say that it is exercising a dictatorship instead
of the democratic government required under the
Statute.²

The enforcement of Article 7, giving Lithuania
exclusive jurisdiction over all matters not mentioned
in the Statute, on the surface does not seem open to
much difference of opinion. From the Lithuanian

¹ For the meanings of the respective sections of Article 5 see the opposing
views in Rogge, pp. 287 ff, and Robinson, pp. 371 ff.

² Hesse, *Die Entwicklung des Privatrechts im Memelgebiet*, p. 680.

side it is not.¹ Article 7 was set up as to eliminate any possible conflict of jurisdiction between Memel and Lithuania. However, several people have contended that since the Memel Territory is German by origin, and since Lithuania is, first, Russian in character, and second, inexperienced in governing, Memel suffers as a result of having Russian laws and judicial procedure forced upon it.² Lithuania, it is contended, sets up governmental standards which are entirely alien to the Memellanders. In this same connection questions have been raised as to the precedence of laws including the Statute, the Lithuanian Constitution, the old German Constitution, the Weimar Constitution, and the various legislative acts passed in pursuance of each of these.³ These are not idle questions as may readily be seen by the fact that the power of pardon is not mentioned anywhere in the Statute. The debate on this Article shows how difficult the present situation is. There can be no doubt that Lithuania legally, morally, and otherwise possesses this power, and yet she is challenged in its exercise.

Another point of dispute has to do with Memel citizenship. The matter of nationality was settled under the Convention,⁴ and as a result of Articles 8 to 10 an *Optionsvertrag* was drawn up between Germany

¹ Robinson, pp. 477 ff.

² Rogge, p. 298.

³ For example, H. Borchert, *Die wesentlichen Grundrechte der Memelländer*, pp. 1-12. Paul Borchert, *Ueber die Kompetenzabgrenzung zwischen dem Memelgebiet und Litauen*.

⁴ Carl G. Bruns, *Staatsangehörigkeitswechsel und Option im Friedensvertrage von Versailles*, pp. 65-67.

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and Lithuania on February 10th, 1925,¹ giving the Memellanders the right of opting for German citizenship. When the options took place, Lithuania found cause to complain, because the German element in Memelland had been urged to opt for Lithuanian citizenship and not for German.² In this way the German element remained preponderant in Memel *after the option*. This had its effect on the Statute, especially in matters relative to elections. Rogge pointed out that the text of Article 8 of the Statute in being translated into Lithuanian had been the cause of much trouble, because no rules determining Memel citizenship existed.³ Robinson answered that there were two kinds of citizenship in Memel, one of origin, the other of the newcomers. One might be a citizen of Lithuania without being a citizen of Memel ; but every Memel citizen was at the same time a citizen of Lithuania.⁴ He described other phases of the subject, but did not say anything about the character of the citizenship. The answer was complete as far as Rogge was concerned, but did not alter the fact that to-day, after eleven years of the Statute, the matter of Memel citizenship is still unsettled.

As for the civil rights which were recognized under Article 9 as applicable to the citizens of Memel Territory in Lithuania, they have never been defined.

Still another question dealing with the Statute

¹ *Amtsblatt*, 1925, No. 38.

² See the current numbers of *Das Memelland* for instance during this period.

³ *Kommentar* p. 304.

⁴ *Kommentar*, p. 494.

had to do with Articles 10, 11, 12, 13, and 15. These provide the organization and constitution of the Representatives. The manifold accusations directed at the Lithuanian authorities are far too numerous to list in detail. The Governor is charged with exercising his veto powers so as to nullify the laws¹ and to make it impossible for the legislature to function efficiently. The Governor is also accused of illegally closing the sessions² and exercising his extraordinary power to convoke and adjourn legislative sessions as though it were a regular function. The elective lists have been tampered with, and deputies have been deprived of their right to vote.³ The Governor has refused to convoke a special session of the Chamber of Representatives although Article 12 makes it mandatory for him to do so, when one-third of the members request it.⁴ And finally it is contended that the immunities of the members have been violated by the shelving of domiciliary rights of the Landtag by the Direktorium.⁵ Without protracting the list further, it is apparent that these contentions accuse Lithuania of creating a condition in Memel which violates all of the five above-mentioned Articles of the Statute. And in this connection Article 16, dealing with the Governor's veto power, may be included as an additional Article over which dispute is taking place.

¹ Meyer, p. 124.

² Meyer, pp. 177-192.

³ *Ibid.*, pp. 195-196; L.N.O.J., 1930, pp. 1618 ff.

⁴ Meyer, p. 124; L.N.O.J., 1930, pp. 1618 ff.

⁵ Meyer, pp. 199-205; L.N.O.J., 1930, pp. 1618 ff.

Article 17, which deals with the Directorate, was the basis of the Böttcher case.¹ As will be remembered the Permanent Court of International Justice refused to side completely with either side. But the matter was not settled with that. To-day as bitter a difference of opinion exists over the meaning of Article 17 as before the Böttcher trial. A legally constituted Schreiber Directorate, it is avowed, has been illegally removed by the Governor,² and in its place an illegally constituted one has been created. The Lithuanian authorities state that they cannot work in harmony with the Directorates to which the difficult Chamber of Representatives will give their vote of confidence. They find that Article 17 failed to define the executive duties clearly; there were no rules fixed for the way in which the Directorate was to work; and the executive power is not facultative, but obligatory. Therefore they must supply a Directorate. As yet no solution for these many difficulties has been found, so as to satisfy both sides.³

Article 18 is also the subject of dispute. The Governor is accused of interfering with legislation to such an extent that he has generally and specifically blocked the Chamber of Representatives from initiating legislation.⁴ Article 19, too, which deals with elections to Communal and District Assemblies may be added to the list of contested Articles. It was the

¹ Publ. of P.C.I.J., *supra cit.*

² Meyer, p. 117.

³ See Rogge, p. 336, and Robinson, p. 564.

⁴ Meyer, p. 124.

subject of a complaint brought to the League in 1930, but as the result of a temporary agreement between Germany and Lithuania, it was never given a hearing.¹ Memellanders complain that the new electoral law of 1929 makes voting for the people in the cities difficult, but for those in the country easy.² When confronted with these protests the Governor replies that these are undecided matters in which the position he has assumed is fully as tenable as that of the Chamber.

Next, the maintenance of public order (Article 20) is a point of sore debate. Military forces, secret police, and regular police all have jurisdiction in Memelland at the same time. Bitter complaints have been made against the Lithuanian authorities for permitting some public meetings and preventing others. Students are accused of tearing down German signs by force and insisting that Lithuanian signs be put in their places. At the present moment a case is pending in which officers of the Chamber of Representatives charge the police with failure in their duties to maintain the public peace in an official sitting of the committee charged with formulating the programme of the Chamber. This list might be prolonged indefinitely, but the illustrations given are sufficient to show that the charge is seriously made that public order is not maintained in Memelland, and that the local authorities are prevented from taking the necessary measures to insure it. Here again the

¹ L.N.O.J., 1930, p. 1618.

² Hesse, *Mitteilung*, p. 49.

Lithuanian answers are extensive. For example, they show that some meetings are dangerous to the safety of the State, others are not. The students were only following an ordinance, which the people and city officials of Memel disobeyed.

A similar story is heard about Articles 21, 22, 23, and 24, providing for the organization of the Memel courts.¹ Lithuania regards these Articles as limitation upon the autonomy of the Memel territory,² and she has acted accordingly. This, however, is not the view of the champions of autonomy.

The following are a few of the charges listed by legal writers on these Articles: (1) There is a need for a higher tribunal which shall settle disputes about the Statute. The panel on the Lithuanian Supreme Court allotted to Memel is of no service because all important decisions require a full sitting of the court, which means that the panel will be outvoted and thus becomes a nullity. (2) Prisoners have been taken from the custody of the Memel prisons after the Memel courts within the scope of their power had passed sentence upon them.³ (3) Judges have been dismissed from office even though they were guaranteed their offices for life under the Statute. (4) Only the Lithuanian Supreme Court was given the right to take jurisdiction in Memel affairs, and

¹ Hallier, pp. 168 ff; Hesse, *Gerichtsverfassung und Rechtspflege im Memelgebiet*; *Die Entwicklung*, etc.; *Das Memelstatut*; Hans Borchert, *Die Wesentlichen*, etc.; Paul Borchert, *Ueber die Kompetenzabgrenzung*. Bibliographies can be found in all of these.

² See both Rogge, pp. 336 ff and Robinson, pp. 607-714.

³ L.N.O.J., 1931, pp. 1473 ff.

yet other Lithuanian courts are trying purely Memel cases. (5) In the spring of 1930 several customs officers were haled before a Lithuanian court, although it was contended this was a breach of the Statute. There is no need to prolong the list, nor to repeat that Lithuania has an answer for every single act. There is overwhelming evidence of misunderstandings and disagreements over the meanings of the Articles 21 to 24 of the Statute.¹

Next in order comes the difference over Article 25. That formerly innocent Article has suddenly burst into publicity. When the Lithuanians suggested that the curriculum adopted in the public schools of Memel should not be inferior to that followed in the schools of Lithuania, people agreed, but thought nothing more of it. Since then the Governor has interfered in school affairs in order to have more Lithuanian taught in the Memel schools. The Schreiber Directorate set itself against these measures, which it considered to belong properly in the category of autonomous powers under Article 5 of the Statute.² and therefore lying outside the scope of the Governor's powers. This difference of opinion led to the dismissal of the Directorate, and the question of which side was correct still remains unsettled.

Great bitterness surrounds the provisions guaranteeing the equality of the two languages. As early as 1926 the Council of the League was addressed with

¹ See *L'Année de la S. d. N.*, 1930, pp. 163-164; Meyer, pp. 129 and appendices; *L.N.O.J.*, 1930, pp. 1618-1633.

² Meyer, pp. 117 ff, and the attached documents.

an alleged violation of this provision.¹ Since that time the accusations have grown louder and more frequent. To-day a wide difference of opinion exists over the interpretation of Article 27. The Lithuanians say that it means that in official Lithuanian matters Lithuanian must be used. Thus, for instance, the railway employees to-day speak only Lithuanian, and the German names on all stations have been changed to Lithuanian. The court procedure likewise has been altered to conform to this view. In matters which are not officially Lithuanian, but local, such as business regulations, the two languages must be placed on a par. In accordance with this view all signs must have a Lithuanian text in letters equally as large as the German. At home the Lithuanians agree that any language may be used. The bulk of the Memelland population cry out against this procedure, contending that Article 27 means that those who use the German or Lithuanian languages in Memel are free to elect which they will use. They insist that this means that the freedom may be exercised both in public and private life, and in official and unofficial matters. If they choose to address a railway employee in German, he should answer them in German, if he can do so, and if he cannot he has no right to be employed; if they hang up a sign in German only, that is the affair of the owner; and if they address their letters in German script and with German names, the post office officials must handle

¹ L.N.O.J., 1926, p. 1271.

the letters. The category of alleged wrongs is extremely long.¹

Articles 28, 29, and 31, dealing with public officials and employees, have formed the core of several pointed complaints. In 1925 and 1926 the Council of the League of Nations was told that Lithuania was dismissing many of the old officials and continued to do so in spite of all protests.² Since that time wholesale dismissals have taken place in all branches of public service extending from sailors on tugboats to teachers and clergymen.³ Lithuania will not allow teachers to come in from the outside,⁴ and one of the most serious charges is that the new officials are recruited only from Lithuanian supporters, and when none such can be found available in Memel the desired type is encouraged to enter. Of course Lithuania has given many reasons for dismissing these people, the chief one being that Lithuania is afraid to have in public employ, however humble the position, anyone who is not dependable.

The alleged violations of Articles 32 and 33 are so numerous that it is again possible to list only a few: (1) Homes have been unreasonably searched and property confiscated. (2) Editors have been exiled and severe Press censorship has been instituted. (3) Disciplinary actions have been taken against public

¹ Meyer, appendices and p. 132.

² L.N.O.J., 1926, pp. 1271 ff.

³ Meyer, p. 121; also Suppl. 1, pp. 42-43 and appendices; Deu, pp. 48 ff.

⁴ Hallier, pp. 158 ff.

officials. (4) Freedom of religion, freedom of the Press, and freedom of public assemblies have been abrogated. (5) the Lithuanian law for the Defence of the People and State, of February 8th, 1934, legalized former irregular acts. It is vague, elastic, and catastrophic when placed in the hands of the judges.¹ (6) In addition to these there are alleged violations of the various rights: freedom of person, private property, postal service, speech, equality before the law, and freedom of election.² The Four Signatory Powers have all been given evidence to support these charges.

Nor has Article 34 escaped being a bone of contention. On March 2nd, 1926, the Council of the League of Nations was told that Lithuania was violating the passport restrictions prescribed in this Article.³ On August 11th, Lithuania answered⁴ that she had reached an agreement with Memel Territory and the matter had therefore been laid at rest. Nothing has been heard of the matter since.

Article 35 also reached the League Council on August 28th, 1930.⁵ Lithuania was accused of purposely creating hindrances to the operation of the financial regulations laid down in Article 35. The Chamber of Representatives asked for League help in the matter. They stated that Lithuania

¹ Meyer summarizes these charges, pp. 124 and 132 and appendices.

² H. Borchert, *Die Wesentlichen*, etc., chap. iii to end. K. Ballerstedt, *Die evangelisch-lutherische Kirche in Litauen im Kampf um ihre Freiheit*. See also Dr. Gaigalatis defence as an offset. Also Hesse, *Die Entwicklung*, etc., pp. 678 ff.

³ L.N.O.J., 1926, pp. 1271 ff.

⁴ *Ibid.*, pp. 1273.

⁵ *Ibid.*, 1930, pp. 1618-1633.

(1) refused to compute the percentage of payments contemplated in Article 45; (2) Lithuania would not pay the proper taxes on the salaries of Lithuanian officials operating in Memel Territory; and (3) Lithuania increased taxes on the Territory without Memel's consent. On January 24th, 1931, Lithuania answered vaguely to these charges¹ and on May 22nd, 1931, Braadland reported that Lithuania was reaching an adjustment on these matters with Memelland. It was therefore a matter for the courts and the special régime in the country.

Like the two previous Articles, Article 37 gave cause for recriminations. It is of course ancient history now, but the elections to the first Chamber of Representatives took place almost eight weeks after the deposit of ratifications in Paris instead of the prescribed six.²

To-day the last Article, Number 38, has aroused a new debate. The Chamber of Representatives wishes to amend the Statute. They began a discussion of Article 25 in May, 1934, in hopes of being able to relieve the school situation by amending it under Article 38. The Governor thereupon notified the Chamber that it might not initiate an amendment, but it could only accept one. The Chamber refused to agree and the Governor closed the session.³

It is useless to catalogue further complaints. They are available for anyone who wishes them in far

¹ *Ibid.*, 1931, p. 232.

² Rogge, p. 406; Robinson, p. 83; A.B.1, 1925, pp. 866, 905, 928.

³ Meyer, pp. 124 ff. and appendices.

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greater detail than here given.¹ Five of the thirty-eight Articles have escaped serious challenge. Article 3, which places the elections to the Lithuanian Sejm in Lithuanian hands, naturally gave the Memellanders no enforceable rights. Article 4, also placing treaties in Lithuanian hands, has never been seriously challenged because that is entirely a Lithuanian affair. Article 14, continuing the Economic Council, made it an insignificant and advisory body whose existence depended upon the will of the Chamber, and therefore not worth quarrelling over. Article 26, concerning minorities, has been challenged, but was passed over by the Council of the League for the more secure ground of Article 17 of the Convention. Besides, it is contended that the German element in Memelland is in the majority and Article 26 is only a base of shifting sand on which to place rights. And finally Article 36, prescribing equality of tariffs, has so far been free from any serious charge of misapplication or violation.

This multiplicity of charges is stupendous. Every single Article, with the exception of the last five mentioned, is or has been disputed. It is not a question any longer of the misinterpretation of individual Articles. The whole Convention with its three annexes is being challenged. Whether Lithuania is right or wrong is only one side of the matter; such hostile feelings are being aroused that something should be done.

¹ Brönner-Höpfner, *Die Leiden; Das Memelland; Deu; and the Memeler Dampfboot* are good examples.

CONCLUSION

IF the situation in Memelland is serious, some remedy is necessary, and it must include a definite clarifying of the positions of the various parties, whether they have a real or only a pretended interest in the Territory. The last chapter has given ample proof that not only the legal but also the political phases of the problem are in need of rectification. The charges made, that Lithuania is violating the autonomy provisions, go to the very heart of the Statute.

Any effort at adjusting the situation in Memel must from the very beginning keep the following issues in mind. The question is not, how did Lithuania obtain sovereignty over Memel? It is rather, having obtained the sovereignty, how is Lithuania entitled to use it? It is not a problem so much of past history, as it is a question of what we are to do with the problem now that it is with us. It is not the time for recriminations over the past, but for effective remedies for present evils and future harms.

Either, on the one hand, Lithuania must be admitted to have the right to a free hand over Memel, carrying with it the right to alter the Statute as she wishes. In such a case the outside powers become mere intermeddlers in Lithuanian affairs, when they attempt to interfere under Article 17 of the Convention. Or else, on the other hand, the Statute must be considered as an international instrument

guaranteeing a permanent autonomy for Memelland, which guarantee the Four Signatory Powers, or any member of the Council of the League of Nations, have the right to insist is observed.

If the second of these two positions is considered to be the correct one, then the Statute is grievously violated and changes should be made in the present arrangements. Most important among them is, that the nature of the guarantee should be more clearly defined. One of the greatest troubles in Memelland to-day is that in spite of all the statements maintaining that the Signatory Powers are guarantors whose duty it is to see that the Statute shall be observed, there is no way in which to give effect to these provisions. The chief reason is because the guarantee has been a subject of political caprice, and as such has been found lacking in some of the most difficult situations.

For example, when Germany left the League of Nations the Memellanders lost a champion in the Council. The results were most disastrous from the Memelland point of view, for Lithuania succeeded in working its will unhindered on the land. Japan was uninterested, being so far away; France looked favourably on Lithuania as a potential link in her diplomatic chain and would never intervene; Italy was not concerned with Baltic diplomacy or the fate of Memelland; and this left England alone of the Four Signatory Powers to see that autonomy was observed. English intervention has been either half-hearted or unsupported, depending upon the

diplomatic and political situation in the world. As for the other members of the Council of the League, they have studiously kept out of Memel affairs. Meanwhile the Lithuanian policies have been pursued with a persistent determination, and unchallenged. Lithuania has been accused of timing her most serious inroads upon the "rights of Memelland"¹ when political conditions in the world were most favourable to her success.

It is immaterial whether these accusations are right or wrong. From either point of view it is evident that there is a serious fallacy in placing the guarantee in the hands of a single power. *There comes a time when the greatest State is helpless to act, and it requires only one such moment for much harm to be done.* The only solution lies along some juridical line where the remedy does not depend upon political considerations.

Added to the other present difficulties with the Statute and Convention is the fact that they are so framed as to make an appeal for aid come after the harmful act has been committed. Any new arrangement should permit of some immediate way of checking contemplated actions, which might impinge upon the autonomous rights; and if a dispute over a present act is in existence some way should be provided for a reasonably rapid decision. It has often been suggested that an international umpire such as is found in Danzig might solve the problem. There are many objections to such a procedure, not the least being that Lithuania possesses the sovereignty over Memel-

¹ Reinhold Pregel, *Litauische Willkürherrschaft im Memelgebiet*.

land, whereas Danzig is a free city under the League of Nations. On the other hand, such an officer would *have the merit of meeting a situation* immediately it arose, especially if he had his residence on the spot.

The unsatisfactory nature, then, in the guarantee of Memel autonomy lies in the fact that there is only a moral obligation on the Council of the League and the Signatory Powers to see that the Statute is observed. The Powers intended first to transfer this responsibility to the Council, making that body the guarantor by positive mandate. Lithuania finally succeeded in jockeying the Powers into the non-committal Article 17, which permits the intervention, but does not prescribe it. While undeniably some good has come from the application of Article 17; from Lithuania's standpoint it is more of an irritant than a corrective. The Memellanders consider it weak. It might be suggested that if the Powers find the function of guarantors of Memel autonomy onerous, they might very easily shift the responsibility to the Council, and make it mandatory for that body to see that the Statute is observed.

Nor must one imagine that Lithuania finds the Statute entirely to her liking. Qualified sovereignty over any area is at its best unsatisfactory, and in Memelland especially so. In spite of the contentions that a large bulk of the Memelland population is Lithuanian, Lithuania is experiencing great difficulties with these same people. The elections have gone very heavily against the Governor and his supporters. The Chamber of Representatives has

constantly refused to give the Directorates appointed by the Governor their confidence. Over a hundred people who were recently tried for treason were found guilty by a military tribunal and sentenced. And there are any number of incidents available showing a thorough lack of understanding and co-operation between the Memellanders and the Lithuanians.

One who becomes subjectively involved in this quarrel eventually finds grounds for accusations of bad faith and repressive or treasonable measures on the other side, and is able to justify his position to his own satisfaction. The reason is that there are two entirely different concepts of what the Lithuanian policies in Memel should be. One is the Lithuanian, which looks upon the Statute as a stage in the transition of Memel from complete German possession to complete Lithuanian possession. The second is that which holds that the purpose in setting up autonomy in Memelland was to preserve permanently the people of the Territory in the enjoyment of their language, religion, culture, and other rights. As has been said, there was never a meeting of minds between the proponents of these two points of view, not even to the essaying of a compromise. In a sense each side can justify its actions, a fact which neither will admit of the other. Of course Lithuania, being in possession of Memelland, has not hesitated to put her originally contemplated policies into effect, and therefrom arise the difficulties. It must be most emphatically stated that any new arrangements contemplated for Memelland must hinge on a

real meeting of minds so that there will be the spirit as well as the word of the document to enforce.

Many proposals have been made to remedy the situation. Lithuania would prefer to have the Powers withdraw entirely and leave her to complete the Lithuanizing of the Territory. The Memellanders, with the exception of a small minority, still ask, as they always have, for a plebiscite. Germany would like to regain Memelland, and would have no objection to a plebiscite knowing that she would receive a majority vote. In case a plebiscite is denied, both Germany and Memellanders demand a strict observance of the Statute and the autonomy. Other suggestions include giving the League of Nations control over the area, and making England the guarantor for the observance of the autonomy.

No single plan so far proposed is free from serious objections. Even the changing of the Convention is ruled out because no means of amending it are provided in that instrument. It is noteworthy that all three of the annexes contain amending Articles. The omission in the Convention must therefore have been intentional, with the thought that the annexes would be the only parts, which would need alteration. The Statute itself may be changed by a joint process in which Memel and Lithuania have both a part. To-day, however, the authorities of Memel and Lithuania cannot agree on the meaning of the article. A special court has been created by Lithuania to interpret just such questions; but here again there is

serious doubt as to the validity of the decisions of this tribunal, where *Lithuania* is both judge and party. No hope therefore lies in this direction.

Under these circumstances the logical and rational thing to do is to appeal to the League of Nations for aid under Article 19 of the Covenant. It reads:

“The Assembly may from time to time advise the reconsideration of Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.”

The whole Memel Convention and the Statute should be reconsidered. If such a course of action were to be followed, Germany would do well to re-enter the League of Nations; and if she were not a member of the League, she should be invited to participate in the reconsideration of the Convention and appendices; because any adjustment of the Memel affairs which leaves Germany out of consideration is useless. Her long historical claim to Memelland, the nature of the population, and the culture of the Territory give Germany a place second to no other State in this complicated matter.

No territorial problem to-day is in greater need of honest and immediate discussion than that of Memel. Either the autonomy must be observed, and with it the Memel culture, or the guarantor Powers must provide a legal method of changing the autonomy. To permit the present situation to exist is to invite war in the north-eastern Europe.

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