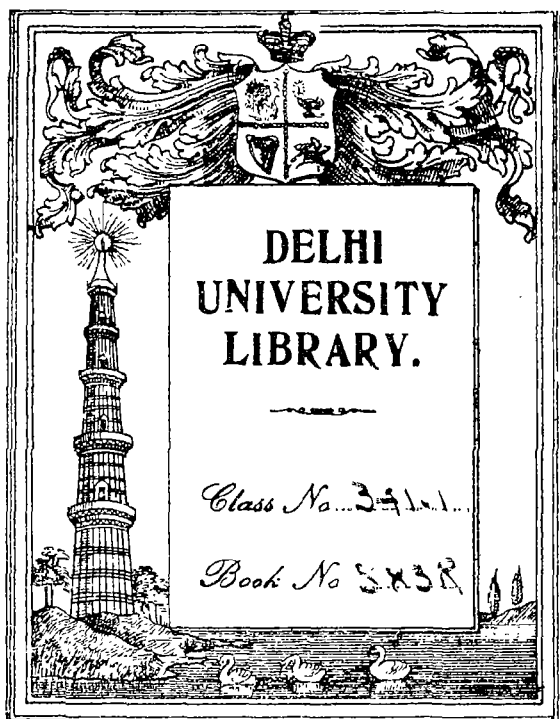




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REGIONAL GUARANTEES OF MINORITY RIGHTS



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REGIONAL GUARANTEES OF MINORITY RIGHTS

*A Study of Minorities Procedure
in Upper Silesia*

BY

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TO
GEOFFREY CHEVALIER CHESHIRE
MY FIRST PRECEPTOR IN THE LAW
THIS VOLUME IS
GRATEFULLY DEDICATED

PREFACE

This volume, published under the auspices of the Bureau of International Research of Harvard University and Radcliffe College, is a companion to *International Guarantees of Minority Rights*,¹ recently published by the Oxford University Press. Both deal with the procedure at present in force under treaties for the protection of minorities of race, language, and religion. So long as these treaties, and the problems with which they are intended to deal, continue to exist, the procedure provided under them will continue to be of vital importance. Moreover, the tendency to-day seems to be in the direction of extension rather than restriction of the idea of protection of minorities. This tendency is well illustrated by the assumption of minorities obligations by Iraq prior to its admission to the League of Nations in 1932.²

The former of these two studies, namely, *International Guarantees of Minority Rights*, is an analysis of the procedure for the protection of minorities at present in force under the series of multi-partite treaties made as a part of the post-war settlement and placed under the guarantee of the League of Nations. The common feature of these treaties and of the later declarations modelled upon them, is that the organ charged with supervising their execution is situated

¹ To avoid misunderstanding it may be explained that the emphatic word in both titles is "guarantees." "Guarantee" is here used in the sense which it bears in the minorities treaties and the Germano-Polish Convention; namely, in the sense of the *sanctioning process which stands behind the substantive rights conferred by the treaties*. It is with this process or procedure that both studies are concerned; the one with the system which has its focal point at Geneva; the other with the system which has its focal point in the region affected by the protecting treaty.

² See *League of Nations Official Journal*, 1932, pp. 1212-6, 1342-9, 1727-28.

outside the state concerned, and that persons belonging to minorities have no right of access to that organ. This may be said to be one of the two types of minorities procedure which is being tested at the present day.

The present study, entitled *Regional Guarantees of Minority Rights*, is an exposition of the other type of minorities procedure now in operation. It was established under the Germano-Polish Convention of May 15, 1922, relating to Upper Silesia, and its character is in strong contrast with that of the general system of minorities protection referred to above. It was possible by this bi-partite agreement with reference to a specific situation, to make elaborate provisions, both substantive and procedural, going far beyond those in the multi-partite treaties. The outstanding features in the procedural provisions are, in the first place, the establishment within the area concerned of regional machinery invested with considerable freedom of action; and, in the second place, the express grant to persons belonging to the minorities of rights of direct access to this regional machinery. Supplementing this regional procedure, provision is made for recourse to the Council of the League of Nations. Here also there is a very significant point of contrast with the general system of minorities protection, for in the latter, persons belonging to the minorities are given rights of direct access to the Council of the League of Nations.

The object in view in both studies has been to establish not only what is the procedure in theory, but also its exact nature, scope and operation in practice, as shown by all the cases submitted to it. Each step, institution and problem are examined in the chronological order in which they usually make their appearance in the march of procedure. As each is reached, there is presented to the reader a cross-section of all the relevant treaty texts, Council resolutions and discussions, Rules of Procedure of the Mixed Commission, and

cases. Perhaps the most striking illustration of the fruitfulness of this method is to be seen in the significant rôle played by the minority organizations which it reveals. These organizations have become a legally recognized institution in the system of minorities protection in Upper Silesia, although they are nowhere mentioned in the Convention itself.

This account of the procedure covers the practice before the regional machinery and before the Council of the League of Nations from 1922 to 1932, and the names of official *personnel* are given as at September 1, 1932.⁸ The official materials used have been the text of the Convention and the Rules of Procedure of the Mixed Commission, the opinions of the President of the Mixed Commission, of which there are now well over one hundred, petitions to the Council of the League and Council documents and minutes, relevant judgments, opinions and documents of the Permanent Court of International Justice, and the records of the chief minority organizations. This documentary material has been supplemented by personal investigations in Upper Silesia, including conferences with the officials of the two states charged with the execution of the Convention, with the officials of the Mixed Commission, and with the leaders of the minority organizations. Where facts or arguments are drawn from other than official documents I have been careful to make a note to that effect. The necessity in this field, more than in most others, of a cautious use of literature, has confirmed me in the principle of keeping as far as possible to strictly primary sources. Existing literature is referred to, however, where comparison is instructive, and a bibliography is provided.

There is no official publication of the opinions of the President of the Mixed Commission, but a private collection,

⁸ There have been considerable changes in *personnel* on the German side since this date.

complete up to July, 1929, appeared in that year in J. P. Warderholt, *Das Minderheitenrecht in Oberschlesien*, Berlin. It is this collection, supplemented by single opinions appearing from time to time in League documents and by mimeographed copies of the rest obtained from the Secretariat of the Mixed Commission in Upper Silesia, which has been used. For convenience of reference the opinions are cited by date, section and sub-section, and also by the page of the private collection; where more than one opinion bear the same date, the name of the complainant or party aggrieved has been given for purposes of identification. Translations of extracts quoted in the text have been done by the author. The Appendices include the texts of the Convention, of the Rules of Procedure of the Commission, and of the report and resolution of the Council and the Paris Agreements affecting the procedure. In addition, three tables contain exhaustive lists of the cases dealt with under the Convention, and indicate, for each case, the subject-matter and the references to relevant documents.

The writer acknowledges with gratitude the generous assistance accorded to him by President Felix Calonder, by the Foreign Offices of the two states, by the Oberpräsident of German Upper Silesia, and the Voivode of Polish Upper Silesia, by the Secretariat of the Mixed Commission and the officials of the Minorities Offices, by the Consulates-General of the two states in Katowice and Oppeln respectively, and by the minority organizations in both parts of the plebiscite area. He is deeply indebted to M. W. Royse for the loan of many documents and for many fertile suggestions and constructive criticisms; Dr. Royse very generously permitted the author to read the manuscript of his forthcoming work on "International Protection of Minorities," one chapter of which is devoted to "Regional Minorities Procedure." Finally he wishes to express his appreciation for

the helpful advice received from Professor Manley O. Hudson of the Harvard Law School and from Professor George Grafton Wilson of Harvard University.

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October 1, 1933.

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REGIONAL GUARANTEES OF MINORITY RIGHTS

INTRODUCTION

A. THE ORIGINS OF THE GENEVA CONVENTION OF MAY 15, 1922

The fate of Upper Silesia in the post-war territorial settlement was the subject of extended controversy and remained undecided long after the Peace Conference dissolved.¹ The peace terms handed to the German delegation on May 7, 1919, allotted the whole of the area to Poland. The "Observations of the German delegation with regard to the peace terms" contained a strong protest against this, which resulted in a reconsideration of the question by the "Council of Four." The "Council of Four" decided, on June 4, 1919, to modify the original peace terms by arranging for a plebiscite in Upper Silesia, and the final decision of the Peace Conference to this effect was embodied in Articles 88 and Annex, and 90 and 91 of the Treaty of Versailles.² An Inter-Allied Commission was set up to carry through the plebiscite, which was duly held on March 20, 1921.³ The Commission, however, failed to agree upon the frontier line justified by the returns. The Supreme Council of the Principal Allied Powers was therefore constrained to reëxamine the problem and it appointed a Committee of Experts for this purpose. This Committee also failed to agree upon the

¹ See *Minutes of the Extraordinary Session of the Council on the Question of Upper Silesia*, pp. 11 *et seq.*, and II Temperley, *History of the Peace Conference*, pp. 287-8, 391, 441. For literature on the Upper Silesian question generally, see Bibliography I.

² Kraus and Rödiger, *I Urkunden zum Friedensvertrage*, pp. 566, 596.

³ See Sarah Wambaugh, *International Plebiscites since the War*, New York, 1933 (forthcoming). For the Polish view-point see *La Silésie Polonaise*, Paris: Gebethner and Wolff, containing a study by M. Smorgorzewski.

frontier line, and the divergence of views between the Powers on the Supreme Council could not be removed. In view of this situation the latter body decided, on August 12, 1921, to submit the question to the Council of the League of Nations. Each of the governments represented undertook, in the course of the discussions, to accept the solution recommended by the Council of the League. That body accepted the task on August 29, 1921.⁴

In view of the existence of serious disagreement between two of the Great Powers it was natural that the matter should have been referred by the Council to a committee of small powers consisting of Belgium, Brazil, Chile and Spain.⁵ The report of this committee proposed a division of the regions, giving the greater area to Germany, but resulting in effect in the award of the great bulk of the industrial resources to Poland. The Council recommended to the Conference of Ambassadors (to whom in the meantime the functions of the Supreme Council had been transferred) a settlement on this basis subject to certain conditions. This was accepted and the definitive boundary settled on October 20, 1921.⁶

The present work is not concerned with any discussion of the merits of these questions. It is important, however, to recall that neither Germany nor Poland regarded the boundary line as satisfactory, and that Germany in particular accepted it only under protest. Germany had two main grounds for complaint. In the first place, the boundary line drawn included within Poland a great mass of persons of German origin. In the second place, by far the greater part of the industrial wealth of the area was given to Poland.⁷

⁴ *Minutes of the Extraordinary Session of the Council, etc.*, p. 10.

⁵ *Id.*, pp. 4-6.

⁶ *League of Nations Official Journal*, 1922, p. 117 for summary of these events.

⁷ See II Temperley, *op. cit.*, p. 213. On the strategical aspects of the frontier line see *id.*, p. 211.

Only the first of these is of direct interest here. A recent writer,⁸ after noting the difficulty of accuracy in these matters, estimates the number of persons of German origin in Polish Upper Silesia to be 300,000. The number of persons of Polish origin in German Upper Silesia cannot be stated even with approximate accuracy, but is substantially less than this number, although Poland asserts that the figure is higher.⁹

The conditions suggested by the Council of the League were intended to meet these among other considerations. These conditions may be stated in the words of the Council's recommendation to the Supreme Council on October 12, 1921:¹⁰

"To preserve for a certain time, for the industries of the territory separated from Germany their former markets, and to ensure the supplies of raw material and manufactured products which are indispensable to these industries: to avoid the economic disturbances which would be caused by the immediate substitution of the Polish mark for the German mark as the legal currency in the territory assigned to Poland: to prevent the working of the railways serving Upper Silesia from being affected by the shifting of the political frontier: to regulate the supplies of water and electricity: to maintain freedom of movement for individuals across the new frontier: to guarantee respect for private property: to guarantee as far as possible to the workers that they shall not lose, in the portion of territory assigned to Poland the advantages which were secured to them by German social legislation and by their Trades Union organization: and finally to ensure the protection of minorities upon the basis of an equitable reciprocity.

"The solution of these problems should be achieved by means of arrangements effected under the form of a general Convention between Germany and Poland. . . .

⁸ See Royse, *International Protection of Minorities*, New York, 1933, (forthcoming).

⁹ But see Wintgens, *Der völkerrechtliche Schutz der nationalen, sprachlichen und religiösen Minderheiten*, Stuttgart, 1930, p. 131. See *post*, p. 20, n. 1.

¹⁰ See *Minutes of the Extraordinary Session of the Council, etc.*, pp. 17-18.

"With a view to facilitating and supervising the application of the temporary measures, of which a summary has been given above, and which should be incorporated in a general convention, the Council considers that it is necessary to set up a commission composed of an equal number of Germans and Poles of Upper Silesia, and of a President of another nationality who might be designated by the Council of the League of Nations. This Commission might be called the 'Upper Silesian Mixed Commission.' It would be essentially an advisory organ.

"Further, it would be expedient to constitute an arbitral tribunal to settle any private disputes which might be occasioned by the application of the temporary measures."

With regard to the protection of minorities which is here of greatest interest, Appendix 3 to the Recommendation ¹¹ provided:

"The treaty with regard to the protection of minorities concluded between the United States of America, the British Empire, France, Italy and Japan of the one part and Poland of the other part, shall be applicable to those parts of Upper Silesia definitely recognized as part of Poland. The principles of equity and the maintenance of the economic life of Upper Silesia demand that the German Government should be bound to accept, at least for the period of fifteen years dating from the definitive allocation of the territory stipulations corresponding to Articles 1, 2, 7, 8, 9 (paragraphs 1 and 2), 10, 11 and 12 of the said treaty, as regards those parts of Upper Silesia definitely recognized as part of Germany.

"The provisions of the agreement to be concluded between the German and Polish Governments, in order to put into force the above-mentioned principles, constitute obligations of international concern for Germany and Poland and should be placed under the guarantee of the League of Nations in the same way as the provisions of the Treaty of June 28, 1919.

"Any petition addressed by one or more of the inhabitants of Upper Silesia to the Council of the League of Nations with regard to these provisions or to the execution of the provisions of the Treaty of June 28, 1919, insofar as these provisions affect

¹¹ *Id.*, p. 24.

persons belonging to racial religious or linguistic minorities shall be sent to the Government in whose territory the petitioners are domiciled. This Government shall be bound to forward them with or without observation to the Council of the League of Nations for consideration.”¹²

In its decision of October, 1921, adopting the recommendation of the Council, the Conference of Ambassadors laid down that the Convention should be concluded between a German and a Polish plenipotentiary under the presidency of a person appointed by the Council of the League of Nations, “that person having a casting vote in case the parties fail to agree.”¹³ The names of the plenipotentiaries were to be communicated to the Principal Allied Powers within eight days.

The President of the Council of the League with the unanimous approval of his colleagues appointed M. Felix Calonder, former President of the Swiss Confederation, to preside over the conference. The plenipotentiaries being duly appointed¹⁴ the conference was convened at Geneva on November 23, 1921. The Geneva Convention relating to Upper Silesia was signed on May 15, 1922.

The provisions relating to the protection of minorities are contained in Part III of the Convention consisting of Articles 64-158. This Part contains three Divisions.

Division I (Articles 64-72), after recalling the decision of the Conference of Ambassadors of October 20, 1921, sets out in parallel columns those articles of the Polish Minorities Treaty which are to be applicable in the Polish and German portions of the plebiscite area, in the former indefinitely, in

¹² This last proposal was considerably modified and elaborated, being represented in the final Convention by Articles 149-157.

¹³ O.J., 1922, p. 117.

¹⁴ See *ibid.* The names of the plenipotentiaries were: for Germany, M. Schiffer, Ex-Minister of the Reich and M. Lewald, Secretary of State; for Poland, M. Olszowski, later Polish Minister in Berlin, and Ambassador at Angora.

the latter for the transitional period of fifteen years. It should be noted in regard to Division I that the only stipulations of the Polish Minorities Treaty omitted therefrom are Articles 3-6 dealing with questions of nationality and the right of option; these subjects are elaborately dealt with in Part II of the Convention. The wording of Article 64¹⁵ is such that the continued and permanent application of the Polish Minorities Treaty to the Polish portion of the plebiscite area is clear; whereas the German undertaking in Division I will, unless renewed, expire at the end of the transitional period.

Divisions II (Articles 73-147), and III (Articles 147-158), of Part III of the Convention, are agreed to by both parties only for a period of fifteen years from the date of the transfer of the territory to the two states¹⁶ "in order that the protection of minorities in the two portions of the plebiscite area might be based on the principles of equitable reciprocity and in order that the special conditions arising from the transitional régime might be taken into account." Their provisions both as to procedure and as to substantive rights are much more detailed than those of the general treaties reproduced in Division I. Division II contains stipulations regarding the rights of members of minorities in civil, political and religious matters, regarding private education, public education in primary, technical and continuation schools, secondary and higher education, the official language of the administration, and the language to be used in the courts.¹⁷ Division III sets out the procedure avail-

¹⁵ "The Polish Government refers to the following provisions of the Treaty of June 28, 1919, applicable *ipso facto* in the Polish portion of the plebiscite territory."

¹⁶ The date of the transfer was June 15, 1922.

¹⁷ For a critical examination of the substantive provisions of the Convention, see Warderholt, *Das Minderheitenrecht in Oberschlesien*, Berlin, pp. 1-97; Royse, *op. cit.*; Wintgens, *Der völkerrechtliche Schutz des nationalen, sprachlichen und religiösen Minderheiten*, Stuttgart, 1930, pp. 356-413; Erler, *Das Recht der nationalen Minderheiten*, Münster, 1931, *passim*; Mandelstam, *Protection Internationale des Minorités*, Paris, 1931, pp. 115 ff.

able for the protection of the rights of minorities. Every person belonging to the minorities has rights of petition and appeal expressly conferred upon him. This is a most striking departure from the provisions of the general minorities treaties, under which *locus standi* in the procedure has been repeatedly and emphatically denied to minority persons. Further an elaborate regional machinery is established for dealing with alleged infractions of the Convention. If the complainant is not given satisfaction as a result of the regional proceedings, he may appeal to the Council of the League of Nations. Besides this regional method of appeal, persons belonging to a minority are entitled to petition the Council of the League direct, either individually or collectively.

Division III of the Convention therefore purported to confer upon the League of Nations, and in particular upon the Council, certain important supervisory functions. In this respect it is similar to the general minorities treaties, and as such required formal acceptance by the League through its organ, the Council.¹⁸ On May 16, 1922, the day after the Convention was signed, the Council, in order to assure its efficacy as from the future date of ratification, adopted the following anticipatory resolution:

"The Council of the League of Nations decides that the provisions regarding the protection of minorities contained in the German-Polish Agreement relating to Upper Silesia shall be placed under the guarantee of the League of Nations, as is laid down in the Agreement, from the time of their coming into force, subject, however, to the said provisions being further considered by the Council of the League of Nations at its next session."¹⁹

The exchange of instruments of ratification took place at Oppeln on June 3, 1922, before the next session of the Coun-

¹⁸ Compare Stone, *International Guarantees of Minority Rights*, pp. 16-18.

¹⁹ See O.J., 1922, p. 542.

cil,²⁰ and the Convention was registered with the Secretariat of the League of Nations under Article 18 of the Covenant on June 21, 1922.²¹ As from that date it came into force in all respects²² subject, however, as far as the Council was concerned, to further consideration of its provisions. This took place on July 20, 1922, after the text of the Convention had been communicated to the members of the League of Nations,²³ and it was thereupon resolved that:

"The Council, having examined the clauses referring to the protection of minorities contained in the third part of the German-Polish Convention regarding Upper Silesia, concluded at Geneva on May 15, 1922, confirms its decision of May 16, 1922, by which these stipulations have, as provided for in the Convention, been placed under the guarantee of the League of Nations."²⁴

The Final Protocol of the Conference which produced the Convention provides in paragraph III that "les deux Parties Contractantes peuvent, d'un commun accord, modifier ou abolir toutes les dispositions du régime transitoire."²⁵ The right here reserved would have existed in any case, but attention is drawn to it because it was actually exercised in 1929 to modify the provisions of Article 147 of the Convention dealing with the right of direct appeal to the Council.²⁶ Such modification is of course, insofar as it affects the provisions relating to the protection of minorities, subject to the consent

²⁰ See *Dziennik Ustaw*, 1922, No. 44. Texts 371 and 372.

²¹ The text of the Convention does not figure in the *League of Nations Treaty Series*; see Vol. IX, p. 466. It is to be found in 16 De Martens, *Traité de droit international* (3e sér.), pp. 645-875, and in an unnumbered League Document. See Appendix I.

²² The condition mentioned in Article 88, Annex, paragraph 6 of the Treaty of Versailles had been previously fulfilled.

²³ See O.J., 1922, p. 919.

²⁴ See *id.*, p. 806.

²⁵ 16 De Martens, *Traité*, 867.

²⁶ See *post*, pp. 144 *et seq.*

of the League of Nations acting through its organ the Council.²⁷

Unless renewed the whole of Part III will cease to be in force at the end of fifteen years from the date of the transfer of the territory to the two states.²⁸ From that time, if it is not renewed, Germany may cease to be bound by any international obligations in respect of the treatment of minorities.²⁹ Poland will continue to be bound by the minorities treaty of June 28, 1919, in respect of her part of the plebiscite territory. The regional machinery established under the Convention will cease to operate,³⁰ and the general procedure in minorities questions will be the sole channel of protection for the rights of minorities in Polish Upper Silesia.

B. GENERAL VIEW OF THE REMEDIES AVAILABLE UNDER THE CONVENTION

The channels of recourse for the protection of the rights of minorities provided for in the Convention may be classified under two main heads: the first is to the regional

²⁷ Cf. Stone, *op. cit.*, pp. 16-23 where the analogous legal problem under the general treaties is discussed.

²⁸ See the second paragraph of the Preamble to Division I and the Preamble to Division II.

²⁹ Attention may here be drawn, however, to a declaration made by Germany during the Peace Negotiations in respect of minorities throughout her territory. In its observations of May 29, 1919, on the Draft Treaty of Peace the German Peace Delegation emphasized the necessity that German populations which became minorities in other states should be accorded international protection. The observations on this point concluded: "Germany on its part is determined to treat ethnic minorities (*fremdstämmige*) within its territory in accordance with the same principles." This declaration by Germany was formally noted by the Allied and Associated Powers in their reply to the German observations. See Kraus and Rödiger, I, *Urkunden zum Friedensvertrage*, pp. 457, 584; Kraus, *Das Recht der Minderheiten*, pp. 42-3. For comment see Wintgens, *Der völkerrechtliche Schutz des nationalen sprachlichen und religiösen Minderheiten*, pp. 182-3; Dachselt, *Die Rechtsverhältnisse des fremden Minderheiten in Deutschland* (Arch. für Politik und Geschichte, 1926, Heft 4-5), and other literature cited in Erler, *Das Recht der nationalen Minderheiten*, p. 175. This possibility was referred to by M. Paul-Boncour in the Council discussions of the Bernheim petition concerning the Jewish minority in German Upper Silesia on May 30, 1933. See O.J., 1933, p. 841.

³⁰ See Article 606 of the Convention.

machinery established by the Convention, and the second, to the Council of the League of Nations.

I. *The Regional Channels.* These are four in number.

(a) Under Article 585 of the Convention which provides that:

"S'il vient à la connaissance du Président de la Commission Mixte des faits, circonstances, ou situations, qui, à son avis, ne sont pas conformes aux dispositions de la présente Convention, le Président est libre d'attirer sur eux l'attention de l'Agent d'Etat compétent.

"L'Agent d'Etat est alors tenu de transmettre sans délai la communication à son Gouvernement."

This competence of the President extends equally to infractions of all Parts of the Convention, but it has in practice attained special significance for minorities questions as a recognized stage preliminary to the institution of the proceedings specially provided for minorities questions in Articles 149 to 157. As such it will be considered at the beginning of the Chapter on the work of the President of the Mixed Commission.

(b) Under Articles 149 and 157 of the Convention which constitute the regional procedural provisions of chief importance with which the present study is concerned.

In each portion of the plebiscite territory, a Minorities Office is set up, and persons belonging to a minority have the right, after having lodged their complaint with the administrative authority competent therein, to submit a petition to the Minorities Office of the state of which they are nationals. If the Minorities Office cannot satisfy the petitioner, it must forward the petition with any observations to the President of the Mixed Commission. The President is given very wide powers of investigation and must afford an opportunity to both the petitioner and the Minorities Office of making further observations. Before rendering his opin-

ion he must consult with the members of the Commission, but this done, he renders the opinion as his own and upon his own responsibility. The opinion is transmitted to the Minorities Office which communicates it to the competent administrative authority, and informs the President what steps are being taken to give effect to his opinion.

(c) Under Article 588 of the Convention which provides as follows: ⁸¹

"Paragraph 1. (1.) If, in an Upper Silesian case, the judgment or decision depends on the interpretation of an Article of the present Convention, either party to the case may, up to the conclusion of the proceedings in the second instance, demand that the question of interpretation be submitted to the Arbitral Tribunal (*évocation*).

"(2.) An Upper Silesian case shall mean a case brought in the first instance before any tribunal, including administrative tribunals, in the plebiscite area, or before the administrative authorities of the said area who do not receive orders from higher authorities. An Upper Silesian case shall also mean a case brought in the first instance before any tribunal, including administrative tribunals, outside the plebiscite area, or before administrative authorities who do not receive orders from higher authorities, provided that such case emanates from a part of the plebiscite area which is subject, in the first instance, to the jurisdiction of the said tribunals or authorities.

"The tribunal or authority in question shall reject the demand for evocation, if it considers that its judgment or decision does not depend upon interpretation, or if evocation does not appear to it admissible under the provisions of the present Convention. It may reject the demand, if the question of interpretation has already been settled by the Arbitral Tribunal and published in its official gazette, or if manifestly the purpose of the demand is solely dilatory.

"Paragraph 3. An error in the application of the provisions of

⁸¹ With this Article there should be read Article 3, paragraph 2, which provides that "the tribunals and courts of justice, including the administrative, military, and extraordinary tribunals, shall be competent to examine whether the legislative or administrative provisions are not contrary to the stipulations of the present Part" (Part III of the Convention).

paragraph 2 shall be regarded by the tribunals and authorities of both countries as an essential fault of procedure."⁸²

"Paragraph 4. Unless otherwise expressly provided in the present Convention, the interpretation of the Arbitral Tribunal shall be binding on the tribunals and authorities of both countries in their judgments or decisions."⁸³

Article 588, like Article 585, applies in respect of all the provisions of the Convention and not merely the minorities provisions. Moreover the class of persons to whom "évocation" is available and the class of complaint in respect of which it is available, are not limited. The Article, therefore, could be taken advantage of in many cases where the normal procedure under Articles 149-157 is not available.⁸⁴ In practice, however, Article 588 has proved to be of little significance, a fact due, perhaps, to the discretion given to the tribunal before which "évocation" is claimed in deciding whether it shall be allowed.⁸⁵ It will not receive any further consideration in the present study.

(d) Under Article 4 of the Convention which provides that the Parties shall recognize and respect in their respective parts of the plebiscite area rights of all kinds, especially concessions and privileges, acquired before the transfer of sovereignty by individuals, associations and corporations. All questions of compensation for the violation of these provisions are, under Article 5, within the competence of the Arbitral Tribunal.

It is clear that if, in any case arising under Part III of the Convention, there exists also the violation of an acquired right within Article 4, the member of a minority will be entitled to proceed before the Arbitral Tribunal under Ar-

⁸² The effect of such a fault of procedure in both countries is to make a new trial necessary. No case seems to have arisen as yet under this provision.

⁸³ Translation in *League Document*, C.L. 110, 1927. 1, Annex, p. 87.

⁸⁴ See *post*, Chapters II and III.

⁸⁵ For a case where the competent tribunal rejected a request for *évocation* see *Publications of the Permanent Court*, Series A, No. 9, p. 11.

ticle 5. Here again, however, the remedy is not limited to persons belonging to the minority, nor to the rights protected under the minorities provisions of the Convention.

Proceedings under Article 5 are instituted by the presentation of the complaint in six copies to the Arbitral Tribunal in Beuthen. No fees are payable and it is not necessary for the complainant to be legally represented, though he may be if he so desires. This recourse has not been used to any great extent by members of the minorities,^{**} a fact somewhat surprising, since an award by the Arbitral Tribunal is made binding upon the state concerned by Article 593 of the convention, whereas the opinion of the President of the Mixed Commission has no such binding force. This remedy of members of a minority will not be considered further.

II. *Recourse to the Council of the League of Nations.* This may be had through three distinct channels.

(a) Under Article 149 of the Convention which provides that if the petitioner is not satisfied with the action taken by the administrative authorities after the regional procedure under Articles 149 to 157 has run its course, he "may appeal to the Council of the League of Nations."

Article 157 supplements this:

"The appeal to the Council of the League of Nations provided for in Article 149 shall be addressed to the Minorities Office. The latter shall arrange for its transmission to the Council by the Government."

It should be noted that this is an appeal, not from the opinion of the President of the Mixed Commission in the regional procedure, but from the refusal of the administrative authority against whom the infraction is alleged to sat-

^{**} For further details of the procedure before the Arbitral Tribunal in these cases see the Rules of Procedure of the Tribunal of March 9, 1923. *Reichsgesetzblatt*, 1923, II, 203. It may be noted that there is no appeal to the Council of the League of Nations from decisions of the Arbitral Tribunal. See O.J., 1930, p. 496. See also Wintgens, *op. cit.*, pp. 435-9.

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isfy the petitioner. It is thus not usually an "appeal" in the judicial sense of an application to a higher tribunal for review of the decision of an inferior one, though it may in effect be such where the authority has carried out the opinion and the petitioner is still unsatisfied.

Further, since the competence of the President of the Mixed Commission is limited, it is obvious that an appeal to the Council under Article 149 must always be of a character falling within those limitations. In respect of matters falling outside the President's competence the members of a minority must employ the direct petition under Article 147.

(b) Under Article 147 of the Convention which provides that:

"The Council of the League of Nations is competent to pronounce on all individual or collective petitions relating to the Provisions of the present Part" (Part III) "and directly addressed to it by members of a minority. When the Council forwards these petitions to the Government of the State in whose territory the petitioners are domiciled, this Government shall return them, with or without observations, to the Council for examination."

This Article is only applicable in respect of infractions of Part III, that is, the provisions for the protection of minorities. It affords direct access to the Council to all members of a minority, but only to members of a minority. The limitations on jurisdiction which apply to the regional machinery do not apply to the direct petition under Article 147. This Article is therefore a necessary supplement to Articles 149 and 157. Though its scope has been somewhat restricted by a later agreement between Germany and Poland it still retains completely this supplementary character.³⁷

(c) Under Article 72, paragraph 2, of the Convention, so far as an infraction of any of the stipulations preceding

³⁷ See *post*, pp. 144 *et seq.*

Article 72 is alleged, and, of course, insofar as they affect persons belonging to racial, religious or linguistic minorities. Paragraph 2 provides:

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

It will shortly be seen that inasmuch as this provision is identical with that upon which the general procedure in minorities questions is based, it would seem to make that procedure applicable in respect of Division I of the Convention. That procedure has been fully explored elsewhere⁸⁸ and it will not be examined in the present work except with a view to contrasting it with the Upper Silesian procedure.

Summary. The scope of the present study may now be summarized as follows:

- (1) Regional procedure
 - (a) under Article 585 of the Convention.
 - (b) under Articles 149 to 157 of the Convention.
- (2) Procedure before the Council of the League of Nations
 - (a) after the regional procedure is exhausted under Articles 149 and 157 of the Convention.
 - (b) on direct petition under Article 147 of the Convention.

⁸⁸ See Stone, *op. cit.*

PART I

INTERNATIONAL GUARANTEES AND REGIONAL GUARANTEES

CHAPTER I. RELATION OF THE CONVENTION TO THE GENERAL MINORITIES UNDERTAKINGS.

CHAPTER I

RELATION OF THE CONVENTION TO THE GENERAL MINORITIES UNDERTAKINGS

THE outstanding fact behind the provisions of the Geneva Convention of May 15, 1922, is the great political significance of the partition of Upper Silesia. Though other regions in which the general minorities procedure applies have great political significance, there are few which have it in a degree so productive both actually and potentially of intense political passion, and consequent international friction.

This political conflict has its basis in the economic facts of the situation, in the troubled history of the area over a considerable number of years, and in the presence of a large number of former German nationals upon the soil of Poland and of Poles who remained under German sovereignty. Further, these factors co-existed in a geographical situation which seemed to present a temptation to irredentism on the one hand and to exaggerated and unhealthy attempts at suppression of the minority on the other. The probability that such attempts at suppression might take place was increased by the difficulty in both portions of the plebiscite territory of establishing minority identity on the basis of German or Polish consciousness. The language criterion, the only approximately safe one, was rendered well-nigh useless because by far the majority of the inhabitants of Upper Silesia spoke and still speak neither German nor Polish proper, but "Was-serpolnisch," a dialect akin to Polish but by no means iden-

tical with it. A considerable number, moreover, are bilingual.¹

A. CONTRAST OF THEIR RESPECTIVE MINORITIES PROVISIONS

These grave political, economic, and cultural considerations seem to be the basis of three characteristics of the protection of minorities in Upper Silesia as contrasted with the general minorities system.

In the first place, it should be noted that the Convention attempts to set out in great detail the exact scope of the protective provisions. A comparison of the Polish Minorities Treaty with Part III of the Convention is a sufficient demonstration of this point, but attention may be specially directed to a comparison of the procedural provisions contained respectively in paragraph 2 of Article 12 of the Treaty² and in Articles 147 to 158 of the Convention.

In the second place, whereas in the general minorities procedure the only available remedy in respect of treaty infractions is the invocation of the competence of the Council of the League with all the accompanying publicity and political friction involved, the emphasis is quite different under the procedural provisions of the Convention. Although direct recourse to the Council is provided for in Article 147, that recourse is largely concurrent with recourse to the regional machinery consisting of the Minorities Offices and the President of the Mixed Commission in the class of cases falling within the competence of this machinery under Arti-

¹ The confusion of the situation is illustrated by an altercation in the Council between the German and Polish representatives as recently as Feb. 1, 1933. The Polish representative gave 500,000 as the number of members of the Polish minority in German Upper Silesia, the German representative alleged that it was 14,500 or at most 27,600. O.J., 1933, p. 246.

The dialect and bilingualism are discussed in the same place. Cf., Judge Nyholm in *Publications of the Permanent Court*, Series A, No. 15, p. 63, and also *id.*, p. 41.

² This provision is of course incorporated in Article 72, paragraph 2 of the Convention. *Ante*, p. 4 and *post*, p. 22.

cle 149.³ It is only of importance in cases falling outside the President's competence under that article. The *point de résistance*, therefore, of the Upper Silesian procedure lies in the regional machinery. This machinery is designed to avoid, whenever possible, any direct clash either between minority and state, or between one state and another. It is flexible and adaptable according to the needs of the particular case. Though it has the sanction of wide publicity in the background, it is in general directed towards a quiet solution of the difficulties with which the minorities are confronted, so far as that may be done consistently with the maintenance of their legal rights.

This emphasis upon the regional machinery has been recognized since 1929 as necessitating a formal restriction on the originally unlimited scope of the direct method of appeal under Article 147.⁴ Subject to certain considerations which will be set out in their appropriate places hereafter, there is no doubt that this restriction is in conformity with the character of the Upper Silesian system as a whole.

For cases in which the President of the Mixed Commission is not competent, or where the regional machinery has failed or in certain other cases,⁵ the way to the Council of the League is open. Here a third point of contrast with the general system presents itself. For there the so-called "right of petition" is not really a right at all, not being mentioned in the treaties, but is a mere facility afforded to all persons to send information to the League, upon which the members of the Council may act or not, as they deem fit. On the other hand, the "right of petition" under Article 147 is a "right" in the true sense of that term, giving to members of a minority individually or collectively a definite *locus standi* in the procedure. The same remark applies to the right of appeal under Articles 149 and 157.

³ See *post*, Chaps. II and III.

⁴ See *post*, pp. 144 *et seq.*

⁵ *Ibid.*

B. APPLICABILITY OF THE GENERAL MINORITIES PROCEDURE
IN UPPER SILESIAN CASES

Division I of Part III of the Convention constituting Articles 64-72 reproduces textually the greater part of the Polish Minorities Treaty of June 28, 1919, which is the type of all the minorities treaties and declarations. In particular, Article 72 of the Convention, contains in the Polish column the exact text of Article 12 of the Polish Treaty, and the German column is identical in effect, though there are certain differences in paragraphs 1 and 3.⁶

With these exceptions Article 72 of the Convention is identical with Article 12 of the Polish Treaty and the corresponding articles of all the other minorities treaties. Now on the basis of these treaty articles (which will be termed hereafter "the general procedural provisions") there has been built up an elaborate procedure (which will be termed hereafter "the general procedure") of which no express mention can be found in the treaties.⁷ The question immediately arises, therefore, whether the general procedure is to be regarded as applicable to Upper Silesian cases, in addition to

⁶ The differences in the German column consist first of the omission of the following from par. 1: "The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these Articles which is assented to by a majority of the Council of the League of Nations." This clause was necessary in the Treaty of June 28, 1919, since the enumerated states were parties thereto of the first part, and the Polish column of the Convention, merely referring as it does to the provisions of the Treaty, had perforce to repeat its exact words. So far as Germany was concerned, however, the enumerated states were not parties to any instrument to which she was a party. Consequently their mention was dispensed with. Second, in paragraph 3 of Article 72 there is a difference due to the same reasoning. The Treaty of June 28, 1919, and consequently the Polish column of Division I of the Convention provided for the submission of "any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power a Member of the Council of the League of Nations" to the Permanent Court of International Justice at the option of such Power. The German column, on the other hand, naturally omits any mention of the Principal Allied and Associated Powers, who, not being legally concerned with the conclusion or execution of the Convention, have no logical place in its provisions.

⁷ See Stone, *Rules of Procedure in Minorities Questions* in 26 *American Journal of International Law*, pp. 502-13.

the procedure provided for in Articles 147-158 of the Convention (which will hereafter be termed "the Upper Silesian procedure").

In view of the fact that under the general procedure the petitioner has no *locus standi* and cannot be certain that his complaint will ever reach the Council, whereas under the Upper Silesian procedure he has *locus standi* and is certain to have his complaint considered by the Council, this question may seem to be a mere academic one. Why should members of a minority trouble about the former when they have greater and more precise rights under the latter? The answer is that whilst it is true that the Upper Silesian procedure is generally more useful to the minority than the general procedure, yet the latter is wider than and supplements the former in at least three respects.

I. *Limitations on the right of petition.* In the first place, the right of petition and appeal to the Council given under Articles 147, 149 and 157 respectively of the Convention can be exercised only by "members of a minority" ("les personnes appartenant à une minorité"). The texts are explicit on this point. It has been laid down by the President of the Mixed Commission and it may be accepted here (subject to later examination) ⁸ that to be a member of a minority within the procedural provisions a person must fulfil certain requirements; for instance, he must be a national of the state concerned. On the other hand, under the general procedure, the facility of submitting petitions is not limited to any class of persons whether within or without the state concerned, but petitions may be received (subject to the regulations as to form) from any authenticated source.⁹

A petition therefore, which is not sent by a "member of the minority," or which, for some other reason, does not fall within the provisions of the Convention, may nevertheless be

⁸ See *post*, pp. 31 *et seq.*

⁹ See Stone, *The Legal Nature of the Minorities Petition* in *British Year Book of International Law*, 1931, p. 76 *et seq.*

submitted to the general procedure and the complaint it contains may eventually be brought before the Council under paragraph 2 of Article 72, just as would happen if a general minorities treaty were in question.¹⁰ Moreover there is nothing to prevent a petition being submitted and dealt with under the general procedure even though it is capable of submission or has already been submitted under the special Upper Silesian procedure.

At least one example of this latter course can be found in the documents. Thus a petition from the Unions of Intellectuals of the Districts of Neustadt and Loebenschutz in German Upper Silesia was submitted under the general procedure to the German Government for its observations and was then examined by a Minorities Committee. The Minorities Committees are an institution unknown to the Upper Silesian procedure. In accordance with the resolution of June 13, 1929 (applicable only to the general procedure) the members of the committee informed the members of the Council of the result of their investigation and of their intention not to bring the matter to the attention of the Council.¹¹

It would seem, though it is not certain, that the reason for this use of the general procedure was that the petition did not invoke Articles 147, 149 or 157 of the Convention. The case is unique, but it indicates that the general procedure is available alongside of the Upper Silesian procedure for questions arising out of the Convention.¹²

¹⁰ Compare O.J., Supp. No. 73, p. 49, and Warderholt, *op. cit.*, p. 106, Note 1. The best and most recent illustration of the concurrence of the procedures is to be seen in the Secretary-General's statement concerning the petitioner in the Bernheim case on May 22, 1933: "If he was not a member of the minority, the question would obviously not be placed on the agenda and the petition would be referred, in the ordinary way, to the Committee of Three." O.J., 1933, p. 798.

¹¹ See O.J., 1930, p. 388.

¹² The otherwise ably drafted Jewish petition of May 12, 1933, invoked only Article 72, through some curious misunderstanding of the procedure under the Convention. The Secretariat and the Council nevertheless treated the petition as one entitled to be placed directly on the agenda, i.e., as if submitted under Article 147. See *post*, p. 35, n. 3.

II. *Seisin of the Council by a member.* In the second place, the Upper Silesian procedure securing to members of a minority recourse to the Council, is supplemented by Article 72, paragraph 2, of the Convention, which provides that any member of the Council may bring any infraction or danger of infraction to the notice of the Council. This provision is identical with that in the procedural provisions of the general minorities treaties and the practice of the general procedure is applicable here also. This step is always available to Germany as a permanent member of the Council, and is available to Poland as long as she retains her non-permanent seat. It is a valuable additional guarantee of the execution of the minorities provisions.

An example of the use of Article 72, paragraph 2, is to be seen in the case arising out of the 1930 election disorders in Polish Upper Silesia. Germany brought these occurrences to the notice of the Council by a note of November 27, 1930.¹³ The instance is all the more interesting because a petition dated January 7, 1931, under Article 147 (that is, under the Upper Silesian procedure) was received by the Council and figured in the agenda, alongside the note of the German Government, throughout the discussions on this case.¹⁴ In effect, therefore, the general procedure and the Upper Silesian procedure were invoked side by side, but *either* would have been sufficient to give the Council competence.¹⁵

III. *The jurisdiction of the Permanent Court.* In the third place, under Article 72, paragraph 3, any of the Prin-

¹³ See O.J., Feb. 1931, p. 371.

¹⁴ For petition of Deutsche Volksbund für Oberschlesien, see O.J., 1931, p. 382 *et seq.* For discussions see O.J., 1931, pp. 165 *et seq.*, 237 *et seq.*, 1144 *et seq.*, 2262.

¹⁵ In these discussions there were as a matter of fact, three procedures employed concurrently. For by a note of Dec. 17, 1930, the German Government seized the Council under Article 12, paragraph 2 of the Polish Minorities Treaty in respect of incidents in Poznan and Pomorze (see O.J., 1931, p. 649). The two German notes and the Volksbund petition constituted one item on the agenda throughout the discussions. See references in last note.

cial Allied and Associated Powers, or any Power member of the Council of the League of Nations, may submit unilaterally to the Permanent Court of International Justice any difference as to a question of law or fact arising between itself and Poland as to the provisions affecting minorities. Any Power member of the Council may do the same in respect of a difference with Germany.

An example of the exercise of this right may be seen in Germany's submission to the Court of the question concerning the admission of sixty children to the minority schools in Polish Upper Silesia.¹⁶ The co-existence of the two modes of procedure is again clearly demonstrated in this case. The question at issue was originally raised and provisionally settled under the Upper Silesian procedure, that is, Articles 149 and 157 of the Convention,¹⁷ Germany reserving her right to reopen the question. Germany did reopen the question by submitting it to the Court under Article 72, paragraph 3, in December, 1927. Subsequently to the decision of the Court the question was again raised under the Upper Silesian procedure, first through the regional channels¹⁸ and then through appeal to the Council of the League under Articles 149 and 157.¹⁹

It is important to remember that though the general procedure supplements the Upper Silesian procedure in these three respects, it does so only in cases involving alleged infractions of the articles of the Convention *preceding* Article

¹⁶ See *Publications of the Permanent Court of International Justice*, Judgment No. 12, Series A, No. 15, p. 26. For a discussion in the Court on the concurrence of the competence of the Council under Article 149 and of the Court under Article 72, paragraph 3, see *id.*, pp. 23, 29-30, 62. See also Feinberg, *La Jurisdiction de la Cour Permanente de Justice Internationale dans le Système de la Protection des Minorités*, Paris, 1931, pp. 118-130; Mandelstam, *op. cit.*, pp. 215-16. The use of Article 72, paragraph 3, falls rather under dispute procedure than under minorities procedure and will not be further considered. See Stone, *op. cit.*, pp. 10-12.

¹⁷ See O.J., 1927, p. 377 *et seq.*

¹⁸ See opinion of the President of the Mixed Commission of Feb. 10, 1930, translated in O.J., 1930, p. 1643 *et seq.*

¹⁹ O.J., 1930, p. 1521 *et seq.*

72; for paragraph 1 of that Article, which governs the whole of it, only brings within the scope of the general procedure "the stipulations contained in the preceding articles." On the other hand, the Upper Silesian procedure, regulated in Articles 147-157, is expressly stated to cover complaints relating to . . ." (Article 147) or concerning "the application or interpretation of . . ." (Article 149) Part III of the Convention. Part III includes the general stipulations in Division I as well as the special stipulations in Divisions II and III. Whereas, therefore, the Upper Silesian procedure would be applicable to all the allegations of infraction which might be raised under the general procedure, the converse proposition would not be true.

This question was raised in an interesting way before the Permanent Court in the sixty children case referred to above. Germany appealed to the Court in that case under Article 72, paragraph 3, of the Convention, basing its case primarily upon Articles 74, 106, 131 and also upon Articles 65, 68, and 72, paragraph 2.²⁰ The Polish Government raised the question of jurisdiction, urging that the Court could not consider under Article 72, paragraph 3, any provisions of Part III of the Convention except those preceding Article 72. Though the court took jurisdiction, it did so on the ground that Poland had, by pleading to the merits, submitted to the jurisdiction even in respect of the articles following Division I.²¹ Upon the question raised by Poland, however, as to whether, by virtue of Article 72, paragraph 3, questions arising out of Divisions II and III could be submitted to the Court, it accepted the Polish position.²²

²⁰ Judgment No. 12, Series A, No. 15, pp. 19-20.

²¹ *Id.*, pp. 23-26.

²² It may be noted here that paragraph XV of the Final Protocol of the Conference provides that: "Aucune disposition de la Convention ne modifie en rien les stipulations des Articles 65 à 72." In case, therefore, of conflict between these provisions and any other Division of Part III, the former must prevail. This is of some importance so far as the substantive rights contained in Division I are concerned, but is of no importance procedurally. 16 De Martens (3 sér.), 867.

C. STATUS OF THE CONVENTION IN POLISH AND GERMAN MUNICIPAL LAW

The Convention became municipal law of the Reich by a law of the Reichstag of June 11, 1922. By this law, in which the text of the Convention and the Final Protocol is embodied, it is provided that:

"The Reichstag has passed the following law, which, with the consent of the Reichsrat, is hereby promulgated.

"Article 1. The annexed German-Polish Convention of May 15th, 1922, along with the Final Protocol of the same date are assented to. . . .

"Article 2. The Government of the Reich may make legal regulations (*Rechtsverordnung*) and general administrative ordinances necessary for the execution of the Convention and Final Protocol, but the consent of the Reichsrat shall be required if such execution calls for action by the authorities of the States. . . ." ²³

It is clear from this that, at any rate, so far as concerns the rights and duties of nationals and officials of the German Reich, the provisions of the Convention are operative in Germany as municipal legislation. ²⁴

The relation of the Convention to the municipal law of Poland is equally clear. The law of May 24, 1922, ²⁵ after authorizing ratification of the Convention provides in Article 3 for the execution of the Convention by the various Ministers of State who may be concerned. This form is a usual one for the enactment of Polish law. ²⁶ Here again, there-

²³ See II *Reichsgesetzblatt*, 1922, p. 237. Translation by author.

²⁴ The recited consent of the Reichsrat indicates in itself that the act of June 11, 1922, had the effect of transforming the provisions of the Convention into municipal law. See Article 45, paragraph 3 of the Constitution of the Reich (R.G.B. 1919, p. 1392) which only requires the consent of the Reichstag for the conclusion of treaties, and see Articles 68 and 74 which require the consent of the Reichsrat to legislation (R.G.B. 1919, pp. 1395 and 1397). See also Ernst Schmitz, *Die Methode des Abschluss internationaler Verträge nach deutschen Recht* in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Bd. III, Mr. 3.

²⁵ See *Dziennik Ustaw*, 1922, No. 44, Text 370.

²⁶ See also Ordinance of the Cabinet of Ministers of Nov. 3, 1922, establishing the Minorities Office provided for in the Convention. *Dziennik Ustaw*, 1922, No. 98, Text 900.

fore, it must be concluded that insofar as the duties of the nationals and officials of the Polish state are concerned, the provisions of the Convention are operative as municipal law of Poland.

As to the Rules of Procedure of the Mixed Commission, Article 596 of the Convention provided that:

"The Mixed Commission and the Arbitral Tribunal shall, taking into account the principles and dispositions contained in the present Part, establish their own Rules of Procedure . . . ²⁷

"1. The Rules of Procedure shall be published in the *Reichsgesetzblatt* and the *Dziennik Ustaw Rzeczypospolitej Polskiej*. They shall enter into force fifteen days after publication in these two organs. . . .

"3. This provision applies to amendments of the said Rules of Procedure." ²⁸

The rules envisaged in the article were duly made (so far as the Mixed Commission is concerned) on December 5, 1922, and published in the two official journals.²⁹ They have been twice amended since that date,³⁰ but remain in force substantially in their original form. Being under express authority of the Convention, which is binding as municipal law upon the citizens and officials of the two states, it would seem that these rules have a similar binding character. Though in theory the matter may present certain points of doubt, no issue has in practice been raised upon it up to the present time.³¹

Throughout the present study this status of the provisions of the Convention and of the Rules of Procedure within the

²⁷ The part referred to is Part VI concerning the Mixed Commission and the Arbitral Tribunal (Articles 562-606).

²⁸ Translation by the author from the French text.

²⁹ See II *Reichsgesetzblatt*, 1923, pp. 63-7, and *Dziennik Ustaw*, 1923, No. 19, Text 128.

³⁰ See II *Reichsgesetzblatt*, 1928, p. 539 and II *id.*, 1929, p. 504.

³¹ Inquiries by the writer from the Polish and German officials charged with the execution of the Convention brought the unhesitating reply that the Convention as well as the Rules of Procedure were part of the municipal law of the respective states, and that the officials and courts of the respective states were bound to fulfil any duties thereby imposed upon them.

two states will be seen to be of importance. This is particularly so as regards the wide powers of the President of the Mixed Commission to summon witnesses, to call for the assistance of officials and tribunals of the two states and disciplinary action generally.⁸² It is of interest to note, for example, that the German Minorities Office informs reluctant witnesses that they are bound, if summoned, to appear before the Mixed Commission.

⁸² See *post*, p. 108.

PART II

THE AVAILABILITY OF THE REGIONAL MACHINERY

CHAPTER II. CAPACITY BEFORE THE REGIONAL MACHINERY.

CHAPTER III. COMPETENCE OF THE REGIONAL MACHINERY.

CHAPTER II

CAPACITY BEFORE THE REGIONAL MACHINERY

THE primary object of this study is to give a narrative and analytical account of the procedure in Upper Silesian cases. It is, however, expedient before taking up the main narrative to dispose of certain preliminary questions of a fundamental character. In the first place it is necessary to define the class of persons who are entitled to institute proceedings before the regional machinery under Article 149. In the second place, it is necessary to delimit the class of acts in respect of which procedure under Article 149 may be instituted. The former will be undertaken in this, and the latter in the succeeding chapter.

Article 149 provides as follows:

“As regards the application and interpretation of the provisions of the present Part by the administrative authorities who receive orders from higher authorities [*par la voie hiérarchique*] members of a minority [*les personnes appartenant à une minorité*] may submit a petition to the Minorities Office of their state for examination, in conformity with the following provisions. In accordance with the special stipulations contained in the following articles, the Minorities Office shall then forward these petitions to the President of the Mixed Commission for his opinion. If the petitioners are not satisfied with the action taken in the matter by the administrative authorities, they may appeal to the Council of the League of Nations.”¹

In the general minorities procedure there is no right to petition in any real sense of that term, but simply a faculty

¹ Translation in *League Document C.L.110.1927. I*, p. 85.

of sending information. The question of capacity does not, therefore, arise under the general minorities treaties. Any individual organization or state, anywhere, may send information to the League; this information in the form of a petition has no legal consequences. Any steps of a legal character are taken, not on the petition as such, but on the information which it contains. In sharp contrast with this the right of petition in the Upper Silesian procedure is a right in the strict sense of that term, whether the petition is to the regional machinery under Article 149 or to the Council under Article 147 and Articles 149 and 157. In each case the petition or appeal, as the case may be, is the first legal step in the proceedings, and the subsequent proceedings follow in regulated fashion from that step.^{*} It is natural therefore that the capacity of the petitioner should be legally defined in the Upper Silesian procedure.

Both in Articles 147 and 149 the phrase employed to describe the petitioners is "les personnes appartenant à une minorité." It is clear, therefore, that whatever this phrase means, only persons falling within it have any *locus standi* in the Upper Silesian procedure. The mere fact that a number of articles in Part III, for instance Articles 67, 71, 83, 85, and 101, assure rights to all inhabitants, does not entitle them to present petitions in respect of those rights unless they can establish that they belong to a minority within the meaning of that phrase as used in Articles 147 and 149.

The term "members of a minority" will be used hereafter as the most convenient translation for the French text. What constitutes such membership is a question of considerable difficulty. Until recently the only minorities of practical significance in Upper Silesia were the German and Polish minorities, although from a legal point of view the Czech ele-

^{*} For proceedings under Article 585 prior to the submission of a petition see *post*, pp. 99 *et seq.*

ment in the Polish area and the Jewish element in both areas could claim the protection of the Convention. Since the inauguration of the anti-Jewish policy of the National-Socialist Government in Germany in 1933, however, the minority identity of the Jews has ceased to be a merely speculative problem, and the Council of the League has fully recognized their rights as a minority in the German area.*

Four points of controversy have been manifest in discussions of the question of capacity before the regional machinery.

- A. Is the criterion of membership of a minority an objective one based on external criteria such as language, race or religion? or is it a subjective one based solely upon the expressed will of the individual to adhere to the minority? These have been termed respectively the objective and subjective theories of minority character or identity.
- B. In order to be a member of a minority so as to exer-

* No petition had, prior to 1933, been presented under the Upper Silesian procedure in respect of any other minority. There is a very small Czech element in the Polish area. The Jewish population in this area, though more numerous, had adhered to either the Polish majority or the German minority. It could not be doubted, however, that the Jews in both parts of the plebiscite area constituted a minority, the members of which might claim the protection of the procedural provisions of the Convention. Articles 70-71, 87-93, 95-96 deal expressly with the rights of the Jews as a minority. The first petition on behalf of the Jewish minority was submitted by Franz Bernheim, and was dated May 12, 1933 (O.J., 1933, p. 930). It alleged violations of Articles 66, 67, 75, 80, 83, 85 of the Convention, by legislation and decrees of the Reich directed against the Jewish minority; violation of Articles 75 and 83 as a result of the "anti-Jewish boycott" of April 1, 1933; and asked that the Council should declare null the said laws and decrees, and ensure reinstatement and compensation to the injured persons. A report was presented to the Council on May 30, 1933, noting that the laws complained of did violate the Geneva Convention, and a German declaration affirming that government's determination to observe its international obligations (O.J., 1933, p. 838). No objection was raised by the German Government on the ground that the minority concerned was Jewish, though it did deny the personal capacity of this particular petitioner. The Council appointed a committee of jurists to report on the latter question, before it dealt with the merits.

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cise the right of petition must a person be a national of the state by which he alleges his rights to have been infringed?

C. In order to be able to petition under the Convention must the petitioner be domiciled or resident in the plebiscite territory or is it sufficient that the alleged infraction took place therein?

D. What is the status of the minority organizations in the procedure?

These problems will be examined in the order set out above.

A. THE SUBJECTIVE AND OBJECTIVE THEORIES OF MINORITY IDENTITY⁴

This is without doubt the most keenly debated problem arising out of the protection of minorities in Upper Silesia. It assumes its importance from three considerations, namely, the very mixed character of the population, the lack of consciousness in an appreciable part of the population of being definitely either German or Polish,⁵ and finally, the fact that the language criterion of minority identity is not decisive when applied to the large sections of the population who speak neither German nor Polish proper but a local dialect akin to Polish. These facts constitute obstacles not merely in the way of the objective theory, but render even the subjective theory difficult of application and susceptible of abuse. For whereas the will of the individual may incline neither to the German minority nor to the Polish majority (or *vice versa*) he must for the purposes of the Convention

⁴ For the general problem see Erler, *Das Recht der Nationalen Minderheiten*, Münster, 1931, pp. 328 ff., Wintgens, *op. cit.*, pp. 5 ff., Toscano, *La Minoranza di razza, di lingua, di religione*, Torino, 1931, pp. 53-68; Mandelstam, *Protection Internationale des Minorités*, Paris, 1931, pp. 21-48; Akzin, *Der Rechtsbegriff der Minderheit*, 8 Zeitschrift für öffentliches Recht (1928-29), pp. 203-28.

⁵ A large proportion of the population have merely what might be termed an "Upper Silesian" consciousness.

fall within one or the other.⁶ This opens the way to pressure of various kinds, so that in practice the subjective theory may lose its virtue of free choice.

The texts around which the controversy has centered are Articles 74 and 131, paragraph 1. Article 74 provides that:

"The question whether a person does or does not belong to a racial linguistic or religious minority, may not be verified or disputed by the authorities."

Article 131 at the end of the chapter dealing with education provides that:

"In order to determine the language of a pupil or child, account shall only be taken of the verbal or written statement of the person legally responsible for the education of the pupil or child. *This statement may not be verified or disputed by the authorities.*"

Article 131 raises exactly the same issues of principle as Article 74 and since its substance is not in point, the succeeding argument will be limited to Article 74.⁷

The opposing principles contended for by the German and Polish Governments respectively, may be stated in the terms of the judgment of the Permanent Court of International Justice in the question concerning admissions to minority schools in Upper Silesia: ⁸

"Basing itself upon Article 74 . . . Germany is of the opinion that by this Article the Parties have by common agreement adopted the principle that this question must be left to the subjective expression of the intention of the persons concerned, and that this intention must be respected by the authorities even where it appears to be contrary to the actual state of the facts." ⁹

⁶ See, for instance, Article 132 which provides: "By language of instruction or language considered as a subject of the curriculum is meant correct literary Polish or German as the case may be."

⁷ Article 131 is discussed in Judgment No. 12. *Publications of the Permanent Court of International Justice*, Series A, No. 15, p. 39 *et seq.*

⁸ *Id.*, p. 32.

⁹ This was the traditional principle upon which the German Government had always conducted its census. See Royse, *op. cit.*

"On the other hand, Poland considers that the question whether a person does or does not belong to one of the said minorities is a question of fact, and not one of intention,¹⁰ and that such is the true meaning of the provisions of Division I of the Third Part of the Geneva Convention, provisions which would not be modified by those of Division II of that Part. If Article 74 leads to the conclusion that the persons concerned may themselves declare whether they do or do not belong to the minorities in question such a declaration must be in accordance with the facts. A person who, in a manner clearly contrary to the facts, were to declare that he belongs to a minority would, in the opinion of the Polish Government, be committing an abuse which could not be tolerated."

M. Calonder, the President of the Mixed Commission, and formerly President of the Conference which drafted the Convention, had passed on this question in 1926.¹¹ He then declared:

"Article 74 is based upon the view that competition in intellectual and moral matters between the majority and the minority and transfer from the minority to the majority and *vice versa* shall be free from all interference. . . . In face of the serious difficulties which arise from the very mixed cultural and linguistic elements in the population of Upper Silesia, the Geneva Convention established the principle of free self-determination even in educational matters. . . . As regards neither the guardian nor the child does the question depend upon definite objective circumstances such as national origin or mother tongue, but the decision is a purely subjective decision by the parent or guardian."

The Permanent Court, on the other hand,¹² in its judgment of April 26, 1928, completely endorsed the Polish view so far as the general minorities treaty (reproduced in Division

¹⁰ It may be noted here that in the former German and Austrian territories of Poland both theory and practice had long been based solely upon the subjective principle, as may be seen in the carrying out of the census. The present Polish view is a complete reversal of these traditions.

¹¹ See opinion of Dec. 15, 1926. Warderholt, *op. cit.*, pp. 293-4. See also opinion of Feb. 17, 1925, *id.*, p. 242.

¹² Judges Huber, Nyholm and Negulesco, dissenting on the question of jurisdiction, and Judge Nyholm, also on the question discussed in the text.

I of Part III of the Convention) was concerned. It admitted, however, that Division I could, if the parties had expressed sufficient intention in the succeeding parts of the Convention, have been modified to conform to the German theory so far as Upper Silesia was concerned. The Court failed, however, to find such an intention in Article 74 since "the prohibition as regards verification or dispute which is comprised in the Article can be quite easily understood even if the construction placed upon it by Germany be rejected."¹³

For present purposes the interpretation given by the Court in respect of the general minorities treaties may be admitted.¹⁴ So far as the Convention itself is concerned, it is difficult to see any difference between the view of the majority of the Court and that of the German Government, even though the German view termed itself subjective, and the Court's objective. For in the only two sets of circumstances where any different results would be arrived at by choosing one theory or the other, the Court negatives any difference. Thus where the objective facts of a case are not decisive one way or another the Court emphasizes¹⁵ that the prohibition of verification of a person's declaration is absolute, and that the "preference" of the parents may then "properly" be decisive, even though this introduced a "certain subjective element." Further, the Court held that:

"If . . . a declaration which clearly does not conform to the facts is to be considered as not in conformity with the Geneva Convention, it does not follow, as the Polish Government appears to maintain, that the prohibition to verify or dispute ceases to be applicable in such a case. The prohibition which is expressed in unqualified terms cannot be subject to any restriction."

¹³ Series A, No. 15, pp. 34, 46.

¹⁴ For a very recent discussion and summary of the various views, so far as the general minorities treaties are concerned see N. Ito, *La Protection des Minorités*, 1931, Paris, pp. 90-102

¹⁵ Series A, No. 15, pp. 34, 40-1.

At this point, feeling apparently something of the strangeness of the conclusion, it stated enigmatically that "it must not be inferred from this that the construction given above according to which the declaration must in principle be in conformity with the facts is therefore of no value. It is indeed of some importance to establish what is the situation at law."

As Judge Nyholm in effect pointed out in dissenting,¹⁸ to say that minority identity must be determined by objective criteria, and then add that a declaration by the individual, however patently false, cannot be disputed, is at best a confusion of legal and moral considerations, and at worst a plain contradiction in terms.

However this contradiction is explained, it is clear that as regards rights under the Convention, whether substantive or procedural, a person has minority identity when he declares that he has. This conclusion is thoroughly in conformity with the practice of the President of the Mixed Commission. Petitions submitted under Article 149 of the Convention almost invariably contain a declaration of minority identity and even if it is not so formally declared, it is enough if the petitioner declares it orally during the proceedings. Conversely the petition will be rejected if, at any stage of the proceedings, it appears that the petitioner does not have minority identity. Thus in an opinion of the President of the Mixed Commission of February 1, 1926, relating to a case arising in German Upper Silesia it appears that no declaration was made as to adherence to the minority before the oral hearing. The petitioner then "in reply to the inquiry of the President of the Mixed Commission declared that she considered herself as belonging to the German

¹⁸ *Id.*, p. 63. He referred to the *travaux préparatoires* of the Geneva Convention in dissenting from the view of the majority. *Id.*, pp. 64-5. For another critique of the Court's holding see C. G. Bruns, *Gesammelte Schriften zur Minderheitenfrage*, Berlin, 1933, pp. 133-147.

majority." Her petition was rejected on this among other grounds.¹⁷

B. NATIONALITY OF THE PETITIONER

The text of the Convention is by no means clear as to whether the petitioner must be a national of the state against which he petitions. Insofar as any conclusion may be drawn from its provisions, they would seem to favor the view that a "member of a minority" within Articles 147 and 149 need not be a national of the state concerned.¹⁸ Thus wherever it is sought in the Convention to confer rights upon nationals only, the text is careful to say expressly "nationals" ("les ressortissants"), "nationals who belong to . . . minorities" ("les ressortissants appartenant à des minorités . . .").¹⁹ On the other hand, in Articles 147 and 149 no mention is made of nationality. The inference, therefore, might be drawn that, insofar as substantive rights are assured by the Convention to minority persons who are not nationals, they should be entitled to petition under Articles 147 and 149.

It is interesting to note that there is a similar ambiguity in the general post-war treaties for the protection of minorities. For instance, Articles 7, 8 and 9 of the Polish Treaty, in conferring substantive rights, expressly require nationality for their enjoyment. On the other hand, the procedural article, Article 12, refers to the stipulations "so far as they affect racial, religious or linguistic minorities" without mentioning nationality. The Permanent Court has on two occasions expressed the view that nationality of a state is not under the general treaties necessary for membership of a minority within that state. In its seventh advisory opinion in 1923, the Court stated that the term "minority" seems to include inhabitants who differ from the population in race,

¹⁷ *Warderholt, op. cit.*, pp. 265, 267.

¹⁸ *Cf. id.*, pp. 110, 129.

¹⁹ See e.g. Articles 67, 69, 75 (1), 77.

language or religion, that is to say, amongst others, inhabitants of this territory of non-Polish origin, whether they are Polish nationals or not.²⁰ Further, "the terms of Article 12" (of the Polish Minorities Treaty) "which fixes the extent of the competence of the League of Nations, are in entire accordance with the wider conception of a minority . . . since it speaks of 'persons belonging to racial, religious or linguistic minorities' without attaching any importance to the political allegiance of these persons."²¹ The Court cited this previous holding with approval in the advisory opinion concerning the treatment of Polish nationals in Danzig in 1932,²² and has expressed no later doubt as to its accuracy.

Despite the natural implication arising from the text of the Convention and the pronouncements of the Court on the analogous problem, the practice of the President of the Mixed Commission is settled quite definitely against permitting the use of Article 149 by a non-national of the state concerned. The President's view seems to be based upon the wording of Article 149 itself, which provides that aggrieved members of a minority may submit a petition "à l'Office des Minorités de leur Etat." If the petitioner might be a German national living in the Polish part this would produce the absurd result that his petition should be sent to the German Minorities Office. Similarly persons who were neither Polish nor German nationals would be directed to submit petitions to non-existent Minorities Offices. This argument is very persuasive, but a doubt is permissible as to whether "the Minorities Office of their state" may not also be taken to mean "the Minorities Office in that part of the plebiscite area where they live or are domiciled."²³

²⁰ *Publications of the Permanent Court*, Series B, No. 7, p. 14.

²¹ *Id.*, p. 15.

²² *Id.*, Series A/B, No. 44, p. 39.

²³ See *post*, p. 45, where a similar doubt in the procedural provisions is considered.

In the case of Karl Michalik²⁴ where the nationality of the petitioner was doubtful, the President refused jurisdiction and directed the petitioner to go to the Arbitral Tribunal to have that preliminary question settled. In the course of the opinion he declared:

"The burden of proof of membership of the minority, when the fact is disputed, lies on the petitioner. There are two elements involved in the membership of a linguistic minority here in question: minority identity in the state against the administrative authorities of which the petition is brought, and nationality of the same state. As to minority identity the petitioner decides according to his own free will (see Article 74 of the Convention), but in regard to nationality this must be decided by the competent authority in accordance with the provisions laid down."²⁵ In the present case the nationality of the petitioner is disputed and very doubtful."

The President added that he could, for the purpose of proceedings before him, decide the question of nationality himself, but he refused to do so because of the extreme doubt of the question, and the lack of finality which would attach to his decision. The petitioner in this case appealed to the Council of the League under Articles 149 and 157, and he was there again directed to apply to the competent organ for settlement of the question of nationality.²⁶

Another example of the rejection of complaints on the ground that the petitioner has not the nationality of the state petitioned against is to be found in the case in 1929 concerning the dismissal of thirty-two doctors by the board of directors of the Spolka Bracka of Tarnowskie Gory.²⁷ The President rejected the petitions of a number of the doctors saying that:

²⁴ Opinion of Feb. 17, 1925, Warderholt, *op. cit.*, p. 241.

²⁵ Articles 55 *et seq.* of the Convention which provide for the settlement of these questions by a Conciliation Commission of the Arbitral Tribunal.

²⁶ O.J., 1926, p. 517.

²⁷ Opinion of June 30, 1929, III, Warderholt, *op. cit.*, pp. 440, 443; cf. opinion of Oct. 11, 1926, II, *id.*, pp. 39-40.

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"Article 149 of the Geneva Convention expressly lays down that only persons belonging to the minority may bring petitions before the President of the Mixed Commission. Therefore, where Polish authorities are involved, only Polish nationals may be regarded as persons belonging to the minority, and petitions of German nationals cannot be considered."

Though the practice of the Mixed Commission on this point does not appear to be consistent with the most natural interpretation of the text, it probably does not work serious injustice. The most important class of beneficiaries excluded by it from capacity under Article 149 are persons entitled under Articles 40-45 to retain their domicile in one part of the plebiscite territory while being nationals of the other state. Such persons are assured certain rights by Article 82 of the Convention, but from the practice of the President they could not petition under Article 149. Any apparent injustice to this class disappears since a concurrent practice had grown up that the Arbitral Tribunal will take jurisdiction in case of alleged infractions of Article 82.¹⁴ It may therefore be taken that Article 149 is only available for nationals of the state against which the petition is brought.¹⁵

C. DOMICIL OF THE PETITIONER

The third requirement for capacity under Article 149 is that the petitioner must, at the time of submitting the peti-

¹⁴ See *Entscheidungen des Schiedsgerichts für Oberschlesien*, Berlin, 1929, p. 104 *et seq.* Of course as regards all Polish nationals in the German area and German nationals in the Polish area the ordinary diplomatic protection of nationals abroad is open to the two states. The Polish Consulate-General in Oppeln, and German Consulate-General in Katowice are both very active in this respect. They have large staffs and occupy spacious premises. For the procedure in nationality questions before the Arbitral Tribunal and its Conciliation Commissions, see Articles 55-63 of the Convention Appendix I.

¹⁵ Warderholt, *op. cit.*, p. 110 makes a strong attack on the view taken by M. Calonder. There is no such corresponding practice as to Article 147 and capacity under that Article will be discussed at a later stage. It may be noted, however, that in a 1932 case, the Council summarily rejected a petition because the petitioner was not a national of the state concerned. It does not appear whether Article 147 or Article 149 was in question. O.J., 1932, p. 479.

tion, be domiciled within the plebiscite territory. This is considered by the President to be a natural implication from the limited territorial character of the Convention, though it is nowhere mentioned expressly in the procedural provisions. This requirement of domicil was the ground of rejection in the 1928 case which arose on a petition submitted by the Deutsche Volksbund für Polnisch-Schlesien on behalf of the Turngemeinde Katowice, an association with its headquarters outside the plebiscite territory.⁸⁰ The President held:

"The Geneva Convention with its various provisions and institutions for the protection of minorities only applies to the minorities in the plebiscite area. It follows that the German Gymnastic Union in Poland cannot invoke the minorities rights guaranteed by the Geneva Convention, and has not capacity to submit a petition concerning infractions of these rights. From the same facts proceeds the lack of competence of the President of the Mixed Commission."

"Domicil" of a person is defined in Article 29 of the Convention as "le principal endroit de concentration de ses activités et intérêts tant personnels qu'économiques,"⁸¹ and this appears to be the sense in which it is used by the President.⁸² Domicil in either part of the plebiscite area will support a petition against the authorities of either state. According to the opinion of the President in the case of Boleslaus Drozdowski⁸³ it is not necessary that the petitioner should have been born in the area; nor that he should

⁸⁰ Opinion of June 21, 1928, I, Warderholt, *op. cit.*, pp. 402, 404.

⁸¹ For an interpretation of this by the Permanent Court, see *Publications*, Series A, No. 7, p. 79.

⁸² The writer seriously doubts whether the application of this test of domicil by the President is either necessary or desirable. Why should not a person domiciled outside the plebiscite area, but with permanent business or other interests within it, be entitled to petition when he is injured in respect of those interests? The Convention does not dictate the President's view, nor does expediency and justice.

⁸³ Opinion of Oct. 11, 1926, II, Warderholt, *op. cit.*, pp. 279, 281.

have had his domicile there for any particular length of time. In that case both these grounds of incapacity were urged by the German Minorities Office and disallowed. On the other hand, mere temporary presence in the area will not support a petition under Article 149 even if the alleged infraction was committed whilst the petitioner was in the area.³⁴

Three elements are essential, therefore, to give a person capacity to submit a petition under Article 149 of the Convention. He must have minority identity, he must be a national of the state against whose authorities the petition is brought, and he must be domiciled in the plebiscite area. As regards the first two elements a failure of either at any stage in the proceedings will be fatal. In the words of the President of the Mixed Commission³⁵ they constitute an indispensable condition "not only for the bringing of the petition but for the carrying through of the entire procedure under the petition. The plea, therefore, that the petitioner has not minority identity may be made at any stage in the procedure. If this minority identity is lacking from the start, or if it is lost during the proceedings, the petition must in either case be rejected without examination." On the other hand, as to *domicil* in the plebiscite area, it has been suggested that a distinction should be made, and that, provided the condition is satisfied at the moment of the submission a subsequent removal of the domicile outside the area will not be material.³⁶ This distinction is due largely to the peculiar situation in the plebiscite area where change of domicile is a common phenomenon in the lives of the in-

³⁴ Opinion of June 21, 1928, Warderholt, *op. cit.*, p. 402. Cf., O.J., 1933, 934.

³⁵ Opinion of Feb. 17, 1925, II, Warderholt, *op. cit.*, pp. 241, 242.

³⁶ See Warderholt, *op. cit.*, p. 114, n. 4. The report of the committee of jurists on the capacity of the petitioner in the Bernheim case seems to go even further: "The fact that at the time of presenting the petition the petitioner was not in the plebiscite area does not deprive him of the right conferred upon him by Article 147, at all events in the circumstances of the case as revealed by the petition. . . ." See O.J., 1933, p. 934.

habitants, so that it would be unjust to deprive them of the protection of the Convention in respect of acts done before the change of domicil.

Finally it should be noted that the Minorities Office to which, in the first place, the petition is submitted, is not itself competent to reject a petition on the ground that capacity is lacking in any of these respects. It must forward the petition to the President in the usual way, and raise any objection in respect of capacity in its observations on the petition. This objection will then be passed upon by the President.³⁷

D. THE LOCUS STANDI OF MINORITY ASSOCIATIONS

The grant to individual persons of legal capacity before the Mixed Commission and before the Council of the League of Nations, was a step going far beyond the theory and even the practice of the general minorities procedure. Moreover, it presents a striking illustration of the manner in which individuals may, by special convention, be given attributes normally exercised only by independent states. Not only does the individual in this procedure have *locus standi* before a regional international tribunal and before the Council of the League, but he has it *as against the authorities of the state of which he is a national*. It is impossible to explain this phenomenon on the ground that an individual before an arbitral tribunal merely represents his state, for the proceeding is against his own state in an international tribunal.

An even more significant development in the Upper Silesian system is the status of minority organizations. The Convention itself contains provisions of great interest which have been the starting point for a movement leaving its textual origin far behind. Article 78 provides that:

³⁷ See e.g., opinions of Feb. 17, 1925, II, Warderholt, *op. cit.*, p. 241; Oct. 11, 1926, *id.*, p. 279; Feb. 1, 1926, I, *id.*, p. 265; Mar. 20, 1924, *id.*, p. 212; June 30, 1929, III, *id.*, p. 440.

"1. Nationals belonging to minorities shall enjoy the same rights as other nationals as regards the right of association or meeting and the creation of foundations.

"2. The fact that associations devote themselves to the interests of minorities as regards their language, culture, religion, ethnical character or social relations, cannot constitute a reason for prohibiting these associations, hindering their activities or preventing them from acquiring legal status."³⁸

It would be difficult to frame a wider charter for collective minority activity. For the present purpose the significant content of this provision is that it makes not only legally possible, but absolutely inviolable, the right of the individuals of a minority to associate for the purpose of more effective assurance of their rights under the Convention. Such a purpose falls clearly within the phrase "devotion to the interests of minorities as regards their language, culture, religion, ethnical character or social relations."

The minorities in the respective parts of the plebiscite area were not slow to take advantage of these provisions. "The League of Poles in Germany" ("Zwiazek Polakow W Niemczech") was early established in the German part with its headquarters at Oppeln. It is an association of a cultural character and as such is duly registered in accordance with the German law regarding such associations.³⁹ It is, to a considerable extent, representative of those of the Polish minority in German Upper Silesia who adhere with any persistence to their minority character. Though other independent cultural organizations exist there are none that claim to be so representative of the Polish minority. Registration of these associations under German law confers full legal capacity upon them to sue and to be sued.⁴⁰

³⁸ The French text is identical in result.

³⁹ See Article 21 *et seq.* of the German Civil Code and especially Article

55. ⁴⁰ Article 21 of the *Bürgerlichegesetzbuch* and Article 50 of the *Zivilprozessordnung*. I Stein and Jonas, *Die Zivilprozessordnung* (1928), p. 164.

In Polish Upper Silesia the "Deutsche Oberschlesischen Volksbund für Polnisch-Schlesien zur Wahrung der Minderheitsrechte" is an association with its headquarters at Katowice registered under the Polish law.⁴¹ As its name implies it has for its primary object the maintenance of minorities rights assured by the Convention.⁴² It is directed by a permanent and very active administration at the head of which are the Prince von Pless and Dr. Ullitz. It may be regarded as a clearing-house for all minorities questions affecting the cultural organizations, industrial and other societies of the German minority in Polish Upper Silesia. It is thus even more representative than the "League of Poles," and much more highly organized. It functions as a semi-political organ of the minority for the protection of their rights under the Convention.

All the members of the Volksbund are juristic persons.⁴³ which are themselves duly incorporated and registered. The total number of individuals, members of these organizations, is about 30,000. Three of them, the Deutsche Schulverein, Deutsche Kulturbund, Deutsche Wohlfahrtsbund, have their seats in the administrative headquarters of the Deutsche

⁴¹ *Dziennik Praw*, No. 3, Text 88 (Decree of Jan. 3, 1919) amended in *Dziennik Ustaw*, 1926, Text 544. Legal capacity consequent on registration is still governed by the above-mentioned provisions of the German Civil Code. The Volksbund is registered in the *Vereinsregister des Burggerichts (Sad Grodzki)* in Katowice, in accordance with Articles 21 *et seq.*, of the *B.G.B.* (German Civil Code). For the Constitution of the Volksbund see Appendix V.

⁴² See Article 1 of the Constitution of the Volksbund.

⁴³ The following are the member organizations of the Volksbund:

Bezirksvereinigung Katowice des Deutschen Volksbunds für Polnisch-Schlesien.

Bezirksvereinigung Krolewska-Huta.

Bezirksvereinigung Myslowice.

Bezirksvereinigung Lubliniec.

Bezirksvereinigung Pszczyna.

Bezirksvereinigung Tarnowskie Gory.

Bezirksvereinigung Rybnik.

Deutscher Schulverein für Polnische-Schlesien.

Deutscher Kulturbund für Polnische-Schlesien.

Deutscher Wohlfahrtsbund für Polnische-Schlesien.

All these organizations are themselves duly registered.

Volksbund and coöperate closely with, and are financed by the latter. The only German cultural organization not a member of the Volksbund is the Verband Deutscher Katholiken in Polen.

Developments since the Convention came into force have given these two minority organizations the function of legally representing the respective minorities before the organs entrusted with the execution of Part III of the Convention. This development, which will shortly be analyzed, has three very definite causes which not merely justify, but necessitate the recognition of this legal representative character.

In the first place, it is obvious that collective activity is of the very essence of the solidarity of a social group. This truth is repeatedly recognized in the Convention, as is seen not only from Article 78 examined above, but also from the numerous provisions in Part III dealing with such matters as religious, cultural and philanthropic institutions, and especially educational rights.⁴⁴ It is a natural corollary from this recognition of collective minority activity, that insofar as these collectivities or associations are entitled to legal personality under the laws of Germany and Poland respectively they should be entitled to take the steps for the protection of that activity provided in the Geneva Convention. This is the basis for the undisputed admission to *locus standi* in the Upper Silesian procedure of juristic persons belonging to the minority.

In the second place a study of the situation in the plebiscite area, both at the time when the Convention was made and throughout the succeeding years, provokes the following thought. However indisputably assured in the Convention the legal right of the individual to institute proceedings may be, the conflict between minority and majority, particularly

⁴⁴ See e.g., Articles 81, 86 and Articles 97-131, *passim*.

in the economic sphere, and the extra-legal modes of pressure at the disposal of the majority, would make a minority individual very reluctant to take advantage of his legal right. To quote the words of the President of the Mixed Commission: ⁴⁶

"The individual physical persons of the minority very often have neither the essential means, the knowledge nor the time to represent their own interests. Even more important is the fact that the members of the minorities in both parts of Upper Silesia, in consequence of the persecutions suffered by them, still feel threatened and not without reason, and that they often do not dare to make complaints in their own name for fear that they will expose themselves to annoyance. In spite of all the legal guarantees of the Geneva Convention the actual burdensome pressure is so great on the Polish minority of German Upper Silesia and the German minority in Polish Upper Silesia that according to the firm conviction of the President, the provisions of the Geneva Convention for the protection of minorities would be illusory if the associations for the maintenance of minority rights did not possess the right of petition under Articles 147-158."⁴⁷

It is upon these considerations that there rests the well-established recognition of the right of the representative minority organizations to institute proceedings under Articles 147-158 on behalf of individuals of the minority.

In the third place, questions have arisen in the operation of the Convention, which, because they are so vital to the very existence of the minorities, touch not merely an individual but the whole minority. As such, they called for the participation in the procedure of organizations which could speak for the minorities as a whole, and could not be satisfactorily decided without this participation. To quote again the words of President Calonder: ⁴⁷

⁴⁶ Opinion of Nov. 26, 1923, II, Warderholt, *op. cit.*, pp. 172, 174.

⁴⁷ For an illustration of the frequent helplessness of the individual and the manner in which the organization comes to his assistance see the facts in the opinion of Oct. 5, 1927, I, *id.*, p. 346.

⁴⁷ Opinion of Dec. 15, 1926, II, Warderholt, *op. cit.*, pp. 284, 288.

"The right of minority groups—the Deutsche Volksbund in Polish Upper Silesia and the Związek Polaków in German Upper Silesia—to submit petitions on their own initiative and without the special authorization of private persons for the purpose of protecting the general interests of minorities, is indispensable. Without this right of petition by minority groups, the protective provisions of the Geneva Convention would in practice lose much of their value. Rightly considered it is in the interests not only of the two minorities but of the two states that the minority provisions of the Convention should be discussed with the cooperation of these groups, and in the event of dispute be thoroughly cleared up. The purpose of minority protection is reconciliation and the settlement of differences between the minority and the state on a basis of justice and mutual confidence. Far from injuring the two states, the groups are doing valuable service for the Geneva Convention which deserves to be fully recognized."

This is the basis of what must be regarded as the most progressive feature of the very progressive minorities procedure in Upper Silesia. Minority organizations are admitted to the procedure, not merely on their own behalf, not merely on behalf of individuals of the minority, but also in general questions which concern the minority as a whole on behalf of the minority as a whole.

The grounds for the admission of the organizations to the Upper Silesian procedure being thus laid, the practice of the Mixed Commission will now be examined under the following three heads:

- I. The right of petition under Articles 147 to 157 of associations which are juristic persons for the protection of their own rights.
- II. The right of petition under Articles 147 to 157 of associations which are juristic persons on behalf of the individual members of a minority whose rights are alleged to have been violated. Such members may be either
 - (i) natural persons
 - (ii) juristic persons.
- III. The right of petition under Articles 147 to 157 in their

own name, of associations which are juristic persons and in fact representative of the minority in respect of matters which concern the minority as a whole.

In order to avoid repetition at a later stage the practice before the Council of the League will be stated side by side with that before the Mixed Commission.

I. *The right of petition of associations which are juristic persons on their own behalf.* The question whether "les personnes appartenant à une minorité" in the procedural articles of the Convention only covered physical persons was raised and settled quite early in the procedure and has not since been seriously disputed. In 1923 the Polish Minorities Office challenged the capacity of the Deutsche Volksbund in any circumstances to petition under Articles 147 to 157. The ground taken was that it was not a physical person. The opinion of the President on this point was unequivocal.⁴⁸

"According to Articles 149 and 157 petitions may be sent to the Minorities Office by "les personnes appartenant à une minorité." This must not be understood to mean only physical persons. Juristic persons as well, in particular associations, are persons in the legal sense, who may belong to the minority and through their organs have complete capacity to exercise the right of petition. This would suffice to make inadmissible the restriction of the right of petition to physical persons. There is the further fact, however, that the Geneva Convention has expressly protected organizations which are devoted to the interests of the minorities in linguistic, cultural, religious or social matters, as well as religious foundations, cults and congregations of the minority, and has conferred certain rights upon them. It follows inevitably that the view is not tenable which limits the right of petition under Articles 147 to 158 to physical persons."

The question was again raised by the Polish Minorities Office in 1924 and the President again stated the above view,

⁴⁸ Opinion of Nov. 26, 1923, II, Warderholt, *op. cit.*, pp. 172, 175.

referring to his earlier opinion.⁴⁹ After this time the objection to capacity merely on the ground that juristic persons have not the right of petition does not seem to have been made. The German Government did not object to the admissibility of the early petitions from the *Związek Polaków*,⁵⁰ and though it did raise the question in 1925 it withdrew its objection and recognized the right of petition in the same case.⁵¹

Moreover, in the procedure before the Council of the League, the position is identical or even stronger. For Article 147 makes the Council competent to pronounce upon "all individual or collective petitions addressed to it by persons belonging to a minority." As will be seen in the succeeding examination of the representative capacity of the *Deutsche Volksbund* and the *Związek Polaków* the Council has from the very beginning regularly received and passed upon petitions from juristic persons.⁵²

It need only be mentioned that a juristic person just as a physical person must, in order to establish its capacity, show that the three conditions set out above as to minority identity, nationality, and domicil in the plebiscite area, are fulfilled.⁵³ It would seem from the decision in the *Gymnastic Union Case*⁵⁴ that for this purpose domicil in Upper Silesia rests upon the restriction of the activities of the associations to this area.⁵⁵

II. *The right of petition of associations which are juristic*

⁴⁹ Opinion of Mar. 20, 1924, II, *Warderholt, op. cit.*, p. 212.

⁵⁰ Opinion of March 15, 1924, *id.*, p. 206.

⁵¹ Opinion of Sept. 15, 1925, III *Aktivlegitimation, id.*, p. 246. For a later example see opinion of Apr. 25, 1927, *id.*, p. 320.

⁵² The Council has never, however, expressly committed itself upon this question. See e.g., O.J., 1924, p. 686.

⁵³ In connection with the economic provisions of the Convention, and those for the preservation of acquired rights (see *ante*, p. 12) the Permanent Court has held that "a special conception—that of a 'controlled company'—has been adopted" in the Convention instead of that of nationality. *Publications*, Series A, No. 7, p. 70.

⁵⁴ Opinion of June 21, 1928, I, *Warderholt, op. cit.*, p. 402. But see *post*, p. 57.

⁵⁵ The criticisms made *ante*, p. 45, n. 32, apply here also.

persons, on behalf of individuals of the minority, whether such individuals are members of the association or not. The right of the Deutsche Volksbund to represent individuals in the procedure was also disputed by the Polish Government in the early years of the Convention. That government, however, accepted on this point the President's opinion of November 26, 1923, quoted above. In a statement to the President by the agent of the Polish Government dated March 22, 1924, it was declared: ⁵⁶

"As to the very important question of the right of petition of the Volksbund the Polish Government is not persuaded by the argument of the President and maintains its belief that Article 147 of the Convention speaks of collective "petitions" and not of "persons." It follows that petitions although "collective" can only emanate from physical persons who alone can belong to a minority. . . . Nevertheless, notwithstanding this formal point of view, and in order to show its good will as regards the protection and execution of minorities rights within its state the Polish Government will henceforward recognize the petitions of the Volksbund on an equal footing with individual petitions. Where the Volksbund acts with the authorization of physical persons, the formal attestation (*légalisation*) ⁵⁷ of the signatures of these persons will not be demanded."

This statement while admitting the capacity of the Volksbund when acting on behalf of individuals left open the question of the right of petition on behalf of the minority as a whole, which is shortly to be examined. ⁵⁸ The German Government has not disputed the right of the Związek Polaków to petition on behalf of individuals. ⁵⁹

⁵⁶ Quoted in opinion of Dec. 15, 1926, II, *id.*, pp. 284, 286.

⁵⁷ I.e., formal acknowledgment before, and attestation by a public authority.

⁵⁸ For cases where the Polish Government has not objected to petitions on behalf of individuals, see opinions of Aug. 19, 1929 (Gregor Sakry); Nov. 12, 1929 (Johann Niechoj); Jan. 31, 1930 (Adolf Klima); March 24, 1930 (Karl Włodasch); June 28, 1930 (Johann Wiesner); July 5, 1930 (Paul Michalik); July 16, 1930 (Paul Besuch); Aug. 1, 1930 (Marthe Berger).

⁵⁹ See e.g., opinions of Nov. 18, 1924, Warderholt, *op. cit.*, p. 225; Nov. 25, 1924, *id.*, p. 227; Sept. 20, 1926, *id.*, p. 273; Oct. 11, 1926, *id.*, p. 279; Feb. 10, 1927, *id.*, p. 308; Feb. 12, 1927, *id.*, p. 311; July 17, 1930.

It is clear that not only physical persons may be represented by these organizations, but also juristic persons. Thus, in 1928, the Deutsche Volksbund presented a petition on behalf of the Katowice Gymnastic Union which was itself a registered association. Though the petition was rejected on another ground, no question was raised as to the propriety of the Volksbund acting as a legal representative of a minority juristic person.⁶⁰

The Council of the League of Nations has frequently acted upon petitions from the minority organizations acting on behalf of individuals whose rights are alleged to have been violated.⁶¹ It must be taken, therefore, to have recognized their right of petition in such cases. This recognition is even more significant than that already mentioned of their right to submit petitions where their own rights as organizations are alleged to have been violated.

The individual or juristic person on behalf of whom the organization is acting must satisfy the conditions for capacity analyzed above. Thus, in one case, the juristic person on behalf of whom the Deutsche Volksbund was acting, was one not restricted in its activities to the plebiscite area, having its headquarters outside the area. The President held that the petition must be rejected saying:

"A clear and fundamental distinction between Upper Silesian minorities associations and associations which comprehend other areas is called for, if misunderstanding for the future is to be avoided in the application of the Geneva Convention."

In the case before him the seat of the association was outside the plebiscite area, and its activities also extended outside, so that the President's view was clearly correct. A

⁶⁰ See opinion of June 1, 1928, *id.*, p. 405.

⁶¹ See e.g., the following cases: Norbet Lubos, O.J., 1929, pp. 555, 1689; Paul Michalik, O.J., 1931, p. 230; Paul Besuch, *id.*, p. 229; Marthe Berger, *id.*, p. 230.

strong case might be made, however, for the admissibility of petitions on behalf of associations whose activities extend outside the area but whose seat and whose activities are mainly concentrated within it. The above dictum should be read with these facts in mind, and there being no case in point, the question must be left open.

Assuming that the above conditions for establishing the substantive rights of minority persons are established, there is no doubt that the minority organization may initiate and carry through the entire procedure on their behalf. So far as the present writer is aware, it has not been argued that the injured person must be a member of the organization in question or even of its member organization. Although, among the cases cited, there must be many where he was not such, issue has never been taken on this point by either government. The petitions and opinions do not allege any connection between the injured person and the organization, except that the organization represents him. In practice, when the individual has lodged his complaint with the organization and given it a power to proceed, nothing more is required. The individual then only figures in the procedure as a witness if required to do so. Moreover, it is the view of President Calonder that the membership of the petitioner in organizations affiliated to the Deutsche Volksbund and the Związek Polaków is immaterial in deciding the right of petition of these bodies. The governments have never cast doubt upon this position.

The procedure within the minority organization may be illustrated from the practice of the Deutsche Volksbund. The injured member of the minority lays his complaint either orally or in writing before the Volksbund officials. The legal aspects of the complaint are then examined by the officials, but the facts do not appear to be investigated, the Volksbund not assuming responsibility for their truth. If

there appears to have been an infraction of the Convention the complainant is required to sign a statement of the facts alleged by him and the following power:

FULL POWER (*Vollmacht*)

I.....(Name, Occupation, Address) give to the Deutsche Volksbund for Polish Silesia in Katowice full power to submit to the competent authorities on my behalf petitions of all kinds concerning the infraction of my rights under the Geneva Convention, and to institute and carry forward proceedings in the Minorities Office, before the President of the Mixed Commission for Upper Silesia and the Council of the League of Nations, and to accept on my behalf notice of the decisions in the above matters.

I acknowledge myself to belong to the German minority.

(Date).....

(Signature).....

The Volksbund then frames and submits the necessary petition. It will be perceived how completely the organization is assimilated to a legal representative or adviser in this procedure.⁶²

III. *The right of petition of these associations in their own name in respect of matters which concern the minority as a whole.* The capacity of the minority organizations to represent the minority as a whole was recognized by the Polish Government in the 1924 cases concerning the verification of signatures upon applications for schools.⁶³ The

⁶² There was some conflict between the Polish Minorities Office and the Deutsche Volksbund as to the genuineness of statements purporting to be made and powers given. An interchange of letters with the President of the Mixed Commission took place on the subject in 1927 (July 5, 1927, Polish Minorities Office to President; Oct. 20, 1927, Deutsche Volksbund to President; March 7, 1928, President to the Minorities Office and the Deutsche Volksbund). The President approved the procedure of the Volksbund but recommended care in taking statements.

⁶³ Opinion of Apr. 22, 1924, Warderhoit, *op. cit.*, p. 220. The Polish Government had already objected to the right of petition in a similar case, and its objection had not been upheld by the President. See opinion of March 20, 1924, cited *ante*, p. 54, n. 49.

question raised by the Deutsche Volksbund in this case was one affecting the whole minority inasmuch as it challenged an established policy of the administrative authorities with regard to school applications.⁶⁴ In its observations to the President the Minorities Office disputed the right of the Deutsche Volksbund to petition under Articles 147 and following, but at the oral hearing before the President it recognized this right of petition. Section II of the opinion reads that "the right of petition of the petitioner in this matter is recognized by the Voivodschaft and the Minorities Office." Moreover, in the same year, it was noted in the Council of the League that "the Polish Government and the President of the Mixed Commission are in agreement" concerning the right of the Deutsche Volksbund to present petitions.⁶⁵

The German Government has never objected to the right of petition in such cases, and the long series of precedents since 1924,⁶⁶ in which both governments have raised no further objection, indicates an established and agreed rule so far as the regional procedure is concerned. There is no room to doubt the legal right of petition of either the Volksbund or the Związek Polaków in this class of case.

The practice of the Council is equally unequivocal in favor of the admission of the right of petition of the representative organizations in these cases, though that body has never passed expressly on the question. The following questions are outstanding examples of proceedings by organizations on behalf of the minority as a whole: admissions to the primary German minority schools in the Voivodie of Silesia

⁶⁴ Namely, whether there was a right to reject applications in which street names and place numbers were written in German. See *ibid.*

⁶⁵ See report of M. Souza Dantas noted by the Council, O.J., 1924, p. 686.

⁶⁶ See opinions of Sept. 15, 1925, Warderholt, *op. cit.*, p. 243; Dec. 15, 1926, *id.*, p. 284; July 15, 1927, *id.*, p. 331; Oct. 5, 1927, *id.*, p. 341; Oct. 10, 1927, *id.*, p. 357; June 1, 1928, *id.*, p. 395; Feb. 10, 1930; Mar. 1, 1930 (minority theatre in Polish Upper Silesia); Mar. 1, 1930 (minority theatre in German Upper Silesia).

raised under Article 149 by the Deutsche Volksbund;⁶⁷ formalities of entries to the German minority schools raised by the Deutsche Volksbund in 1928 under Article 147;⁶⁸ non-admission of sixty children to the minority schools in 1929⁶⁹ raised by the Deutsche Volksbund under Article 149; the acquisition of land by members of the Polish minority in Germany raised by the Związek Polakow under Article 147 in 1929;⁷⁰ the "Spolka Bracka" cases raised by the Deutsche Volksbund under Article 147⁷¹ and 149;⁷² and, finally, the 1931 petition of the Deutsche Volksbund concerning the disorders which accompanied the Polish elections of 1930 in Polish Upper Silesia.⁷³

Though, on occasion, the Polish Government has challenged the good faith and loyalty of the Deutsche Volksbund⁷⁴ it has never formally denied before the Council the legal capacity of the organization in these cases, and this latter statement is true also of the German Government in regard to the Związek Polakow. The Council has always acted as of course under these petitions, and has never attempted to cast doubt on their admissibility.

So far, therefore, as practice can establish a legal conclusion, it must be concluded that the Deutsche Volksbund and the Związek Polakow have been admitted both to the regional machinery, and to the Council of the League of Nations, as persons having a legal right to petition not merely on their own behalf, not merely on behalf of individuals but also as legally representative of the respective minorities. Up to August, 1930, the President of the Mixed

⁶⁷ O.J., 1927, p. 377.

⁶⁸ O.J., 1929, pp. 61 *et seq.*

⁶⁹ O.J., 1930, pp. 1310, 1643 *et seq.*, 1931, p. 228.

⁷⁰ O.J., 1930, p. 106.

⁷¹ *Id.*, p. 103.

⁷² *Id.*, pp. 106, 550, 1309.

⁷³ See O.J., 1931, pp. 165 *et seq.*, 172 *et seq.*, 237 *et seq.*, 382 *et seq.*, 1496-1497.

⁷⁴ See O.J., 1929, p. 69; and the reply of the Volksbund in *Nation und Staat*, Jan. 1929, p. 295. It is obvious that the recognition of the right of association must be qualified by the duty of loyalty to the state. See opinion of Sept. 15, 1925, III, *Warderholt, op. cit.*, pp. 243, 246.

Commission had given ninety-five opinions comprehending many more individual cases. Of these, seventy-four were in cases arising in Polish Upper Silesia, and of these seventy-four, fifty-six concerned cases in which the proceedings had been instituted by the Deutsche Volksbund. Twenty-one were in cases arising in German Upper Silesia, and of these, seven concerned cases raised by the Zwiazek Polakow. These facts are eloquent. Further, up to August, 1930, sixty-four Upper Silesian cases had been dealt with by the Council of the League of Nations. Out of the forty-nine of those arising in Polish Upper Silesia, thirty-three were brought before the Council by the Deutsche Volksbund. Out of the remaining fifteen which arose in German Upper Silesia, eleven were brought before the Council by the Zwiazek Polakow.

The novel and even revolutionary situation indicated by the above facts can be truly appreciated only by making a comparison with the general minorities procedure. In that procedure there is not only a constant denial of any *locus standi* to the minority representative organization, but even to the individual physical person. Legally they do not figure in the procedure, although as has been shown elsewhere, their position is not in fact as impotent as a simple statement of their legal position would indicate.⁷⁵ Nevertheless, the difference from the Upper Silesian procedure remains striking and significant, and there can be no doubt as to which is more conducive to the effective protection of minorities.

⁷⁵ See Stone, *op. cit.*, Chapters III, IV and V.

CHAPTER III

COMPETENCE OF THE REGIONAL MACHINERY

THE protection of minority rights granted by the Convention comprehends, of course, protection against all acts of the state authorities. For example, in the procedure before the Council under Article 147, any act, whether executive, legislative or judicial, whether of superior or subordinate administrative authorities, may be impugned. In this respect, the Convention does not differ from the general minorities treaties.

The regional procedure before the President of the Mixed Commission, however, was intended to prevent international friction in cases susceptible of adjustment on the spot. In order that it might operate successfully, it was necessary to assure a sense of confidence and mutual respect between the regional organs and the state authorities. It seemed, therefore, imperative that any direct clash between the highest authorities of the state and the President of the Mixed Commission should be avoided. Otherwise, the efficiency of his quiet work of securing observance of minority rights in the great majority of cases that come before him would be endangered.

This is the explanation, and, it is submitted, an adequate one, for the limited competence of the President of the Mixed Commission.¹ Article 149 provides that the regional machinery may be invoked "as regards the application and interpretation of the provisions of the present Part by the

¹ For a criticism of this limitation see Warderholt, *op. cit.*, p. 121.

administrative authorities who receive orders from higher authorities (*par la voie hiérarchique*).” Before entering upon an examination of the limitations arising from this provision and two other possible limitations, the following observation may be made. Although the competence of the President is limited as regards *the nature of the infringing authority*, the rights upon which he may adjudicate are the rights contained in the whole of Part III, including Division I, which reproduces the provisions of the Polish Minorities Treaty.

A. DOUBTFUL COMPETENCE WHERE THERE IS MERE DANGER OF AN INFRACTION

In the general procedure the Council of the League of Nations is competent in respect of dangers of infraction as well as infractions.² It is doubtful, however, whether the President's competence extends to *dangers* of infraction. Only one case before the President has been found bearing upon this question. In 1925, the Związek Polakow was informed orally by the authorities³ that members of the Polish minority in German Upper Silesia could not, conformably with their allegiance, become members of the Verband der Schlesischen Aufständischen (Związek Powstańców Soaskich). The association petitioned under Article 149 for a declaration that such membership was not inconsistent with their allegiance to the German Reich. The President, after noting that he had no competence with regard to certain prosecutions in this connection, since no administrative authority was concerned, declared:

“This petition is not directed against an administrative measure or disposition. It seeks . . . only the declaration that German nationals belonging to the Polish minority may become members

² Article 12, paragraph 2, of the Polish Minorities Treaty.

³ The Oberpräsident. See opinion of Sept. 15, 1925, Warderholt, *op. cit.*, p. 243.

of the Verband der Schlesischen Aufständischen. It must be examined whether such a petition for a declaration (*feststellungsbeschwerde*) is admissible before the Mixed Commission.

"Article 149 expressly ensures the right of petition not only in respect of the application of the provisions but also in respect of their mere interpretation. Petitions are admissible not only against concrete administrative proceedings or dispositions, but also for the purpose of interpretation and declaration of rights in those cases where no action or decision but only the ascertainment of a particular legal question is concerned. This view is in conformity with the summary and flexible character of the procedural rules under Articles 149 to 157, which were considered to be adequate for the practical needs arising in the application of so complicated a convention. Still, a petition for the declaration of rights (*feststellungsbeschwerde*) is only admissible where an official determination (*kundgebung*) of a disputed question of law is before the administrative authority concerned, and where there is a legal interest in the decision of this disputed question." ⁴

The petition in this case was held to be good though it was rejected on the merits. The case is clearly one of a danger of infraction, and as such it supports the view, dictated by analogy and convenience, that petitions under Article 149 are admissible for this purpose. Such a view is undoubtedly in conformity with the conciliatory idea behind the President's activity. The power to give a declaratory opinion where there is a real threat to legal rights may avoid serious difficulties at a later stage.

B. COMPETENCE LIMITED TO INFRACTIONS WITHIN THE PLEBISCITE AREA

It is clear that the procedure both before the Council of the League under Articles 147 and 149, and before the regional organs under Articles 149 to 157 is only available in respect of acts done within the plebiscite area. Thus in the case of the student Paul Kwoczek, ⁵ the petition was rejected

⁴ *Id.*, III, 3, *id.*, p. 247.

⁵ See opinion of Nov. 18, 1924, *Warderholt, op. cit.*, p. 225.

even though the requirements for capacity of the petitioner were fulfilled. The President said:

"The facts alleged in the petition took place in Grabine, a place outside the plebiscite area. The competence of the Mixed Commission for Upper Silesia is, however, limited to the plebiscite area. This rule would apply even if the petitioner is domiciled in Oppeln, since the case is one which is based completely on acts done outside the plebiscite area."

M. Calonder deduces this limitation from the consideration that his competence is limited to the plebiscite area, and it seems reasonable enough. A nice question might arise, however, where the infringing authority is situate outside the plebiscite area, though the petitioner is within the area. There is no doubt that in such a case the act or omission would be held to be done within the area.⁶

C. COMPETENCE LIMITED TO ACTS OF CERTAIN STATE AUTHORITIES

The content of the phrase "administrative authorities who receive orders from higher authorities" may now be examined. It must be recognized from the first that the question of the nature of an authority must be decided according to the constitutional law and practice of its own state. In general the nature of the authority will be clear and undisputed, but where it is disputed, the President examines the law of the state concerned before passing upon the question. Thus in the case of Hedwig Skladny in 1924, the question arose whether the public prosecutor (*Staatsanwalt*) in Germany was an administrative authority.⁷ To decide this the President looked first at the German law and practice,⁸ on the

⁶ See *post*, p. 80, n. 5.

⁷ Opinion of Nov. 27, 1924, III, Warderholt, *op. cit.*, pp. 229, 233.

⁸ See Article 148 of the *Gerichtsverfassungsgesetz* and *Wörterbuch des deutschen Staats- und Verwaltungsrecht*, Band 3, p. 468. The President reversed an earlier opinion of Dec. 14, 1923 (Warderholt, *op. cit.*, p. 179) on this point.

basis of which he concluded that it was such an administrative authority.

Two requirements must be fulfilled to bring the acts of an authority within the competence of the President under Article 149. In the first place, the authority must be administrative; in the second place, it must receive orders from higher authorities, that is, it must not be at the summit of the administrative hierarchy.

I. *Subordinate authorities.* The second requirement can be disposed of shortly. No act of an authority which does not receive orders from higher authorities may ever be impugned before the President under Article 149. Acts therefore of ministers of state could not be challenged in this way⁹ but those of the heads of administrative departments could be so challenged since these heads are hierarchically subordinate to the respective ministers. When this question of subordination is raised the President inquires into the constitutional position of the authority himself,¹⁰ and as stated above, he examines primarily the law and practice of the state concerned.

II. *Administrative authorities.* The determination of the question whether an authority is administrative is more difficult, and it can perhaps be best approached by ascertaining what classes of authorities have been held not to be administrative.

First then, the President has no competence in questions

⁹ This would appear to be so in Poland, at any rate, where Part III, Article 56, of the Constitution of Mar. 17, 1921, provides that the Council of Ministers are responsible to the Sejm jointly for the carrying on of the government, and severally for the conduct of business within their respective spheres and that of organs subordinate to them. These ministers can scarcely be said to receive orders "par la voie hiérarchique." In Germany the constitutional position of ministers of the Reich and of Prussia is similarly independent. See Article 56 of the Reich Constitution of Aug. 11, 1919, and Article 46 of the Prussian Constitution of Nov. 30, 1920.

¹⁰ Opinion of Nov. 27, 1924, III, Warderholt, *op. cit.*, p. 229.

involving the validity of acts of legislation.¹¹ This is expressly stated in Article 158, paragraph 2, which, by virtue of Article 153, paragraph 2, applies *mutatis mutandis* to the President of the Mixed Commission. The relevant part of Article 158, paragraph 2, provides that "the question whether any national laws are compatible with the provisions of the present Part may not be examined." It is not necessary in order to produce the incompetence of the President that the petition should directly impugn any of the national laws. If it appears, even incidentally during the the case, that the rendering of an opinion necessarily involves passing upon the question whether the laws are compatible with the minorities provisions, he must declare himself incompetent and leave the petitioner to his remedy under Article 147.

The question of the incompatibility of legislation with the minorities provisions must not, however, be confused with the *application* of that legislation by the administrative authorities. Provided that he is not compelled to pass upon the former question, the President is not only competent to pass upon the latter, but must do so, if his work is to be effective. An example may be seen in the opinion of October 10, 1927,¹² in which the petitioner alleged that certain teachers appointed to the minority school in Krolewska Huta did not fulfil the requirements laid down in the Convention. The Minorities Office urged that the teachers fulfilled the requirements of the Polish law of September 26, 1922, renewed on July 16, 1924. The President found no difficulty in examining whether this law actually justified

¹¹ A number of petitions against legislative discrimination which never reached the stage of an opinion are mentioned in O.J., 1930, p. 106. There have also been a number of cases (Complaints 351 and 529) concerning the election laws in Polish Upper Silesia where the petitions were withdrawn because of the certainty of the President's lack of competence

¹² Warderholt, *op. cit.*, p. 352.

the appointment and had been properly applied by the administrative authorities.¹³

The second category of authorities in respect of whose acts the President is not competent are the judicial authorities of the states. Though, in a broad sense, it is easy to identify a judicial authority, in practice serious difficulties arise. The expression includes not only the regular courts of the state, but all the numerous and varied administrative industrial and labor arbitral bodies which are one of the features of the modern industrial state. The only principle which may be drawn from the practice of the President of the Mixed Commission concerning border-line cases, is that in considering whether a body is judicial great weight is to be attached to its constitution and procedure, the impartiality with which it acts, and its independence of action.

It is clear, however, that it is only on the judicial side that the action of the judiciary is immune from attack under Article 149. Misconduct by a judge not connected with the exercise of his judicial office, such as insulting a member of a minority by telling him to go back to his own country if he does not like the court's justice, may properly be petitioned against.¹⁴

The two most difficult points which have arisen in deciding what are judicial acts, are with regard to the status of public prosecutors and of labor arbitral tribunals.

As to the public prosecutor the practice of the President of the Mixed Commission has not been consistent. In an early opinion¹⁵ concerning the failure of such an official to prosecute in respect of crimes of violence committed against minority persons it was held summarily that "the office of public prosecutor is not an administrative authority within

¹³ Opinion of Oct. 10, 1927, I, 6, *ibid.*

¹⁴ There have been two cases of petitions against judges which were justified and settled quietly. Particulars for obvious reasons are not divulged.

¹⁵ Of Dec. 14, 1923, Warderholt, *op. cit.*, pp. 179, 180.

Article 149, but is a judicial authority. The President therefore is not competent to give an opinion under Article 153 of the Geneva Convention." In a later opinion,¹⁶ however, the President on closer examination arrived at a different conclusion. After considering the German law governing the constitution of the courts, and the relation of subordination to superior orders of the district prosecutors to the first public prosecutor, the President concluded that "the status of the office of public prosecutor in the administrative hierarchy, and the strict subjection to superior orders of its officials, is quite inconsistent with the character of a judicial authority, and its administrative character cannot therefore be doubted." The German Government has acquiesced in this view.

The character of the office of public prosecutor in Poland does not differ materially from that in Germany, and for similar reasons, therefore, it would be considered an administrative and not a judicial authority.¹⁷ The prosecutor in each district receives orders which he must obey, whether general or for particular cases, from the prosecutors in superior courts, and all are subordinated to the first prosecutor of the Republic who is the Minister of Justice.¹⁸

The second difficult class of cases are those involving the acts of labor arbitral tribunals, which may be of various forms and functions. A striking example is to be seen in the case of M. Johann Wiesner. M. Wiesner petitioned the Council of the League under Article 147, alleging that owing to certain irregularities in the election to the Em-

¹⁶ Of Nov. 27, 1924, III, *id.*, p. 279.

¹⁷ O.J., 1930, p. 106.

¹⁸ Action of the police authorities prior to trial is clearly an administrative act and subject to the competence of the President. See opinions of Oct. 11, 1926, Warderholt, *op. cit.*, p. 279; Feb. 10, 1927, *id.*, p. 308. The Polish Government accepts the view in the text. The question has also been decided in this sense by the Arbitral Tribunal. See *Entscheidungen des Schiedsgerichts*, Band II, Nr. 1/2, 1930, E. 2. 230 (Nov. 22, 1930). This view is also acquiesced in by the Deutsche Volksbund and the Związek Polaków.

ployees' Committee of the Richter Pitt belonging to the Königs- und Laura-hütte in Polish Upper Silesia, he and other employees had been wrongfully dismissed. He justified his direct appeal under Article 147 on the ground that as the committee was a judicial body the President of the Mixed Commission was not competent. The Polish Government in its observations said that the authorities in question were not judicial but purely administrative, so that the petition might be remitted to the procedure under Articles 149 to 157. This was done, but the President held himself without jurisdiction owing to the judicial character of the decision under which the dismissal took place,¹⁹ and the matter returned to the Council under Article 147.²⁰

Other questions of a similarly difficult character will no doubt arise in the future, and it would be impossible to attempt any exhaustive classification here. This is a matter which might well be clarified on a renewal of the Convention in 1937.

Attention may finally be drawn in this connection to a recent opinion of the President which lays down a principle of considerable interest and importance.²¹ In the case of John Niechoj, the petitioner alleged that he had been dismissed from employment in a manner constituting an infraction of the Convention, as a result of a decision of the competent labor arbitral tribunal. He further alleged that his appeal against the decision to the Silesian Voivode had been wrongfully ignored. By the law governing these matters the Voivode was the proper instance of appeal from the tribunal. It appeared at first sight that even if the President were not competent to pass upon the decision of the tribunal, he would, at any rate, be competent with regard to the conduct

¹⁹ Opinion of June 28, 1930.

²⁰ O.J., 1931, p. 228. The Polish Government now accepts the view that these bodies are judicial.

²¹ Opinion of Nov. 12, 1929.

of the Voivode, who was admittedly an administrative authority. The President held, for the following reasons, that he was not competent in any respect.

"The starting-point must be that the holding of the arbitral tribunal of the 15th of September, 1927, under the Law Concerning Trade Councils (*Betriebsrategesetz*) is a decision of a judicial nature. This holding is, according to Article 87 of that Law, binding between the employer and employee. The whole proceeding is of a judicial nature.

"It is true that section 30 of the Decree of December 23, 1918, provides that a complaint as to faults in the trial may be brought before the central authority of the area (*Landeszentralbehörde*), and that the competent instance in this particular case is the Silesian Voivode. The Law, therefore, obviously on purely practical grounds, designated as the instance of appeal an administrative authority. Since this is a proceeding in which a decision must be given as to defects at the trial of a proceeding judicial in nature, it must be taken as the intention of the legislator that, in this case, the Voivode assumes judicial functions which he discharges without being subject to binding instructions from superior authorities. The President of the Mixed Commission is, therefore, not competent under Article 149 to give an opinion on the matter."

It would appear from this opinion that a still further restriction must be made upon the meaning of the term "administrative authority." Even if the general constitutional position of an authority would bring it within this term, it may still be shown that in the particular matter it was acting, not in its general capacity, but in a special capacity conferred by the law. If this special capacity is not of an administrative character the President will not be competent.

The practice may be noted here in regard to cases where the same subject matter that is before the President, is or has been before judicial tribunals. It is clear, in the first place, that the mere fact that there is a concurrent proceeding in the judicial tribunals does not deprive the President

of competence. For he is then not passing on the judicial act, but on the case before him.²² Moreover, by the same token, even where the issue has already been decided by a Court, there is no reason why the President should not pass an opinion on the same facts.²³ For reasons of expediency, the President will, of course, often refuse to consider a case whilst a concurrent proceeding is in progress. In such circumstances he will either act under Article 585 in order to have the judicial hearing postponed pending his opinion, or, perhaps more frequently, he will postpone his opinion until the tribunal has taken its decision.²⁴

D. COMPETENCE LIMITED TO OFFICIAL ACTS

Finally, it should be noted that in proceedings under the Convention, whether before the regional organ or before the Council of the League of Nations, there is no remedy in respect of discriminatory acts of private persons or bodies of persons. This is as true of the Upper Silesian procedure as it is of the general minorities procedure.

On the face of it, this is a simple and necessary limitation. In practice, however, it raises very serious difficulties, and

²² See opinion of Dec. 31, 1924, Warderholt, *op. cit.*, p. 234 in which a criminal suit was pending against the petitioner in the same subject-matter.

²³ See opinion of Sept. 15, 1925, *id.*, p. 243.

²⁴ A note may here be made as to the concurrence of proceedings under the Convention itself. The pending of proceedings before the Arbitral Tribunal is no bar to proceedings under Article 149, though if the opinion depends on a question within the exclusive competence of the Tribunal, the President will postpone his decision (see opinion of Feb. 17, 1925, Warderholt, *op. cit.*, p. 241). But see Article 604, paragraph 2, of the Convention which provides: "Si la Commission Mixte s'est déclarée compétente ou incompétente dans une affaire, le tribunal arbitral est lié par cette décision." If the President is proceeding under Article 585, and a petition is also submitted under Article 149, then in principle, the proceedings under the former article are suspended, but this does not in practice necessarily follow, the President sometimes acting under both articles concurrently. Moreover, he has occasionally postponed action under Article 149 pending the outcome of his action under Article 585 (see opinion of May 15, 1927). The simultaneous invocation of Articles 149 and 585 quite frequently occurs. The President suspends all proceedings under Articles 149 or 585 if the Council of the League decides to deal with the same case under Article 147.

in certain respects, endangers any effective minority protection. The daily lives of the population are touched as nearly by the conduct of semi-public organizations such as friendly societies, hospitals, coöperative societies, large industrial concerns, etc., as by the direct action of governmental authorities. Moreover, these bodies, though technically independent of the state, are often in fact, controlled by the state and may be used to enforce state policy.

The leading case on this point is that concerning the dismissal of doctors by the Spolka Bracka Tarnowski Gory, an institution devoting itself to the health and social insurance of the mine and iron workers of a considerable area. It was urged by the Polish Minorities Office in this case that the Spolka Bracka was a private organization, or at any rate, that its acts were not acts of an administrative authority within Article 149. The President of the Mixed Commission refused to accept this argument. He examined the status of the body, its subordination to governmental instructions, the nature of its functions and the sources of its revenue, and guided by these among other considerations he laid down the following principle: ²⁵

"According to Articles 149 ff. of the Geneva Convention petitions submitted to the President of the Mixed Commission must be directed against the administrative authorities. . . . However, according to the terms of Article 149 of the Geneva Convention there must be understood by administrative authorities not only officials in the direct employ of the state, but also the numerous public institutions (public corporations, foundations and establishments) insofar as they are subordinate to the state authority, enjoying a more or less broad autonomy, endowed with official administrative functions, and closely related to the state, as are communes, and forming an integral part of the public organization of the state. This interpretation is confirmed by Article 77 of the Geneva Convention. According to this provision 'public establishments,' among which must be understood

²⁵ Opinion of June 30, 1929, III, Warderholt, *op. cit.*, p. 440.

the different forms taken by the public institutions above mentioned, that is to say public corporations, establishments, and foundations have almost the same obligations as the state itself in regard to their treatment of members of the minority, from which it seems to follow that the Contracting Parties must, in case of violation of the accepted obligations, admit the right of petition against 'public establishments' according to Article 149 of the Geneva Convention."

The President, therefore, admitted the right of petition as against the acts of the Spolka Bracka. On the refusal of the authorities to carry out this opinion, the petitioners appealed to the Council of the League under Article 149 and a committee of jurists was appointed to advise on the question of law,²⁶ but before the committee met, the Council was informed by the Polish Government that the Spolka Bracka had been requested by the competent authorities to conform to the conclusions of the President's opinion of June 30, 1929.

Similar questions have also been raised in respect of the Polish Red Cross²⁷ and the Krolewska Huta Philanthropic Association,²⁸ and the actual and potential significance of the principle laid down by the President in the Spolka Bracka case is so obvious as to make further emphasis unnecessary. It must be decided in each case, upon the basis of that principle, whether a body is so identified with, dependent upon, and controlled by the state, as to be an organ of the state for the purpose of the petition under Article 149.

Two other classes of cases, though appearing to involve only private acts, are nevertheless held to result in state responsibility. The first is where state authorities could have avoided the infraction of the rights of minorities, and failed to do so, either negligently, or deliberately in a spirit

²⁶ See O.J., 1930, p. 550.

²⁷ Opinion of June 1, 1928, Warderholt, *op. cit.*, p. 395.

²⁸ Opinion of March 29, 1928, Warderholt, *op. cit.*, p. 391.

of connivance. In such cases a petition will lie in respect of the infraction. Thus the responsibility of the administrative authorities for public order was the ground for the petition of the Deutsche Volksbund, and of the action of the German Government, in the case of the Polish election disorders of 1930. An element of connivance was also alleged, though denied by the Polish Government.²⁹ In its extreme form this exception is obviously necessary and is admitted. A more doubtful case, however, arises where the government is in fact able to prevent an infraction, for instance, by withholding a subsidy to a private person or organization. It is extremely doubtful whether, in the present form of the Convention, this would be a good ground for a petition, though the spirit of that instrument would dictate the opposite conclusion.³⁰

The third class of cases where apparently private acts may ground a petition is that the acts of public officials, even though done in a private capacity, cannot, where obviously proceeding from a general attitude of hostility to the minority, be treated as private acts. A teacher in a public school, for instance, is not free during his leisure time to engage in activities directed against minority education,³¹ and a district doctor, though acting in another capacity, is not free to abuse members of a minority or to discriminate against them.³² This qualification is very necessary in such cases, and it has the advantage both of preventing conduct

²⁹ See references given *post*, pp. 191 *et seq.*, and especially the report of M. Yoshizawa at O.J., 1931, p. 237 *et seq.* Contrast the facts in the opinion of Dec. 14, 1923, Warderholt, *op. cit.*, p. 179.

³⁰ This point was raised but not decided in the opinion of Mar. 22, 1924, *id.*, p. 214.

³¹ Opinion of Oct. 5, 1927, *id.*, p. 341.

³² Opinion of June 1, 1928, *id.*, p. 395. Contrast with this case that in the opinion of July 17, 1930, of the widow Marthe Slodczyk. There the act of the doctor concerned was not wrongful except if he was acting in his official capacity; as he was not so acting the petition was rejected. He was for all intents and purposes merely a private individual.

contrary to the Convention, and of suggesting to the states concerned that officials appointed in the plebiscite area should be free from extreme dislike of the minority.³⁸

³⁸ The fact that such persons are appointed and maintained in office is a subject of constant complaint by the Deutsche Volksbund. The most recent enumeration of Polish officials alleged to be hostile to the minority is to be found in the Volksbund's petition of Aug. 14, 1931, pp. 6-7.

PART III

THE PETITION BEFORE THE REGIONAL MACHINERY

CHAPTER IV. THE PETITION IN THE MINORITIES OFFICES.

CHAPTER V. THE PETITION BEFORE THE MIXED COMMISSION.

CHAPTER IV

THE PETITION IN THE MINORITIES OFFICES

Article 150 of the Convention provides that:

"1. All petitions must be forwarded to the Minorities Office in triplicate.¹ They may only be addressed to the Office under the following conditions:

(a) After the complaint has been brought before the administrative authority which ranks as the highest competent instance in the plebiscite territory² as regards the matter in question; or

¹ One copy is for the files of the Minorities Office, one for the President of the Mixed Commission, and one for the administrative authority concerned.

² In Poland the highest competent authority for public order, public health, charitable services, education, taxation and control of rivers is the Voivode. The administrative staff of the Voivode is divided into sections dealing *inter alia* with each of these matters. There was formerly in the administration a special section dealing with agrarian reform, which is now discontinued. The highest competent authority in regard to railways is the Railway Administration at Katowice; in postal and telegraph matters, the Postal and Telegraph Administration at Katowice; in regard to mines, the Superior Bureau of Mines at Katowice; in regard to customs, the Customs Administration at Mystowice.

In Germany the highest competent authorities in the plebiscite area for the various matters are as follows:

1. Public order, public health, charitable services, the *Regierungspräsident* at Oppeln.

2. Elementary and grammar (*mittel-*) schools, the *Regierung, Abteilung für Kirchen und Schulwesen*, in Oppeln, at the head of which is the *Regierungspräsident*; high schools, the *Provinzialschulkollegium* Oppeln, the head of which is again the *Regierungspräsident*.

3. Railways, the President of the Railway Administration in Oppeln.

4. Taxation, the President of the *Landesfinanzamt* of Upper Silesia in Neisse.

5. Postal matters, the President of the *Oberpost-direktion* in Oppeln.

6. Judicial matters: in the case of labor arbitral Tribunals, the highest authority is the *Arbeitsamt* in Oppeln; in the case of ordinary tribunals, the authority is the *Landgericht* at Oppeln, that at Gleiwitz, that at Ratibor and that at Beuthen for matters within their respective areas.

(b) If the case is within the competence of the autonomous communal authorities (*Kommunale Selbstverwaltungskörper—Kommunalne ciala samorzadowe*), after the complaint has been laid before the state authority responsible for communal supervision which ranks as the highest competent instance in the plebiscite territory; ³ or

(c) In the case of a dispute as to whether the requisite conditions for the establishment of a minority school, class or course have not been fulfilled, after the matter has been laid before the state authority competent with regard to schools; ⁴ or

(d) In a case in which the first complaint must be addressed to an administrative authority outside the plebiscite area or for which the competent authority of the first instance is outside the said territory, after the complaint has been laid before the proper higher authorities competent in the matter.⁵

7. Judicial prosecution, the General-staatsanwalt of Prussia. The Regierung Oppeln is an administrative district in the general province of Upper Silesia, and includes all the German part of the plebiscite area. Its head is the Regierungspräsident, at present Dr. Lukasczek. Since October, 1923, the offices of Oberpräsident of the province of Upper Silesia and of the Regierungspräsident of Oppeln have been united in the same person. The administrative staffs of the two offices are distinct, and since 1924 it has been the custom of the German Minorities Office, in view of the greater congestion of work of the staff of the Regierungspräsident to deal with the Regierungspräsident through the staff of the Oberpräsident. The headquarters of the Oberpräsident were only established in Oppeln in 1922. The staffs of both the Polish Voivode and the German Oberpräsident include a section dealing exclusively with minorities questions. But see *ante*, p. ix, n.

³ The highest instance for communal supervision in the German part of the plebiscite area is the Regierungspräsident under whom is the Landeshauptmann. In the Polish part the highest instance in these matters is the Voivode himself or the Council of the Voivode in more serious matters.

⁴ The competent authority with regard to schools is, in the German part, the Regierung, Abteilung für Kirchen und Schulwesen, in Oppeln, for elementary and grammar (*mittel-*) schools; and for high schools the Provinzialschulkollegium in Oppeln: in the Polish part, the Department of Public Instruction of the Voivode.

⁵ This paragraph is a very confusing one. It would seem to be intended to deal with two classes of cases. In the first place, it provides for cases where the authority upon which notice would have to be served under the first paragraph has its headquarters outside the plebiscite area. Thus, the authority in matters of land distribution and the authority in judicial matters (Oberlandesgericht) have their headquarters in Breslau. The paragraph, in effect, provides that in such cases Article 150 will be satisfied by serving notice on the higher, as distinct from the highest, authority in the plebiscite area. Thus, in judicial matters a proper higher authority in the plebiscite area would be the Landgericht at Oppeln, Gleiwitz, Ratibor or Beuthen, according to the district in which the act complained of occurred. The second class of cases provided for by this paragraph is where the infringing

"2. A petition addressed to the Minorities Office before the conditions prescribed in paragraph 1 have been fulfilled shall be rejected without examination."

A. PRIOR NOTICE TO HIGHEST COMPETENT AUTHORITY

No conditions as to the form of the petition are laid down either in the Convention or elsewhere in the rules of procedure. In practice, however, the part played in the procedure by the minority organizations—the Deutsche Volksbund and the Zwiazek Polakow—has brought about a certain uniformity; for even petitions submitted by private individuals are often drafted by the organizations, or at any rate will be modelled upon their form. The petition is made in the language of the complainant, who is entitled on request to have the reply from the Minorities Office in the same language.

It is important to note in this connection that there is nothing in the Upper Silesian procedure corresponding to the conditions of receivability of petitions in the general minorities procedure. In the latter procedure a petition, in order to be submitted to the procedure in force, must invoke protection under minorities provisions in force, must refrain from abusive language or from any request for territorial separation from the state concerned; it must further be duly authenticated and refer to facts not recently submitted to the procedure in force.⁶ None of these are technically required in the case of a petition in the Upper Silesian procedure, whether to the regional machinery under Article 149,

authority is situated outside the plebiscite area. Thus, to take the example already given, if some act of the Landgericht in Beuthen was complained of, notice would, according to this paragraph have to be served on the "higher" authority whether within or outside the plebiscite area, that is to say, on the Oberlandesgericht in Breslau. In Poland the paragraph appears to have no application at present, since all the authorities of first and second instance are within the plebiscite area.

⁶ For an account of the conditions of receivability see Stone, *The Legal Nature of the Minorities Petition* in British Year Book of International Law, 1931, p. 82.

or to the Council of the League under Articles 147 and 149, and there is no discretion whatever in the Minorities Office to reject a petition on account of its form.

Article 150 lays down, however, a condition which must be fulfilled before a petition can be received by the Minorities Office. This condition is that notice of the complaint shall previously have been given to the authority competent to receive it under one of the sub-paragraphs of paragraph 1.⁷ It is clear for the disjunctive "or" ("ou") between these sub-paragraphs that there is no need to serve more than one authority, and that the petitioner must choose one under that sub-paragraph which applies to his case.

The reason for this requirement of notice may easily be seen. It has been said that the outstanding characteristic of the regional procedure is its emphasis on non-litigious solutions of questions susceptible of such treatment. The misconduct which is the ground of the petition will in many cases be that of a very subordinate official, and will be unauthorized and even unknown to the responsible authority of the plebiscite area. If the allegation is brought to the notice of this latter authority an opportunity is given for the issue of instructions to the subordinate official which will make contentious proceedings unnecessary. Out of eighty-four petitions submitted to the German Minorities Office between January 1924, and September 1932, fourteen were settled as a result of action by the higher authority upon whom the notice under Article 150 had been served.

The notice of complaint, therefore, must contain full particulars of the facts alleged, and it usually consists of a copy of the petition itself, the only difference being that it is addressed to the authority instead of to the Minorities Office. On the other hand, it is not necessary that it be given at any

⁷ The competent authorities for the various matters are listed in footnotes, 2, 3, 4, 5, *ante*, pp. 77-8.

particular time previous to the submission of the petition to the Minorities Office. The invariable practice of the Deutsche Volksbund is to serve the notice and submit the petition on the same day, and this has not been called in question either by the Minorities Office or by the administrative authorities concerned.⁸ It is certainly unnecessary for the petitioner to await a reply from the authority served before beginning proceedings; ample opportunity is provided for the authority to secure satisfaction to the petitioner in the early part of the proceedings.

B. THE MINORITIES OFFICES

The petitioner must submit his petition under Article 149 to the Minorities Office of the state of which he is a national,⁹ and against which he alleges an infraction of the Convention. The Minorities Office in German Upper Silesia is situated at Oppeln,¹⁰ that in Polish Upper Silesia in Katowice.¹¹ Each Office is an administrative authority of its own state with a definite place in the administrative hierarchy.¹² As such its acts may be a good ground of petition to the regional machinery under Article 149. The Offices were established and their personnel appointed by the respective governments.¹³

The purpose of the establishment of the Minorities Offices

⁸ See *ante*, p. 77.

⁹ The statement is based on an examination of the register of the Deutsche Volksbund. Cf., Warderholt, *op. cit.*, p. 114. The practice seems to be acquiesced in by the authorities of both states and by the President of the Mixed Commission.

¹⁰ This office was established by decree of the Minister of the Interior of Oct. 5, 1922. *Amtsblatt des Regierung*, Oppeln, Oct. 21, 1922.

¹¹ The Polish Minorities Office was established by an Ordinance of the Cabinet of Ministers dated Nov. 3, 1922. *Dziennik Ustaw*, 1922, No. 98, Text 900.

¹² The German Minorities Office is an authority of the Reich, and is directly subordinated to the Reich Minister of the Interior. The Polish Office is directly subordinated to the Polish Minister of the Interior.

¹³ See Article 148. The head of the Polish Minorities Office is M. Hinze, of the German M. Gospos, both of whom have had long familiarity with Upper Silesian conditions. But see *ante*, p. ix, n.

is stated broadly in Article 148 to be "in order to ensure that petitions emanating from members of a minority, and relating to the interpretation or application of the provisions of the present Part, should receive uniform and equitable treatment from the administrative authorities in each of the two Parts of the plebiscite territory." More particularly the Minorities Office may be said to have three functions. In the first place, it is, like the Minorities Section of the Secretariat of the League in the general procedure, a purely secretarial body, receiving, translating and forwarding documents to the administrative authorities, the petitioner, the Mixed Commission and the Council of the League of Nations.¹⁴ In the second place, its duty is to attempt to give satisfaction to the petitioner without making it necessary for the matter to come to an issue before the President of the Mixed Commission. In this respect, since it is an organ of its government, the success of its work is conditioned by the attitude of the administrative authorities concerned and of its government. The Office itself has no power to advise the authorities but acts merely as a channel of negotiation. Success depends on the goodwill of the authorities, stimulated by the prospect of publicity in the proceedings before the President of the Mixed Commission and ultimately before the Council of the League. Finally, under Article 152, paragraph 2, "each Minorities Office shall represent the authority of its country in relations with the President of the Mixed Commission." Thus, it replies to petitions on behalf of the authority concerned¹⁵ but in its own name, and appears at the oral hearing on behalf of the authority. It should be noted, however, that the Office does not represent the state itself before the Mixed Commission, where, for instance, there is a direct representation by the President under

¹⁴ See Articles 150, 152, paragraph 1, 154, 157.

¹⁵ See Article 153, paragraph 1.

Article 585. The State Agent is then the proper intermediary.¹⁸

C. THE PETITION IN THE MINORITIES OFFICE

On receipt of the petition under Article 150 the first task of the Minorities Office is to ascertain whether the condition laid down in Article 150 has been fulfilled. In general this will be a simple matter since the petition expressly declares that the required notice has been served, and this declaration can be verified on inquiry. If the Office finds that the condition has not been fulfilled it is bound by Article 150 to reject the petition, subject however to two exceptions arising from Article 151. This Article provides that:

"If a member of a minority establishes a *prima facie* case ("d'une manière plausible") that the matter which concerns him has not been settled within a reasonable time by the administrative authorities, or that the matter is one which requires urgent settlement, he may demand that his petition should be examined even before appealing to the administrative authorities mentioned in paragraph 1 of Article 150."

The following are a number of the questions which the draftsmanship of this article leaves in doubt. First, before whom must this *prima facie* case be established? Second, when does the "reasonable time" begin to run? Third, which are the administrative authorities referred to in the first clause? Fourth, from whom does the member of a minority "demand that his petition should be examined even before appealing, etc."?

The answers to the first and fourth questions are indicated in the first paragraph of Article 152 which reads:

"In all the cases provided for in Articles 150 and 151, if the Minorities Office does not succeed in giving satisfaction to the petitioners, it shall forward the petition with its observations to the President of the Mixed Commission for his opinion."

¹⁸ See *post*, pp. 99 *et seq.*

This clearly implies that where the exceptions in Article 151 apply, the petition will still be in the hands of the Minorities Office. It follows, therefore, that the members of a minority must establish before the Minorities Office a *prima facie* case that his petition falls within an exception, and it is of the Minorities Office that he demands that his petition be examined. The second and third questions are somewhat more difficult. It is clear, in the first place, that the administrative authorities referred to are not those mentioned in Article 150, for that would produce an absurd result. Clearly, the words must refer to the authorities whose acts or omissions are the grounds of the petition; and in that case the reasonable time would begin to run from the moment when the infringing authority was requested to make good the infraction.

The two exceptions laid down in Article 151 are therefore, first, where the infringing authority has been requested to remedy the wrong complained of and has failed to do so within a reasonable time, and, second, where the matter is one which requires urgent settlement. If the petitioner establishes before the Minorities Office a *prima facie* case under either of these exceptions, the Office may not reject the petition even if the proper notice has not been given under Article 150. Even with this clarification it is difficult to see the wisdom of conferring upon the Minorities Office, which is an administrative authority of its state, the discretion to decide whether a *prima facie* case has been made out under the article. Further, since the Minorities Office is not obliged to forward even urgent petitions to the President before the lapse of forty-five days from their receipt, the dispensation from the condition of Article 150, which could be very rapidly fulfilled, does not seem to serve any purpose.

No light is cast upon the problems arising out of Article 151 by the practice in the regional procedure, for the simple

reason that it is easier to bring the complaint before the authority in accordance with Article 150 than to establish a *prima facie* case for the application of Article 151. Moreover, it appears that an oral understanding exists between the Minorities Offices, the Voivode, the Oberpräsident and the President of the Mixed Commission that in view of the illiteracy of many petitioners, petitions should not be rejected for failure to fulfil the condition of Article 150. This and the following article thus have little practical importance.

The rejection of a petition on the ground that Article 150 has not been complied with will not prevent a later petition on the same subject-matter. Moreover, Article 150 is the only ground upon which the Minorities Office can ever reject a petition. In all other cases, however clear may be the incapacity of the petitioner or the incompetence of the President of the Mixed Commission, the Minorities Office must either give satisfaction to the petitioner, or in default, forward the petition to the President for his opinion. Any questions of capacity or incompetence may be raised in the observations of the Office accompanying the petition,¹⁷ or at a later stage in the proceedings.

The first duty of the Minorities Office after acceptance of the petition is to put the complaint which it contains before the infringing authority, and ascertain the views of that authority as to the possibility of giving satisfaction to the petitioner. It is impossible to discover from the documents in how many cases a settlement is reached at this stage. For in such cases the matter goes no further and the only rec-

¹⁷ Article 152. For references see Chap. II, *passim*. A typical example will be found in the opinion of June 30, 1924, Warderholt, *op. cit.*, p. 222. The Paris Agreement of Apr. 6, 1929 (*post*, p. 144) is merely declaratory in this respect. Sec. (2) provides that: "The Minorities Offices are bound to forward every petition to the President of the Mixed Commission if they cannot succeed in satisfying the petitioners; it will, however, be open to them in every case to raise the question of competence."

ords of it will be found in the Minorities Office and with the petitioners. There would, however, seem to be some indication,¹⁸ supported by a natural probability, that a not inconsiderable number of unimportant matters are settled at this stage. Thus from statistics made available to the writer it would appear that out of eighty-four petitions submitted to the German Minorities Office between January, 1924, and September, 1932, five were disposed of to the satisfaction of the petitioner as a result of the efforts of the Minorities Office. Examples of such settlements are also referred to in the Council discussions concerning the acquisition of land by members of the Polish minority in German Upper Silesia,¹⁹ and they are fairly frequent in questions relating to schools.

If it fails to give satisfaction to the petitioner, and in any case within forty-five days of the date of the receipt of the petition, the Minorities Office must forward it along with its written observations to the President of the Mixed Commission. This time-limit may be compared with that allowed to the government concerned in the general procedure. In that case the time-limit is two months from the time that the petition forwarded by the Secretariat of the League reaches the delegate of the state. The purpose of the time-limit in both cases is identical, namely, to give an opportunity for a settlement,²⁰ and to afford time for the submission of a reply.

It should be noted that the Convention itself did not lay down any time-limit within which the forwarding was to take place. Article 152 merely lays down that it should do so "if the Minorities Office does not succeed in giving satisfaction to the petitioner." Article 155 however, provides that

¹⁸ This indication is derived from the records of one of the minority organizations, and from detailed information concerning the work of the German Minorities Office.

¹⁹ See O.J., 1930, p. 104.

²⁰ See Stone, *op. cit.*, Chap. III.

"the time-limits of the procedure shall be fixed by the President of the Mixed Commission." In accordance with this power, the Rules of Procedure of the Mixed Commission adopted on December 5, 1922, provided in Article 39 for a time-limit of twenty days.²¹ The flagrant and persistent violation of this time-limit by the Polish Minorities Office, and, to a lesser extent by the German, has been one of the outstanding and well-grounded grievances of the minorities.²² In matters of education, where the school year does not wait upon a belated opinion of the President, or in matters of employment where the petitioner's livelihood has been taken away, a long delay in the proceedings may result in a complete destruction of the value of any settlement ultimately arrived at or opinion rendered. The undesirable consequences of delays which often ran into fifty, one hundred or even two hundred days, can therefore be readily imagined. Only in a very few cases was the time-limit observed.

On August 3, 1928, by an amendment of the Rules of Procedure the President extended the time-limit from twenty to forty-five days hoping, perhaps, to achieve more by asking less.²³ This was not effective, however, and the matter was discussed during the Germano-Polish Conversations at Paris in 1929, which resulted in the Paris Agreement of April 6, 1929. Section A 1. (a) of the Agreement now provides that "the Minorities Offices are bound to adhere strictly to the maximum period of forty-five days laid down

²¹ For Rules of Procedure see Appendix II. II *Reichsgesetzblatt*, 1923, pp. 63-7.

²² From references in the opinions of the President for the year 1929 the following figures may be drawn as to the observance of the time-limit. The Polish Minorities Office observed it in seven cases: in twenty-three cases the forwarding took from forty-five to one hundred days, in six cases from two hundred to three hundred days and in one case four hundred and seventy days. The German Minorities Office observed the time-limit in eight cases: in seven cases it took from forty-five to one hundred days, and in three cases from one hundred to two hundred days. These figures do not purport to be exhaustive of the 1929 cases.

²³ II *Reichsgesetzblatt*, 1928, No. 36, p. 539.

in Article 39 of the Rules of Procedure for the transmission of petitions to the President of the Mixed Commission.”²⁴

The obligation to forward within the time-limit applies not only as to the petition but also as to the written observations of the Minorities Office.²⁵ One means of evading the time-limit practiced by the authorities and the Minorities Offices had been to forward the petition and withhold the observations for a considerable period.²⁶ As to this the Paris Agreement laid down that “the Minorities Offices are bound to submit the observations referred to in Article 152 of the Geneva Convention at the same time as they forward the petitions” [Section A 1. (b)]. It provided further that they “are bound to furnish, within the period specified by the President of the Mixed Commission, such additional information as he may require.” [Section A 1. (d)]. The Agreement [Section A 1. (c)] confirmed the President’s power under Article 37, paragraph 2, of the Rules of Procedure which provides that “in view of the special nature of a particular case, or for reasons of justice or fairness, the Commission can deviate from the provisions of these rules of procedure”; and it declared generally that the Minorities Offices were compelled to adhere strictly to the time-limits or to apply where necessary for an exercise of the President’s discretion to extend them [Section A 1. (e)].

Finally in case these provisions should not be effective it was provided that:

“Should the time-limits laid down not be adhered to, the President of the Mixed Commission shall be entitled to take such steps as he may think fit to hasten the procedure and arrive at a solution. He might, for example, in particularly urgent cases, begin the proceedings, open the oral hearings, and establish the pre-

²⁴ O.J., 1929, p. 1104.

²⁵ Article 152, paragraph 1, of the Convention and Article 39 of the Rules of Procedure.

²⁶ See for example opinions of Mar. 20, 1924, I, Warderholt, *op. cit.*, p. 212; Mar. 29, 1928, *id.*, p. 391.

sumptive truth of the facts alleged by the Minorities Offices or by the petitioners."

This provision again merely confirmed the previous practice of the President as may be seen from the following extract of the opinion of March 29, 1928: ²⁷

"On November 14, 1927, the Krolewsko-Hucka Spolka Pieczy . . . of Krolewska Huta submitted a petition to the Minorities Office in Katowice under Articles 149 and following of the Geneva Convention. On December 27, 1927, the Minorities Office forwarded the petition to the President of the Mixed Commission without enclosing its observations in accordance with Article 152 . . . : it declared that it had received no information on the subject of the complaint from the administrative authority concerned. Since, even after this, the observations were not forthcoming from the Minorities Office, the President of the Mixed Commission, in view of the urgency of the matter, summoned the parties to the oral hearing for March 8, 1928, leaving a certain interval for the arrival of the observations under Article 152 . . . : these were forwarded and added to the file on March 6, 1928."

In this case, therefore, the obligations which should have been fulfilled in forty-five days remained unfulfilled for one hundred and thirteen days. Only the action of the President seems to have prevented an even longer delay.

It is somewhat doubtful how far the attempt in the Paris Agreement to reduce the procrastination of the Minorities Offices has been successful. The German Minorities Office, indeed, has loyally carried out the injunctions so far as can be ascertained from the opinions of the President given between the end of 1930 and the middle of 1931. In one case ²⁸ it forwarded the petition and observations in thirty-four days, in the other within twenty-seven days. ²⁹ The Polish

²⁷ Warderholt, *op. cit.*, p. 391.

²⁸ Opinion of Mar. 1, 1930, in the case concerning facilities for dramatic performances by the minority.

²⁹ Opinion of July 17, 1930, in the case concerning the widow Marthe Ślodziak.

Office has not been so observant. In the case concerning the admission to schools of the sixty children ³⁰ a group of petitions submitted during the period August 26, 1929, to December 20, 1929, were forwarded to the President between November 4, 1929, and January 30, 1930. In the next case, concerning minority theatre performances, the time taken was one hundred days despite the intervention of the President in the meanwhile to request an early forwarding in view of the urgency of the matter.³¹ Other cases took respectively ninety-nine days,³² one hundred and thirteen days,³³ three hundred and fifteen days,³⁴ fifty-five days,³⁵ sixty-eight days.³⁶ The only case in the documents since 1929 in which the Polish Minorities Office has observed the time-limits is that of Johann Wiesner, which, it will be recalled, was remitted to the regional procedure by the Council of the League of Nations.³⁷

It is obvious from these facts that without a much greater effort at coöperation by the Polish authorities the machinery cannot function effectively. The responsibility of the governments calls for action to ensure that their solemn undertakings are not made nugatory by the acts and omissions of their officials.³⁸

³⁰ Opinion of Feb. 10, 1930.

³¹ Opinion of Mar. 1, 1930.

³² Opinion of Mar. 24, 1930, in the case of K. Wlodosch.

³³ Opinion of July 5, 1930, in the case of Paul Michalik.

³⁴ Opinion of July 7, 1930, in the case of Albin Schneider.

³⁵ Opinion of July 16, 1930, in the case of Paul Besuch.

³⁶ Opinion of Aug. 1, 1930, in the case of Marthe Berger.

³⁷ See *ante*, p. 70, and opinion of June 28, 1930.

³⁸ Cf. the statement of President Calonder in the opinion of Mar. 1, 1930, II. The comparative youth and lack of experience of the Polish administrative system is often urged as an explanation of the unfortunate delays which constantly occurred. The explanation may be accepted as of some force, but it remains merely an explanation and not a justification in any sense. The Deutsche Volksbund, however, appears on the whole to be well satisfied with the results of the Paris Agreement on the observance of time-limits.

CHAPTER V

THE PETITION BEFORE THE MIXED COMMISSION

THE procedure before the Mixed Commission has a two-fold purpose. In the first place, it attempts by conciliatory means to induce the infringing authority to give satisfaction to the petitioner. In this attempt the entire Commission, that is to say, the members of the two states, as well as the President have their rôle to play. It may indeed be said that only in this respect does the Commission as a whole enter into the procedure. In the second place, it is incumbent upon the President to give a reasoned opinion upon each case to which conciliatory means do not provide a solution. The process by which he arrives at his opinion is clearly judicial. The opinion is that of the President and not of the Commission. It is no objection to its judicial character that the authorities are not bound to carry the opinion into effect.

Two preliminary matters require consideration before taking up the progress of the petition after leaving the Minorities Office. These are, first, the constitution of the Mixed Commission, and second, the action of the President under Article 585 of the Convention. They will be considered in this order.

A. THE CONSTITUTION OF THE MIXED COMMISSION

The Mixed Commission has its seat at Katowice in the Polish part of the plebiscite area, and consists of two Polish

members, two German members and a President of some other nationality.¹

Under Article 564 of the Convention the first President was to be appointed by the Council of the League of Nations on the request of the two governments. M. Felix Calonder was appointed as first President by the Council on May 16, 1922, the day following the signature of the Convention,² in accordance with the expressed wish of the two delegations. The appointment was made for a period of one year, at M. Calonder's request. It was renewed on April 18, 1923,³ with the assent of the governments, for an indefinite period, and still continues.⁴ The choice of M. Calonder was an eminently suitable one. Not only is he a former President of the Swiss Confederation, an eminent lawyer, and a skilled negotiator, but he actually presided over the Conference which produced the Geneva Convention.⁵ Future appointments are to be made in the same way, and in consultation, if necessary, with the retiring President; ⁶ in case of temporary inability to act, the administrative business of the Commission will be conducted by one Polish and one German member appointed annually by their respective governments.⁷

As to the members of the Commission, it is provided in Article 562 that they must be natives of Upper Silesia or specially conversant, whether through their profession, their activity as public officials, or their residence there for a num-

¹ Article 562 of the Convention. As to their installation see Article 565.

² O.J., 1922, pp. 541-2.

³ O.J., 1923, pp. 559, 639.

⁴ M. Calonder tendered his resignation in 1929 but was prevailed upon by the governments to continue in office.

⁵ See *ante*, p. 5. M. Calonder's personal history is as follows: he was an advocate at Coire in the Canton of Grisons; Member of the *Conseil des Etats* (Senate) of the Swiss Confederation, and President of that body in 1911; deputy-judge of the Federal Tribunal; Member of the Federal Council of the Swiss Government; President of the Department of the Interior from 1913 to 1917; President of the Department of Foreign Affairs in 1918 and 1919; President of the Swiss Confederation in 1918 and Member of the Commission of the League of Nations on the question of the Aaland Islands.

⁶ Article 566.

⁷ Article 567.

ber of years, with conditions in Upper Silesia. The two German members are appointed by the German Government, and the Polish members by the Polish Government. Substitutes for members temporarily unable to act are appointed in the same way⁸ and must have similar qualifications. At least one Polish and one German member give their whole time to the work of the Commission.⁹

The first members of the Commission were nominated in November, 1921, at the same time as the plenipotentiaries of the two governments to the Geneva Conference. They were, for Germany, M. Buntzel, Privy Councillor, and M. Theussner, Bank Director; for Poland, M. Joseph Kiedron and M. Stanislaus Grabianowski.¹⁰ Of these persons, however, only M. Grabianowski, by profession an engineer, and a resident of twenty years' standing in Upper Silesia, took office in 1922. The other original Polish member was Constant Wolny, Marshal of the Upper Silesian Diet. The two original German members were Baron von Moltke, at present German Minister in Warsaw, and Dr. Lukaschek, formerly Landrat of Rybnik (now in Polish Upper Silesia), who is at present the Oberpräsident of the province of Upper Silesia. Count Praschma, Upper Silesian member of the Reichsrat, President of the Provinziallandtag of the Province of Upper Silesia, replaced Baron von Moltke in 1924, and Mr. van Husen, formerly Landrat, replaced Dr. Lukaschek in 1927. On the Polish side Mr. Stephan Bratkowski, Counsellor of the Ministry of Foreign Affairs, replaced Marshal Wolny in 1927, and was himself replaced in 1929 by Mr. Gaëtan Morawski, formerly Under-Secretary of State in the Ministry of Foreign Affairs (Western Relations Section).

⁸ Article 566. It would seem, though it is not expressly stated, that the substitutes may at the same time pursue their ordinary profession. It is expressly provided otherwise as to substitutes for arbitrators on the Mixed Arbitral Tribunal.

⁹ M. van Husen on the German side.

¹⁰ O.J., 1922, p. 117.

The secretarial staff of the Commission is appointed by the President with the assent of the governments in accordance with Article 568. Details as to appointments are not specified in the Article save that the chief of staff is not to be either a German or a Pole, and that all officials of the Secretariat are subordinate to and under the instructions of the President. They must, on appointment, "lui promettre solennellement, la main dans la main en guise de serment, d'accomplir leur devoir." The President is not to dismiss any official of German or Polish nationality before having referred the matter to the government concerned. At the present time the principal staff consists of three secretaries, M. Albert Huber, advocate, first secretary, M. Robert Vertelli, advocate, second secretary, both Swiss nationals, and M. Guido Schiller-Schildenfeld, advocate, an Austrian national, third secretary.

In the Upper Silesian minorities procedure proper the President does not come into direct contact with the governments. He is concerned only with their administrative authorities, and with these his relations are through the Minorities Offices. In special circumstances, however, and for the present purpose an intercession under Article 585 is the important example, it may be necessary for him to get into direct touch with the central government. This he must do, not through the Minorities Office, but through the State Agent (*Agent d'Etat*) of the state concerned appointed by the government under Article 564.¹¹ The functions of this

¹¹ The chief importance of the *Agents d'Etat* is in matters other than minorities questions within the competence of the Mixed Commission. Thus, under Articles 2, 165, 170, 215, 237, 335, 367, 379, 394 and 556 of the Convention, competence to act as an arbitral tribunal is conferred on the Mixed Commission in a variety of matters, mainly relating to the economic provisions of the Convention. The procedure is generally instituted by action of the *Agent d'Etat*, and he represents his government in all cases. The present *Agents d'Etat* are: for Germany, Count Adelman, who is also German Consul-General in Katowice, and for Poland, M. Kasimir Szczoeki, succeeded on Oct. 1, 1932, by M. Léon Babiński.

official in the present connection are to facilitate in all possible ways the exchange of views between the President of the Commission and the government concerned. The German *Agent d'Etat* is directly subordinated in the administrative hierarchy to the Foreign Office of the Reich and the Prussian Minister of the Interior; the Polish, to the Foreign Office of Poland.

Interesting provisions are contained in Articles 570 to 572 concerning the protection of the President, the Commission and the Secretariat, under the laws of the respective states, and as to "diplomatic" privileges and immunities. Article 570 extends to the President, the Commission and all officials and employees the same protection under the criminal law as is enjoyed by the officials of the state concerned, and empowers the President to institute prosecutions (*Strafantragen*) in respect of wrongs (*délits*) committed against the Mixed Commission. Polish and German members and officials of the Mixed Commission are subject to the respective laws of their states in respect of wrongs committed in the exercise of their functions in the same way as if they were officials of their state. "Diplomatic" privileges and immunities are conferred upon the President, members, the Chief of Staff and State Agents of the Mixed Commission by Article 572. These, however, are not to be enjoyed by nationals of Germany or Poland whilst in their own state. As to the other secretarial staff, exemption is granted with a similar qualification from income tax, from jurisdiction except where they are accused of crime, from testifying as to facts arising in their official duties save where authorized by the President or State Agent, according to the circumstances, and from police measures of expulsion from their dwellings. Further, the buildings (*locaux*) of the Mixed Commission are declared inviolable.¹²

¹² Article 573 contains provisions for the issue of *Cartes d'identité* to the President, etc.

The salaries of the President, members and officials are fixed by agreement between German and Polish governments, who bear equally these and other expenses of the Commission.¹³ The budget is settled annually by agreement between the President and the State Agents.¹⁴ In practice the President settles the budget and transmits it to the *Agents d'Etat*. Up to the present it has always been accepted.

As to the language to be used in proceedings before the Mixed Commission it is provided in Article 576, paragraph 3, reproduced in Article 9 of the Rules of Procedure, that all complaints or communications to the Commission may be written either in German or Polish, and that replies will be in the same language unless the communicant requests otherwise. All documents and communications from the Mixed Commission to a Polish authority are in Polish, and to a German authority in German, though a translation into the other language may be attached.¹⁵ The official languages of the Commission are German and Polish. The President uses the language most convenient to him. This has been, up to the present time, German. All persons taking part officially in the proceedings must use either German or Polish,¹⁶ and all explanations, motions, resolutions and decisions are translated into both languages, either by the President, a member of the Commission or an interpreter.¹⁷ The *procès-verbal* of proceedings is drawn up in both languages. Within the Commission and its staff either language may be used and all circulars and notices affixed on the premises are to be in both languages,¹⁸ and in practice they are also in

¹³ Article 574. The salary of the President of the Mixed Commission is 150,000 Swiss francs, that of the first secretary 30,000 francs, that of the second secretary 26,000 francs, and that of the third secretary 22,000 francs.

¹⁴ Article 575. During the period Jan. 1, 1925 to Mar. 31, 1932, the average annual expenses, other than salaries, have been 70,000 Swiss francs.

¹⁵ Rules, Article 9.

¹⁶ Article 576, paragraph 1 (1) and Rules, Article 25.

¹⁷ Article 576, paragraph 1 (2) and (4) and Rules, Articles 27-8.

¹⁸ Article 576, paragraph 1 (5) and Rules, Article 30.

French, the language of the state where the Commission is, being given precedence.¹⁹

No legal costs are involved in proceedings before the Commission.

B. INTERCESSION BY THE PRESIDENT UNDER ARTICLE 585

Article 585 of the Convention provides that:

"If there comes to the knowledge of the President of the Mixed Commission facts, circumstances, or situations, which, in his opinion, are not in conformity with the provisions of the present Convention, the President is free to draw the attention of the competent State Agent thereto.

"The State Agent must then transmit the communication forthwith to his Government."

It has already been noted ²⁰ that this power is not limited in its exercise to cases arising under the minorities provisions of the Convention, but that it nevertheless has a special significance in these cases. This significance proceeds from two facts.

In the first place, the President may, under this power, raise questions which would not be within his competence under Articles 149-157 through the normal procedure. His competence under Article 585 is as extensive as the substantive rights covered by the Convention itself, and this being so, the questions of capacity examined in Chapter II are not involved. In the second place, the President may raise a question under this article before,²¹ during,²² and

¹⁹ Article 576, paragraph 2.

²⁰ *Ante*, p. 10.

²¹ Opinion of June 30, 1929, Warderholt, *op. cit.*, p. 440, in the case of the doctors of the Spolka Bracka. Cf. O.J., 1929, p. 558 (facilities to attend religious ceremonies).

²² Opinion of July 15, 1927, *id.*, p. 331, concerning confirmation of local boards in German Upper Silesia. The petition under Article 149 and the invocation of the President's action under Article 585 by the Związek Polakow occurred on the same day.

after ²³ the time when a petition has been submitted under Article 149. This is in conformity with his conciliatory functions in these matters since action under Article 585 is of a purely informal character. Article 49 of the Rules of Procedure provides that in acting under Article 585 the President "is not bound to follow any special form of procedure," and in principle each case is treated individually.

It is because of this informality, and the absence of any records, that it is impossible to give more than an approximate account of the practice, but the following steps are generally involved. First, the facts, circumstances or situations upon which he bases his action may either come to his knowledge indirectly ²⁴ or they may be brought to his knowledge by a direct communication from members of a minority. The President always takes personal cognizance of communications under Article 585. In order to ascertain the facts he may make inquiries and hear witnesses. Thus after the election disorders in Polish Upper Silesia in 1930 many communications were received by the President invoking his action Article 585, and the President examined and took the evidence of a large number of persons who had been assaulted. ²⁵

If satisfied as to the apparent existence of such facts the President submits a request orally or in writing to the Agent of the state concerned asking him to make inquiries from his government as to these facts, ²⁶ and to secure the

²³ See the last intercession in the Spolka Bracka case, cited *ante*, p. 99, n. 21. See also M. Calonder's letter of July 30, 1926, to the State Agent in the school declarations cases. *Publications of the Permanent Court*, Series C, 14-II, pp. 332-4.

²⁴ As a rule, however, the President only intervenes on the application of the interested person, not on mere rumors or press articles.

²⁵ See O.J., 1930, p. 382. The Secretariat, of course, assists in investigations under Article 585.

²⁶ See opinion of July 15, 1927, Warderholt, *op. cit.*, p. 331, in the case concerning the non-confirmation of local boards, etc., in German Upper Silesia. The government declined to furnish the required information in this case.

maintenance of the *status quo* pending proceedings instituted or to be instituted under Article 149.²⁷ He may even propose the terms of a settlement. Thus, in the case concerning the dismissals of the doctors of the Spolka Bracka, upon which the President only gave his opinion in 1929, he had been interceding actively with the Polish Government ever since 1926. In that year, before the actual dismissals and the submission of petitions under Article 149, he approached the State Agent under Article 585 with a request that the *status quo* be maintained.²⁸ This was without result and the proceedings under Article 149 ran their course. At their close but before rendering his opinion the President again approached the State Agent on February 9, 1929, and laid before him a proposal for a settlement on an amicable basis. This was again refused and the President then rendered his opinion.²⁹

On the receipt of the President's request the State Agent forwards it to his Foreign Office and to the competent administrative authority. The Foreign Office makes the necessary inquiries and transmits to the Agent a written report giving its views, and the attitude which it adopts on the questions at issue. The Agent transmits this report to the President and oral discussions between the President and the Agent sometimes take place. It was formerly customary for the Agent of the other state to be present also at these discussions but this was discontinued.

When the matter has been brought to his attention by an informant, the President communicates the results of his action to his informant. The latter may or may not regard these results as satisfactory. If he does not so regard them and the matter is within the competence of the regional

²⁷ For an example see opinion of July 15, 1929.

²⁸ Opinion of June 30, 1929, I, Warderholt, *op. cit.*, p. 440.

²⁹ The opinion was ultimately accepted by the Polish Government. See *ante*, p. 74.

machinery or the Council of the League, he may invoke the ordinary procedure under Articles 147 or 149. When Article 149 is invoked the President, generally but not invariably, closes the proceedings under Article 585, and the *Agent d'Etat* forwards his files on the matter to the Minorities Office. In the proceedings under Article 585 itself the Minorities Office plays no part whatsoever. In the election disorders case the informant was the Deutsche Volksbund. On the close of the proceedings under Article 585 the President communicated to the Volksbund the observations of the Polish Government. These were not regarded as satisfactory and a petition was submitted to the Council under Article 147.⁸⁰ Owing to the absence of available records it is impossible to give examples of cases where the petitioner has been satisfied with the results of the President's action under Article 585.

In a very interesting manner, therefore, proceedings under Article 585, though in origin unrelated to the minorities procedure of the Convention, have come, in those cases where used, to be a kind of preliminary stage to that procedure. An attempt is made to settle the matter without invoking the regular procedure. The possibility of that invocation is in the background as an inducement to conciliatory action on the part of the government. The members of a minority have no legal standing so far as action under Article 585 is concerned but they have the facility of supplying information upon which the President may act or not as he thinks fit. There is thus a remarkable analogy between the position of informants under Article 585 and that of petitioners to the Council of the League under the general minorities procedure.⁸¹

The extent to which the President's action under Article

⁸⁰ O.J., 1931, p. 387.

⁸¹ See Stone, *op. cit.*, Chapters III, IV, and V.

585 has become a part of the general scheme of the Upper Silesian procedure is indicated in the Paris Agreement of 1929. The Agreement, in regulating the conditions under which a direct petition to the Council under Article 147 is to be admissible, provides that such a petition shall not be admissible on questions "regarding which the President of the Mixed Commission has approached the Agent of the government concerned in accordance with Article 585 of the Geneva Convention," until either there has been a refusal to act by the authorities, or a period of four months from the intercession of the President has elapsed.³²

In view of the absence of official information, it would be impossible to gauge the effectiveness of action under Article 585. It may, however, be suggested that in addition to providing a further opportunity for an early settlement in cases in which it is applied, it is useful in at least three types of situations.

The first is where an infraction is threatening which may do injuries not capable of complete redress subsequently. Pressure may then be brought upon the authorities through the government to maintain the *status quo* until the President has had the opportunity of passing upon the matter under Articles 149 to 157. This was one of the reasons for the intercession in the 1926 case concerning the doctors of the Spolka Bracka as stated in the opinion:

"Since the Board of the Spolka Bracka wished to proceed to the dismissal of all the doctors unsuccessful in the language test the President of the Mixed Commission again approached the Polish State Agent under Article 585 of the Geneva Convention to request that the dismissal of the doctors should not take place immediately until he or the Council of the League of Nations had the opportunity to examine the petitions submitted under Article 149 and following."

³² Section B (3) (b).

The President's action in this instance was not successful. A more successful instance was in the case concerning the confirmation of local boards and aldermen in German Upper Silesia.⁸³

In the second place, the rapidity and informality with which the President may act under Article 585, makes it invaluable for cases of a really critical character where not merely the violation of rights, but the entire physical security of the minority is threatened. Immediately after the 1930 disturbances the President instituted inquiries in many hundreds of cases,⁸⁴ and urged the Polish Government to take appropriate measures, such as the punishment of offenders. The results of his inquiries were before the Council when it later considered the matter.⁸⁵ The restraint and reassurance resulting from the presence of a neutral observer with power to investigate and make representations is obvious.

Finally, in cases arising out of the misconduct of officials which are not authorized by the government the informal intercession by the President and the absence of publicity allows the government an opportunity of remedying the matter without the stiffening of attitude which inevitably results to a greater or lesser extent from the institution of formal proceedings.

At the same time, the possible effectiveness of action under Article 585 must not be exaggerated. Success depends upon the attitude of the governments. The aim of the President's action under Article 585 is conciliatory settlement and this is difficult to achieve when, as is often the case, the facts and even the legal questions are in dispute. The prospect, in default of settlement, of proceedings before the Mixed Commission or before the Council, does add a certain

⁸³ Opinion of July 15, 1927, *Warderholt, op. cit.*, p. 331.

⁸⁴ O.J., 1931, p. 172.

⁸⁵ *Id.*, p. 382.

force to the persuasive powers of the President. At the best, however, Article 585 is only a useful supplementary part of the Upper Silesian procedure. The Paris Agreement carefully provided that the fixing of the period of four months after which a petition to the Council under Article 147 is permissible "cannot be taken to imply an obligation on the part of the government concerned to give effect to the action taken by the President of the Mixed Commission."

C. THE PROGRESS OF THE PETITION

I. *Communication to the President.* On forwarding the petition to the President the Minorities Office will, if a doubt exists, raise the question of the capacity of the petitioner and the competence of the President. It should also in every case reply to the petition on its merits, either disputing the existence under the Convention of the right alleged to be violated, or denying that the action of the authority constitutes a violation of an admitted right.

II. *Mixed conciliation and adjudication.* From the moment when the forwarding takes place there is set in motion alongside the conciliatory procedure already described a judicial procedure of investigation into the facts and the law applicable thereto. This latter procedure is clearly litigious, the parties being invariably the petitioner on the one hand, and the Minorities Office involved on the other. The infringing authority is not a party and only figures for the purpose of giving testimony or providing documents. This mixture of functions is the reason for the great pliancy of the procedure. Complete discretion is given to the President, as to the mode and time-limits of the proceedings, and considerable powers of calling for evidence,⁸⁶ of making personal investigations of his own,⁸⁷ and of asking for expert opin-

⁸⁶ See Rules, Articles 13-15 and Article 601 of the Convention.

⁸⁷ *Ibid.*

ions from the courts and administrative authorities of the two parts of the plebiscite area as well as from the Arbitral Tribunal.³⁸ In taking steps of this kind, the President may act on his own initiative, and he is thus in no wise bound, as is an ordinary court, to adjudicate merely on the facts and issues laid before him by the parties. Moreover, it has been seen that he may, under Article 585, at any stage in the procedure, approach either state with proposals for an amicable settlement.

III. *Elucidation of facts.* On the receipt of the petition and observations the first task of the President is the elucidation of the facts at issue. For this purpose he directs the Secretariat to hear witnesses ³⁹ (who may be heard later by the President himself) and enter into consultation with the authorities, in order, if possible, to arrange the matter amicably. These functions fall to the Secretariat in all but the more important cases, which the President takes up himself at the outset. The Secretariat is also always present at conferences between the President and the minorities organizations. After this preliminary investigation the observations of the Minorities Office and any further inquiries are transmitted to the petitioner for his answer.⁴⁰ Under Article 40 of the Rules the answer of the petitioner may then, if the President deems it necessary, be submitted to the Minorities Office for replication and so on. In general, however, any further facts required after the answer will be collected by the President under his very wide powers. Article 153 of the Convention provides that he "is free to collect all information which he deems useful and appropriate." Moreover, since the Convention, and the Rules of Procedure of the Mixed Commission made under it, are, so far as the rights and obligations of officials and citizens of the respec-

³⁸ Rules, Article 17.

³⁹ Rules, Article 42 (3).

⁴⁰ Rules, Article 40 (1).

tive states are concerned, part of the municipal laws of both Germany and Poland, the effective exercise of his powers is adequately ensured.⁴¹

IV. *The powers of the President.* The investigatory powers possessed by the President may be summarized under four heads.

a. *Requirement and admission of proof.* He may decide on his own judgment if and how far facts, evidence, and issues not set out in the pleadings may be considered.⁴² He may ask for supplementary written explanations where the documents submitted are incomplete or ask for such at the oral hearings.⁴³ Moreover, he may do this, and may request any further evidence at any stage in the procedure,⁴⁴ either on his own initiative or upon the request of a party.

b. *Personal investigation.* Within the plebiscite area he can either collect the evidence himself or through a member appointed by the Commission, or through the State Agent. Outside the area, however, the collection must be done through the Agent who will instruct the authority of his state which is competent.⁴⁵ A very good example of such personal collection of evidence by the President is to be seen in the case concerning the minority schools in Rybnik. The petitioners alleged that the schools had been systematically deprived of premises, their former ones having been declared without justification to be unfit for use. The President not only approached the magistrate concerned for further information, but actually proceeded to inspect the premises in question.⁴⁶

⁴¹ See *ante.*, pp. 28-30.

⁴² Rules, Article 13.

⁴³ *Id.*, Article 12. See e.g. opinion of June 30, 1929, IV, Warderholt, *op. cit.*, p. 440 (thirty-two doctors' case).

⁴⁴ *Id.*, Article 14. See case last cited and also opinion of July 6, 1930 (case of Paul Besuch).

⁴⁵ *Id.*, Article 15 (2) and Article 601, paragraph 2 (1) of the Convention.

⁴⁶ Opinion of July 19, 1923, Warderholt, *op. cit.*, p. 152. Cf. Rules, Article 42 (2).

c. *Disciplinary powers.* The President may summon witnesses from any part of the plebiscite area,⁴⁷ and they thereupon are entitled to unhindered passage. The procedure for examination of witnesses, in particular the administration of the oath, is governed by the judicial procedure of the state where the examination takes place. Perjury and false testimony is to be punished by the two states in the same way as if committed before their own authorities. All authorities of the two states must give free official aid to the Mixed Commission.⁴⁸ By Article 602 of the Convention the imposition of fines for contempt, non-appearance, or refusal to testify or to take the oath, is regulated by the law of the state to which the offender belongs. The fine in such cases is imposed at the request of the Commission by the court of the district in which the offender resides. It is retained by the state which collects it.⁴⁹ The examination of witnesses may be delegated to the secretaries, but they are not competent to administer the oath.⁵⁰

d. *Power to obtain assistance of other tribunals.* Finally, the Commission may request the Upper Silesian Arbitral Tribunal and the courts and administrative authorities of both parts of the plebiscite area for a reasoned opinion on any question before it, and the administrative authorities, at any rate, must comply with the request.⁵¹

⁴⁷ For examples see opinions of Feb. 12, 1927, I, Warderholt, *op. cit.*, p. 311 (case of Johann Sobotta) where the authority concerned was summoned and appeared; Dec. 2, 1927, I, *id.*, p. 363 (concerning police action in Brzezine), where the authorities and other witnesses appeared; July 5, 1930, I, (case of Paul Michalik) where the authorities also appeared.

⁴⁸ Rules, Article 15 and Article 601, paragraphs 1 (2), 2 (2) of the Convention. In a number of cases German and Polish courts have heard witnesses on the request of the President.

⁴⁹ See also Rules, Article 16. There has only been one occasion where the President has requested the punishment of a witness for non-appearance. The competent court imposed a fine of 15 marks at his request.

⁵⁰ Rules, Article 42.

⁵¹ Rules, Article 17 and Article 580 of the Convention. The President has, on one occasion, requested an opinion of the Arbitral Tribunal. The question was whether the public prosecutor was an administrative authority within Article 149, and was answered in the affirmative. See *ante*, p. 68.

The freedom of action given to the President of the Mixed Commission is thus very considerable. It has not gone entirely unchallenged and it may be of interest to examine closely the leading case on this point. This was the case of Paul Besuch in 1930.⁵² The petitioner⁵³ alleged that his dismissal from the post of meat inspector was due solely to the fact that he belonged to the German minority, in violation of Articles 75 and 77 of the Convention. The President asked for the production of the files of the authority concerned, with a view to determining the truth of these allegations. The Minorities Office replied, however, that the authority could not accede to this request since the documents were intended solely for the use of administration, and contained no information with regard to the facts, other than that already communicated to the President of the Mixed Commission.

The President in his opinion basing himself on Article 153 of the Convention and Article 42 of the Rules of Procedure, declared that the authorities were bound to communicate these files to him, since they were the most natural means of deciding the question in issue. He noted that in an earlier case⁵⁴ the authorities had disputed the obligation to produce documents, where such production would be injurious to the interests of the state, and admitted that a question might exist on this point in view of the provisions of the Codes of Procedure.⁵⁵ No such possible injury had, however, been alleged in this case, and this question was not involved. He concluded that further consideration of the petition was impossible until the question of production of documents was decided.

⁵² See opinion of July 16, 1930.

⁵³ Represented by the Deutsche Volksbund.

⁵⁴ No. 299, concerning the case of Dr. Skupin. This case never reached the stage of an opinion.

⁵⁵ See Articles 376, 422 ff. and 432 of the German *Zivilprozessordnung* and Article 96 of the *Strafprozessordnung*.

The Deutsche Volksbund then appealed to the Council of the League under Article 157.⁵⁶ In its observations on this appeal the government disputed its admissibility on the ground that its subject-matter concerned, not the relations between the petitioner and the authorities, but only the relations between the President and the authorities. It declined therefore to comment on the substance. The report adopted by the Council cast no doubt on the admissibility of the appeal. It refrained, however, from passing either on the merits, or on the question of production of documents. It proposed merely that the Council "should adjourn this question of procedure, expressing the hope that it may be settled by common agreement between the President and the competent authority, in a manner appropriate to the circumstances." At the June session of the Council it was reported that "the Polish Government had come to an agreement with the President of the Mixed Commission upon a practical solution of the disputed question of procedure," and the matter was therefore deleted from the agenda.⁵⁷ The solution was that the Polish authorities transmitted the documents to the President with a request that they should not be circulated within the Commission. The question of principle was reserved.

Despite the reticence of the Council it cannot be doubted that the standpoint taken by the President was the correct one from a legal point of view. With the possible exception in favor of the welfare of the state, the production of documents is obligatory. If any other view were taken no decision could ever be arrived at in a case such as that under discussion. Moreover, it is doubtful whether even this exception could be made. For obviously a petition to the Mixed Commission always impugns, to some extent, the conduct of the administration of the state concerned, and

⁵⁶ O.J., 1931, p. 229.

⁵⁷ *Id.*, p. 1066.

any disclosure could be urged by the authorities to be against the welfare of the state. Such an interpretation would, in the words of President Calonder, be inconsistent "not only with the formal provisions and the existing practice but with the whole meaning and spirit of the Geneva Convention."⁸⁸

Where the authority concerned refuses to testify or to produce documents two courses are open to the President. In the first place, he may refuse to decide the case, and thus indirectly invoke the authority of the Council as in the Besuch case. In the second place, he may proceed to give an opinion, taking into account in arriving at his conclusions of fact the nature and materiality of the evidence thus deliberately withheld. Thus in the 1928 case concerning the discontinuance of a minority class at Krolewska-Huta,⁸⁹ the Minorities Office was requested by the President to produce the records concerning the alleged insufficient school declarations which were the basis of the authority's position. This was refused, but the President found no difficulty in holding that many of them were in fact sufficient, and it is obvious from the opinion that the refusal to produce was of weight in leading him to this conclusion.

Article 32 of the Rules of Procedure lays down expressly a rule which would in any case have been clear, namely, that "the Commission appraises all evidence according to its own judgment." This process is, of course, involved in every case which comes before the regional machinery. It may be noted that on occasion the President has found himself compelled to hold as a fact that certain documents put in by one of the Minorities Offices,⁹⁰ as being formal withdrawals of

⁸⁸ Opinion of July 16, 1930. Moreover, the necessity for non-disclosure is decreased by the fact that the proceedings before the President are not public. The analogy, therefore, to non-disclosure in ordinary municipal courts is weakened.

⁸⁹ Opinion of July 28, 1930.

⁹⁰ The Polish.

children from a minority school, were written "*von dritter hand*" and not by the persons alleged,⁶¹ or that the evidence of the authorities was not to be relied upon.

V. *Time-limits*. There are no general rules as to the time-limits within which evidence must be filed or witnesses heard; they vary from a few days to a number of weeks and are fixed by the President for each individual case. They vary with the complication of the facts and the urgency of the alleged grievance. Further, if the petition is one of a large number dealing with the same subject-matter, the President does not have each examined separately, but will (in the absence of urgency) delay his action until all are at hand. They will then be consolidated and considered together throughout the procedure. Many examples of this may be found in the opinions, but the case of the sixty children in 1929 may be taken as an illustration.⁶² The infraction alleged in that case was the refusal to admit a number of children to the minority schools, the same ground being taken as to the entire group. There were numerous petitions relating to individual cases, which reached the Minorities Office between August 26, 1929, and December 20, 1929, and were forwarded to the President between November 4, 1929, and January 20, 1930. All the cases were then consolidated and dealt with together both by the President and by the Council of the League at a later stage.⁶³

VI. *The oral hearing*. After the collection of evidence it may or may not be desirable to give the parties an oral hearing. This is entirely within the discretion of the President, for Article 153, paragraph 1, of the Convention merely provides that he "shall give the petitioners and the Minorities Offices an opportunity of presenting their observations

⁶¹ Opinion of Mar. 20, 1924. *Warderholt, op. cit.*, p. 212 (school applications in Nowe-Repty). It is significant that this is one of the few cases in which the President has forbidden publication of his opinion.

⁶² Opinion of Feb. 10, 1930.

⁶³ See *post*, p. 176 *et seq.*

orally or in writing.”⁶⁴ In practice an oral hearing is given in almost all cases. If, therefore, he thinks it desirable, the President fixes a date for the hearing and in connection therewith he may ask the Minorities Office or the petitioner for further information, and can invite witnesses and experts to attend.⁶⁵ In conformity with the conciliatory idea which is constantly in the background, the hearing is never public.

This is the earliest stage at which members of the Commission ordinarily take part in the procedure. The Convention itself does not provide for their presence, but Article 41 of the Rules provides that the four members of the Commission in addition to the President shall take note of the contents of the files and may be present at the hearing, and that at least one Polish and one German member must be so present. In practice there are frequently only one Polish and one German member present at the oral hearings and the subsequent consultation.⁶⁶ There is present also a representative of the Minorities Office and the petitioner or/and his representative. The administrative authority is not present except in the capacity of a witness. The Convention makes no express mention concerning legal representation of individuals before the Mixed Commission⁶⁷ but in fact it is quite the exception for the petitioner to appear personally. There are a few cases where a professional advocate appeared on his behalf⁶⁸ but in almost all other cases the minority organizations have taken over the functions of representatives as well of individuals of the minorities as of each minority as a whole.

⁶⁴ Cf. Rules, 40 (2).

⁶⁵ *Ibid.*

⁶⁶ When the Commission is acting as an arbitral tribunal all the members of the Commission are invariably present. See *ante*, p. 96, n. 11.

⁶⁷ Contrast the Arbitral Tribunal (Article 587 of the Convention).

⁶⁸ See opinion of July 19, 1923, *Warderholt, op. cit.*, p. 152 (concerning schools in Rybnik); Nov. 2, 1923, *id.*, p. 166 (concerning the Evangelist school in Rybnik); and Nov. 6, 1923, *id.*, p. 167 (concerning schools in Lubliniec).

Though the parties are entitled to be present at the hearing, the absence of either or both will not prevent the rendering of an opinion, though of course the President may, if he thinks fit, decide upon a postponement.⁶⁹ The *procès-verbal* of the proceedings is taken down by the secretaries present, and an interpreter is always at hand for the facilitation of the proceedings.

The conduct of the hearing is entirely in the hands of the President, there being no rules on the matter. In general the order of hearing is as follows. The representative of the Minorities Office presents the argument for the state authority concerned,⁷⁰ the petitioner or his representative presents his case, and the President then closes the proceedings. Questions may, naturally, be asked of the parties during the proceedings. The arguments may go to all the questions raised, whether of jurisdiction or substance, and to the facts as well as to the law involved. It would be of little utility and great difficulty to give even a summary indication of the type of questions which may be involved. Their substance is naturally as varied as are the activities and interests of the populations whose rights are protected.⁷¹ The kinds of questions which arise as to jurisdiction have already been examined at length.⁷²

It very often occurs at or before the oral hearing that the observations of the Minorities Office are sufficient to remove, either wholly or in part, the difficulty of which the members of a minority complain. Thus in the 1927 case concerning the minority school at Krolewska-Huta, the petitioner expressed himself at the oral hearing as satisfied as to part of

⁶⁹ See Rules, Article 31.

⁷⁰ Some slight embarrassment has resulted from the refusal on principle of the Polish Office to use German instead of Polish at the hearings. The Polish argument has to be interpreted for M. Calonder.

⁷¹ For a thorough survey of the cases from the point of view of the life of the minorities see M. W. Royse, *op. cit.*

⁷² *Ante*, Chaps. II and III.

his complaint.⁷³ This part therefore, was dropped and the rest proceeded with. Another example is to be seen in the 1927 case concerning the confirmation of local boards and aldermen where nine of the petitions in the consolidated case were withdrawn during the oral hearing.⁷⁴ Many cases are completely settled at this stage. No opinion is given in such cases, but inquiries from the President of the Mixed Commission reveal that the majority of petitions are disposed of in this way without an opinion being rendered, whether because satisfaction is given to the petitioner or because for some other reason the petition is withdrawn. During the period January, 1924, to September, 1932, out of sixty-four cases which came to the President from the German part of the plebiscite area⁷⁵ he procured satisfaction for the petitioner in sixty cases, and rendered an opinion only in four. An example of such a settlement is recorded in the case concerning the closing of certain minority schools in 1928.⁷⁶ The petitioner in addition to proceeding under Article 149, had also petitioned the Council of the League under Article 147.⁷⁷ The question was postponed on September 26, 1928, pending the President's opinion. When it was next considered, the Rapporteur was "very glad to inform the Council that the Minorities Office and the petitioner, while maintaining their respective legal standpoints, have seen their way to accept the suggestion of a compromise by the President of the Mixed Commission."⁷⁸

VII. *Discussion within the Commission.* If no settlement is reached at the end of the hearing the case is discussed within the Commission itself. This is provided for in Article

⁷³ Opinion of Oct. 10, 1927, Warderholt, *op. cit.*, p. 352.

⁷⁴ Opinion of July 15, 1927, I, *id.*, p. 331.

⁷⁵ Figures for the Polish part have not been available to the writer.

⁷⁶ O.J., 1928, p. 1674; 1929, p. 65.

⁷⁷ See also opinion of Oct. 11, 1926, Warderholt, *op. cit.*, p. 279 (case of Boleslaus Drozdowski).

⁷⁸ O.J., 1929, p. 65.

153 of the Convention ⁷⁸ whereby the President is to give his opinion "after giving the members of the Mixed Commission an opportunity to express their views." For this purpose Article 29 of the Rules of Procedure provides that "after the conclusion of the hearing the Commission takes counsel in private session." The primary object of this discussion is to allow the members to express their views upon the questions of law or fact arising, but it serves in addition the purpose of presenting yet another chance for conciliatory influences to take effect. The President delays the rendering of his opinion for a short interval subsequent to the consultation, in order to permit the members of the Commission if they so desire to get into touch with their governments.

VIII. *The opinion of the President.* When all other means of adjustment have proved ineffective, the President must render his opinion. Article 153 of the Convention provides in paragraphs 2 and 3 that:

"After examining the case and giving the members of the Commission an opportunity of expressing their views, the President shall communicate to the Minorities Office his opinion on the manner in which the case may be settled in conformity with the provisions of the present Part. . . .

"The opinion may indicate a final, a provisional or a partial solution. The President may also declare that he will only state his opinion at the end of a certain delay."

Article 38 of the Rules of Procedure is couched in a form even more imperative:

"In each case concerning the protection of minorities granted in the Convention of May 15, 1922, the President is bound to render an opinion and to submit and reason out his opinion in a written report."

These Articles seem to permit the construction that the President must render an opinion even when he has

⁷⁸ Embodied in Rules, Article 43.

been able to settle the case in the course of the proceedings. Such a construction would, however, be quite contrary to the spirit of the Convention which is essentially conciliatory, and in practice no opinion is given in such cases.

In all other cases, however, whether the petition is rejected as unjustified, or as being beyond the competence of the President, or whether an infraction is held to be established, the President invariably renders an opinion. He may do so immediately or after "a certain delay." The discretion to postpone does not seem to be in any way limited, and is another mitigation of the rigidity of formal procedure with a view to giving all possible freedom to the President in his manner of handling cases.

Only one example of an opinion given after a period of time has been found. This is the case of Gregory Sakry in 1929.⁷⁹ The complaint concerned the non-admission of Sakry's child to the minority school. It reached the Minorities Office on October 24, 1928, and was forwarded to the President on December 19, 1928. In view of the fact that the school year was so far advanced and that the petitioner might again enter his son for the minority school for the next year, the President postponed the rendering of his opinion in the hope that it would not be necessary. The hope was not justified and on a renewed complaint of the petitioner the opinion in his favor was rendered on August 19, 1929. The dearth of such cases is due probably to the fact that delays in the procedure prior to this stage have generally made any further delay both inexpedient and fruitless. Should this cease to be so in the future it is suggested that the postponed opinion would be useful in two classes of cases. Where the significance of a case depends upon whether it is an isolated instance or one of a systematic series

⁷⁹ Opinion of Aug. 19, 1929.

of occurrences,⁸⁰ an opinion might well be delayed for a period to make this clear. Further, circumstances may always occur where, owing to the warmth of feeling on the subject, an immediate opinion might do more harm than good.

In most cases, therefore, the opinion of the President will be given shortly after the hearing, and the discussion within the Mixed Commission. A consideration of its legal nature and consequences may well repay a momentary pause in the narrative. The opinion is that of the President alone, and not that of the whole Commission. It only takes account of the views of the members of the Commission insofar as the President himself accepts those views. It is not therefore a political compromise between the views of the two nationalities represented. This is both an advantage and a disadvantage.

In the first place, it tends to clothe the opinion with a judicial character, for it is based upon an impartial sifting of facts freely adduced by the parties in a regular procedure, and the application to those facts of definite legal rules. In form the opinion is indistinguishable from the judgment of a court; in substance it is as sparing of political considerations, and as profuse in acute legal reasoning and close adherence to the matter at hand. All the qualities of judicial labor are here: the reliance upon precedent,⁸¹ and the consequent tendency to distinguish cases;⁸² the scrupulous analysis of each case;⁸³ the close attention to the text of the instrument which is being applied, but, at the same

⁸⁰ Cf. a similar situation in the work of the Minorities Committees in the general minorities procedure, Stone, *op. cit.*, p. 106.

⁸¹ See e.g. the line of cases on capacity of the petitioner in Chap. II.

⁸² See e.g. opinions of Nov. 12, 1929 (case of Johann Mischoj), and July 17, 1930 (case of the widow Martha Slodczyk).

⁸³ See e.g. opinions of Jan. 3, 1924, Warderholt, *op. cit.*, p. 184 (concerning minority schools in Lubliniec); Dec. 15, 1926, *id.*, p. 284 (validity of entries for minority schools); July 15, 1927, *id.*, p. 331 (confirmation of aldermen, etc.); Feb. 10, 1930 (case of the sixty children).

time, a refusal to admit that where the instrument is silent the injustice at hand must go unaided.⁸⁴ Last but not least, the actual opinion itself (as distinct from its reasoning) is couched very often in a form implying an imperative force, which, unfortunately, it does not have.⁸⁵

Thus one is led to the less fortunate side of the independence with which the President speaks. The Convention may or may not have intended him to follow the strictly judicial process in giving his opinion; it merely spoke of "his opinion on the manner in which the case may be settled in accordance with the provisions of the present Convention." Be this as it may, it is certain that the Convention did *not* contemplate that there should be any legal obligation upon the authorities to carry the opinion into effect, for it establishes expressly a separate procedure which is to be invoked should they not do so and carefully refrains from using the words "shall" or "must" in any form.⁸⁶

However imperative, therefore, be the form of the opinion, it remains merely an opinion. It will be taken into account or not as the administrative authority concerned decides after weighing the disadvantage which will accrue from an appeal by the petitioner to the Council of the League. The persuasive authority of the opinion would undoubtedly have been greater had the non-neutral members of the Commission been associated with it. On the other hand, this would have reduced the rights of the minority to a subject of constant barter, and would have prevented the coherent devel-

⁸⁴ See opinion of Nov. 15, 1925, *id.*, p. 253 (concerning minority school registers).

⁸⁵ See for example the following opinions: May 1, 1923, *id.*, p. 151 (case of Johann Wosnitza); Mar. 20, 1924, *id.*, p. 212 (concerning school applications); Dec. 31, 1924, *id.*, p. 234 (concerning minority school in Kamien); Nov. 15, 1925, *id.*, p. 253 (concerning minority school registers); Feb. 10, 1927, *id.*, p. 308 (misconduct of police authorities); Oct. 5, 1927, *id.*, p. 341 (agitation against minority schools); Oct. 5, 1927, *id.*, p. 346 (misconduct of the Starostei of Lubliniec).

⁸⁶ Contrast again the provisions of Article 593 of the Convention concerning the execution of the decisions of the Arbitral Tribunal.

opment both as to substantive and procedural rights, which must in the long run be the basis of a stable régime of minorities protection.

Further, it would seem to be clear as a matter of law that the Convention does not give to the President even the power to advise where the right alleged to be violated is not expressly or impliedly granted by the Convention. This question was raised in a very interesting way in 1925. The Deutsche Volksbund submitted a petition to the regional procedure under Article 149 complaining of certain instructions of the educational authority whereby all accounts, school registers and other records in minority schools, were to be kept in the Polish language.⁸⁷ Though admitting that there was no express provision in the Geneva Convention forbidding this, the President held that these instructions were quite contrary to the whole scheme of the Convention and would seriously prejudice the language rights expressly granted. He held accordingly that these documents should be supplied with German as well as with Polish headings.

The Polish authorities refused to carry out the opinion and failed to forward to the Council the appeal submitted to the Minorities Office by the petitioner. The latter thereupon sent a direct petition under Article 147 requesting the Council "to call for the documents in the case and to render a decision in the same sense as the opinion." The report adopted by the Council concludes: ⁸⁸

"As the President . . . himself points out there is no provision in the Convention relating to the question before the Council.

"Cases will doubtless arise in which, in spite of the absence of any precise provision the Polish Government will find it desirable, acting in a spirit of equity . . . to take measures which have not

⁸⁷ Opinion of Nov. 15, 1925, Warderholt, *op. cit.*, p. 253.

⁸⁸ O.J., 1928, p. 951. For another case of the Council's refusal to act outside the Convention, see O.J., 1928, p. 947 (concerning the minority school at Krolewska-Huta). See *post*, pp. 187 *et seq.*

been provided for in the Convention, since the latter could not foresee all possible practical difficulties. Since, however, there is no definite provision applicable to the present case, I feel that I must propose that the Council should refrain from taking any action in this matter and rely upon the goodwill of the Polish Government to find a practical solution."

However desirable some other view may be, that taken by the Council is clearly the correct one for cases where the Convention is silent, unless the necessity of a reasonable construction dictates the opposite in any particular case. It is, however, more than possible to support the President's opinion in this particular case upon the last-mentioned ground.⁸⁸ Where there is a real *lacuna* in the Convention it should not be difficult to get the two Parties together for the purpose of filling it as was actually done at Paris in 1929.⁸⁹

The final restriction upon the freedom of the President in giving his opinion arises from the combined effect of Article 153, paragraph 2, and Article 158, paragraph 2, of the Convention. The effect of these provisions is that the interpretation given by him "shall take into account *inter alia* such resolutions of the Council of the League of Nations as may refer to similar cases in Upper Silesia." It follows from this that where the Council has disposed of a particular case in a certain way, the President is not at liberty to reopen the case if a further petition is submitted to the regional procedure, unless, of course, new circumstances have arisen.⁹¹ There has been no instance where the above restriction has not been observed. At first sight the case of the sixty chil-

⁸⁸ Warderholt, *op. cit.*, p. 120, supports the view of the President and refers to the unpublished protocols of the Geneva Convention.

⁸⁹ For other instances of such extensive interpretation by the President, see opinions of Sept. 15, 1925, Warderholt, *op. cit.*, p. 243 (*ante*, p. ...) and Oct. 10, 1927, *id.*, p. 349 (case of nineteen unmarried mothers). See also O.J., 1933, p. 413, for another manifestation of the Council's attitude on this question.

⁹¹ Complaints No. 300 and 301 of the Deutsche Volksbund concerning riots during the elections of May 1927 were dismissed by the President at an early stage on this ground.

dren would seem to be an exception, but at a closer scrutiny, it will be seen that the decision of the Council in 1927⁹² was merely provisional and that its effect having been terminated by the action of Germany in submitting the question to the Permanent Court of International Justice,⁹³ the cases subsequently arising would validly be dealt with *de novo*. This was in effect what the President did,⁹⁴ and his action was later upheld by the Council acting on the advisory opinion of the Permanent Court.⁹⁵ Article 158, paragraph 2, clearly does not prohibit the President from examining the scope of the decision of the Council to see if it is applicable to the case before him.

The opinion may, according to Article 153, be final, provisional, or partial.⁹⁶ In the great majority of cases it is final, that is to say, it either indicates the manner in which the President considers that the case should forthwith be dealt with by the authorities,⁹⁷ or it rejects the petition on the merits or for lack of jurisdiction.⁹⁸ In the latter circumstance, the whole procedure is at an end so far as the regional machinery is concerned, and if he desires to press his claims further, the petitioner must appeal to the Council.⁹⁹

The provisional opinion is one which, though rendered at the close of the normal proceedings, does not call for any immediate action by the authorities. It is useful in two situations. First, where the petitioner does not allege any actual infraction but merely a present danger of infraction of the Convention, the opinion can deal only with a hypothetical set of facts, and as such cannot take effect until the set of facts comes into existence. Thus the 1925 case concerning the right of members of the Polish minority in Ger-

⁹² See *post*, pp. 180-1, O.J., 1927, pp. 337, 400 *et seq.*, and 474 *et seq.*, and Stone, *op. cit.*, pp. 222-4.

⁹³ *Publications of the Permanent Court*, Series A, No. 16.

⁹⁴ Opinion of Feb. 10, 1930.

⁹⁵ O.J., 1931, pp. 228, 1151.

⁹⁶ See also Rules, Article 43.

⁹⁷ See e.g. cases in p. 119, n. 85.

⁹⁸ See e.g. cases in Chap. II, *passim*.

⁹⁹ *Post*, pp. 130-1.

many to become members of the Verband der Schlesischen Aufständischen¹⁰⁰ was of this nature, and the opinion would have been a provisional one, had it been in favor of the right claimed by the petitioner. Second, the provisional opinion is valuable where the question before the President is one which, because either of its difficulty or its importance, the President does not feel that he can finally dispose of. In such circumstances the opinion may be made provisional so as to expedite the final settlement of the question by making possible an appeal to the Council of the League. No provisional opinions, however, have been rendered as yet.

IX. *Publication of the opinion.* The President decides in all cases whether the opinion should be communicated to the petitioner and whether it shall be published.¹⁰¹ He invariably directs that the Minorities Office shall communicate the opinion to the petitioner in the latter's own language. There is no exception to this and it is difficult to imagine a situation in which the President would make an exception.

As to publication, the practice is more varied, for it involves considerations of policy in each case. Publication is, of course, one of the few persuasive instruments at the disposal of the President, and though nowhere expressly stated, the following principles as to its use are suggested by a study of the cases. In the first place, publication will be authorized unless there is a reason to the contrary. In a few early cases publication was prohibited by the President, but he subsequently removed the prohibition by a decree of February 11, 1929, and in no later case has publication been prohibited. When given in the earlier cases the authorization was usually for immediate publication, but in the great

¹⁰⁰ See *ante*, p. 63, and compare Article 599 of the Convention: "The Mixed Commission and the Arbitral Tribunal may render on the request of a State Agent or one of the parties, provisional (*provisoires*) resolutions and decisions in cases they deem appropriate. This applies particularly where it appears to be established that immediate steps are necessary to protect a threatened right or avoid serious damage."

¹⁰¹ Article 156 of the Convention and Rules, Article 45.

majority of the 1929 and 1930 cases, and in a few of the earlier ones, a period was set of thirty days from the time of its receipt by the Minorities Office.¹⁰² The object of this is to give a further *spatium deliberandi* to the authorities, and to give them an opportunity of considering the opinion before the political press can engage in propaganda, whether against states or minorities. Where an even longer interval for a possible settlement seems to be required, or where the case is one which has caused much public feeling which publication would tend to aggravate, the President either postpones the question of publication for later decision,¹⁰³ or expressly prohibits publication.

A striking example of this last is the case of 1924 already mentioned in which the President cast doubt upon the handwriting in certain documents put forward as written by members of the minority.¹⁰⁴ In such cases the balance of advantages and dangers must be maintained. It is good to expose the misconduct of an authority provided that the exposure does not create a state of feeling in the populations outweighing the good in the particular case. It is interesting for this reason to compare the above case with that concerning flagrant misconduct of police authorities in Polish Upper Silesia in 1927.¹⁰⁵ The President there authorized immediate publication. No hard and fast rules can, therefore, be laid down.¹⁰⁶

¹⁰² See opinions of Mar. 29, 1928, Warderholt, *op. cit.*, p. 391 (case of the Krolewska-Hucka Spolka Pieczy), June 21, 1928, *id.*, p. 402 (case of the German Gymnastic Union in Poland), and any opinion of 1929 or 1930.

¹⁰³ See opinions of Apr. 22, 1924, Warderholt, *op. cit.*, p. 220 (concerning the verification of entries for schools); Dec. 31, 1924, *id.*, p. 234 (concerning the establishment of a minority school in Kamien); June 1, 1928, *id.*, p. 395 (concerning misconduct of District Doctor Heske).

¹⁰⁴ Opinion of Mar. 20, 1924, *id.*, p. 212.

¹⁰⁵ Opinion of Dec. 2, 1927, *id.*, p. 363.

¹⁰⁶ Even when the President authorizes publication of an opinion there is no official publication of it. The authorization is primarily given for its issue in the daily press. The opinions as a whole are available in but one private collection and this only covers the period up to June 1929. It is contained in Warderholt, *op. cit.*, pp. 141-450.

X. *Transmission of opinion to authorities concerned.* The opinion of the President is signed by him and by the Secretary-General of the Commission and forwarded in two Polish and two German copies to the Minorities Office, which, as already noted, is directed to forward a copy to the petitioner in his own language. The Minorities Office must also forward a copy to the administrative authority concerned.¹⁰⁷ The administrative authority must within twenty days inform the Minorities Office how it has settled the case, and whether and in what manner it has taken the opinion of the President into account.¹⁰⁸ On receipt of this information the Minorities Office must transmit it immediately to the President and simultaneously to the petitioner.¹⁰⁹ This duty of the Minorities Office has not always been strictly observed.

At this point, the functions of the President of the Mixed Commission in the Upper Silesian procedure come normally to an end and any further proceedings take place before the Council of the League of Nations.

¹⁰⁷ Rules, Article 44 and Article 154 of the Convention. The following facts concerning officials against whose acts petitions have been directed in one part of the plebiscite area may be of interest here. They are drawn from a document prepared by one of the Minorities Offices for the use of its own state and cover the period 1924-32. Of 23 police officials whose conduct has occasioned complaint, 17 were cautioned, 4 removed out of the plebiscite area, and 2 otherwise punished. Of 28 teachers whose conduct has been impugned 24 were cautioned, 3 removed out of the plebiscite area and 1 otherwise punished. Of 32 officials of divers kinds whose conduct has occasioned complaint, 29 were cautioned, 1 was removed, 1 was dismissed from the service, and 1 otherwise punished.

¹⁰⁸ *Ibid.*

¹⁰⁹ Rules, Article 44 (2).

PART IV

PROCEDURE BEFORE THE COUNCIL OF THE LEAGUE

CHAPTER VI. PROCEDURE PRIOR TO COUNCIL DISCUSSIONS.

CHAPTER VII. PROCEDURE IN THE COUNCIL.

CHAPTER VI

PROCEDURE PRIOR TO COUNCIL DISCUSSIONS

THERE are two distinct channels through which the petitioner may have recourse to the Council of the League of Nations. If his case has been dealt with in the regional procedure, and if he is not satisfied with action taken in the matter by the administrative authorities, he may appeal under Article 149. According to Article 157, this appeal is to be addressed to the Minorities Office which must arrange for its transmission to the Council by the government. Independently of this, however, Article 147 of the Convention provides that:

“The Council of the League of Nations is competent to pronounce on all individual or collective petitions relating to the provisions of the present Part and directly addressed to it by members of a minority. When the Council forwards these petitions to the government of the state in whose territory the petitioners are domiciled the government shall return them with or without observations, to the Council for examination.”

Up to the moment of actual discussion in the Council the procedure through these two channels is distinct. Each therefore will be taken up separately in the present Chapter and brought to the point of Council discussion.

A. APPEAL TO THE COUNCIL UNDER ARTICLE 149 ¹

I. *Ground of appeal.* It has already been pointed out that the term “appeal” as used in Articles 149 and 157 does not necessarily mean an appeal from the authority of a lower to

¹ For list of cases which have come up before the Council under Article 149 see Appendix VII.

that of a higher tribunal.² Article 149 allows an appeal whenever the administrative authority has failed to give satisfaction to the petitioner. It is equally available therefore whether the authority has carried out the opinion of the President or whether it has refused to do so.

When an opinion has been rendered in the case it is the established practice that the petitioner, if he desires to go further, should proceed under Article 149, and not by direct petition under Article 147. Thus in the case of Johann Wiesner³ the President, after rejecting the petition on the merits, inserted in his opinion the usual clause to the effect that if the petitioner appealed to the Council he was to transmit the appeal to the Minorities Office and a copy to the President.⁴ The petitioner ignored the clause and petitioned the Council directly under Article 147. The Rapporteur of the Council, M. Yoshizawa, disapproved his action, saying that "if the petitioner was dissatisfied with the President's solution he should not have addressed his petition direct to the Council under Article 147, but should have lodged an appeal which under Article 149 and following would have been communicated to the Council by the Polish government." The Council adopted the report.⁵

An additional reason for requiring the petitioner to proceed under Article 149, is that the President on receiving a copy of the appeal, can then forward his *dossier* to the Council, for its assistance.⁶ The position would seem clear therefore where the appeal relates to the merits of a question. Where, however, the petition has been rejected on the ground of the limited competence of the President of the Mixed Commission, it would seem that Article 147 may and

² *Ante*, p. 13.

³ Opinion of June 28, 1930.

⁴ See also opinion of Nov. 18, 1924, Warderholt, *op. cit.*, p. 225 (case of Paul Kwoczek).

⁵ See O.J., 1931, p. 228.

⁶ See e.g. Karl Michalik's case, opinion of Feb. 17, 1925, Warderholt, *op. cit.*, p. 241; O.J., 1926, pp. 517-8.

should be used.⁷ In any case urgency will always justify the use of Article 147.

It should be noted that only the petitioner may appeal to the Council in this way. The Minorities Office may not do so, but this fact need inspire no sense of injustice, since all that the office or the authority concerned need do to bring about an appeal is to fail to give satisfaction to the petitioner.

II. *Communication to the Minorities Office.* The President always provides in his opinion that if the petitioner makes use of the right of appeal to the Council he shall give notice to the President and send him a copy of the appeal. The appeal itself must be addressed to the Minorities Office, which forwards it, along with the opinion and other documents, to the government for transmission to the Council in accordance with Article 157.⁸ The Convention laid down no time-limit within which the petition was to be forwarded to the Council, nor did it indicate whether the transmission was to be automatic or whether an interval might be allowed to the government to decide whether it could make any concession to the petitioner. The time taken before 1928 was sometimes as short as one month⁹ and sometimes as long as eight months¹⁰ and serious minority complaints of undue delay were made.¹¹

The question arose directly for the Council's decision in the case of the Krolewska-Hucka Spolka Pieczy (Krolewska-Huta Benevolent Society) in 1928. On June 4, 1928, after the failure of the administrative authorities to satisfy

⁷ See *post*, p. 139.

⁸ For an example of the form of the appeal see O.J., 1930, p. 1643.

⁹ See e.g. O.J., 1927, p. 377 (admission of children to primary German minority schools).

¹⁰ See e.g. O.J., 1926, p. 517 (case of Karl Michalik).

¹¹ See the case concerning the school at Biertultowy, O.J., 1928, p. 402, where the appeal was not forwarded and a petition under Article 147 had to be submitted. The government's excuse was that it did not consider the matter ripe for treatment.

the petitioner, the latter lodged an appeal to the Council under Article 149. As this appeal had not been forwarded, the petitioner, on August 3, 1928, petitioned the Council directly under Article 147. In its observations dated August 20, 1928, the Polish Government argued that:

"The provisions of the Geneva Convention concerning the forwarding of appeals lodged under Articles 149 and 157 of the Geneva Convention are framed in a manner which allows the signatory governments to examine, at each stage of the transmission, all possible methods of settling the question in accordance with the wishes of the minority. The Polish Government cannot, therefore, consent to a purely formal, and, as it were, automatic transmission of appeals."

As a result of a letter from the petitioner of August 23, 1928, asking the Council to suspend consideration of the matter in view of a communication received from the Minorities Office, the Council did not go into the merits of the case. It did, however, go on to consider the question of procedure.

In his report, the Rapporteur (M. Urrutia) expressed agreement with the standpoint of the Polish Government but emphasized at the same time the necessity of the prompt forwarding of appeals. He proposed, therefore, a resolution in the following terms:

"The transmission provided for in Article 157 of the Geneva Convention . . . of appeals lodged by the minority under Article 149 of that Convention shall be made within two months from the date on which the appeal is lodged with the Minorities Office. This period may be extended by the President of the Council at the request of the government concerned, such extension not to exceed one month."

No petition under Article 147 was to be admissible unless the transmission has not taken place within this period.¹²

¹² For the latter part of this resolution dealing with Article 147, see *post*, p. 143, and Appendix III. The resolution was adopted on Sept. 8, 1928. O.J., 1928, pp. 1492-3.

Unless, therefore, the government satisfies the petitioner, it must forward his appeal and other relevant documents to the Council within two months, or three months if an extension is granted. Such an extension is invariably granted if requested.¹³

III. *Transmission to League Secretariat.* The documents so transmitted consist usually of the appeal, the opinion of the President of the Mixed Commission, and its own observations,¹⁴ but many other documents are often attached by the government as appendices to its case. All these are in practice sent by the government to its delegate accredited to the League who makes certain that they reach the Secretariat. On receipt by the Secretariat, that is, by the Minorities Section, all the documents are translated into the official languages (English and French), and are circulated to the members of the Council in preparation for the discussions. The appeal, meanwhile, is placed on the provisional agenda of the next session of the Council. This stage corresponds exactly to the stage in the general minorities procedure after some member of the Council has seised it of an infraction or danger of infraction of the general treaties and the preliminary procedure has been exhausted.¹⁵ It should be carefully distinguished from the first circulation of documents in the general preliminary procedure, which is merely for the information of members of the Council, and is not connected with consideration of the question by the Council itself.

IV. *Functions of the Rapporteur for minorities questions.* The Rapporteur of the Council for minorities questions,¹⁶ has similar functions in the procedure under Articles 149 and 157 to those in the general procedure. Being the mem-

¹³ See e.g. O.J., 1930, 1643. Cf. Stone, *op. cit.*, p. 77.

¹⁴ See for examples O.J., 1924, p. 686; 1927, p. 377; 1929, p. 57; 1930, p. 550; *id.*, p. 1310; 1931, pp. 229-30.

¹⁵ See Stone, *op. cit.*, pp. 63-4 n.

¹⁶ For a full account of the position of the Rapporteur in minorities questions, see Stone, *op. cit.*, pp. 196-8.

ber of the Council designated to follow these questions with special diligence, he begins his examination immediately upon receiving the documents and even before the matter is placed on the final agenda. In this respect Section A (5) of the Paris Agreement is merely declaratory of existing practice. The Section provides that:

"When an appeal is made to the Council under Article 149, the Rapporteur may, before the opening of the Council session, enter upon an examination of the substance of the question raised by the appeal with a view to the preparation of his report."

The same remark applies to cases arising under Article 147 of the Convention.¹⁷

The scope of his investigation extends to the question of jurisdiction, as well as to that of the merits. It may be noted here that since the appeal under Articles 149 and 157 is against the failure of the authorities to give satisfaction to the petitioner before the regional machinery, the jurisdiction of the Council under Article 149 must be identical with that of the President of the Mixed Commission in the regional procedure. All the questions involved as to the capacity of the petitioner and the subject-matter of the complaints, have been fully explored in Chapter II. It would seem to follow that where the ground of rejection of a petition was the limited competence of the President of the Mixed Commission, it is useless employing the appeal under Article 149, and the direct petition under Article 147 should be employed.¹⁸

The Minorities Section of the Secretariat with its organized information service on minorities questions, and its experienced personnel, is at the disposal of the Rapporteur throughout.¹⁹ Further, he has complete freedom in collect-

¹⁷ See Sec. B (4) of the Agreement.

¹⁸ See *post*, p. 139.

¹⁹ On the functions of the Minorities Section generally see Stone, *op. cit.*, pp. 46-83.

ing information in addition to that contained in the documents. He may direct questions not merely to the government concerned, but to the petitioner. The two governments declared in 1929 that "they would facilitate as far as possible the task of the Rapporteur, if he should think it necessary either to procure supplementary information from the governments or to question the petitioners. It was understood that in the latter case, the German and Polish Governments would undertake respectively to forward to the petitioners the questions which the Rapporteur would formulate in writing, and would send to the Rapporteur the replies of the petitioners, which could be made either verbally or in writing at their discretion." All communications between the governments and the petitioner in pursuance of this declaration pass through the Minorities Office concerned, and not directly from the government to the petitioner, and *vice versa*. Further, it would appear, though it is nowhere expressly provided, that the Rapporteur may approach the President of the Mixed Commission for details of the history of the case or information generally supplementary to his opinion.

The powers of the Rapporteur are, however, not limited to investigation. He may enter into negotiations for a settlement with the state concerned, although any settlement will, of course, be subject to the approval of the Council. Examples are not lacking of a settlement at this stage. Thus in the case concerning the minority high schools in Polish Upper Silesia in 1924, the Rapporteur at the first Council discussion declared:

"I have discussed this question with the Polish delegation particularly with reference to the two points in the opinion of the President relating to the right of the German Upper Silesian People's League to present petitions. . . . I am glad to say that the Polish Government and the President of the Mixed Commis-

sion are in agreement on these points. I have therefore the honor to request the Council to take note of this report."²⁰

Other such cases are those concerning the minority school at Kopalnia Borea in 1924,²¹ and concerning the rights of unmarried mothers in matters relating to their children's education in 1928.²² In all these cases the settlement was on the basis of the acceptance by the government of the opinion of the President of the Mixed Commission.

V. *The appeal on the final agenda.* When the Council meets at the next session after the receipt of the appeal it will in general include the appeal in its final agenda for that session. This rule is not absolute however. It is possible that the documents may only have arrived shortly before the session, and that the Rapporteur has had no opportunity of examining the questions involved. In such circumstances, the matter will either be omitted from the agenda of that session, or it may be placed on the agenda and postponed to a later session when reached. Thus in the case concerning the dismissal of the doctors of the Spolka Bracka, the documents were received by the members of the Council and the Rapporteur on January 13, 1930, the day of the opening of the session. It was left on the final agenda but when reached, the Rapporteur (M. Adatci) proposed its postponement because he found it "impossible to submit to the Council during its present session a report on the subject."²³ The above does not apply if the matter is urgent, but such matters will be raised under Article 147 and not under Article 149.

B. PETITION TO THE COUNCIL UNDER ARTICLE 147

An account of the procedure under Article 147 must be more complicated than that of procedure under Article 149

²⁰ See O.J., 1924, p. 686.

²¹ See O.J., 1924, p. 529.

²² See O.J., 1928, p. 854. In this case the settlement was reported and the examination concluded on the adoption of the final agenda.

²³ See O.J., 1930, p. 106. Cf. O.J., 1932, p. 1201.

for two reasons. In the first place, this article providing a recourse quite distinct from those which have already been considered, it is necessary to determine the limits of the jurisdiction which it confers. In the second place, its availability has been subjected by later agreements to a number of limitations, making its exact scope at the present time somewhat difficult to define.

I. *Capacity to petition under Article 147.* As to the capacity of the petitioner under Article 147, it should be first noted that that article uses exactly the same expression, "members of a minority," as Article 149. In connection with the latter article, this expression was held to mean persons who could show that they fulfilled three requirements.²⁴ These were, first that they adhered to the minority, second that they were nationals of the state petitioned against, and third that they were domiciled in some part of the plebiscite area.

Are these three requirements essential for capacity under Article 147? Without more in the article than the expression "members of a minority," the answer might have been a simple affirmation.²⁵ The second sentence, however, goes on to provide that "when the Council forwards these petitions to the government of the state in *whose territory the petitioners are domiciled*, this government shall return them, with or without observations to the Council for examination."

The presence of the words italicized creates at least two serious difficulties of interpretation. In the regional procedure it is quite possible for a person of Polish origin, being a German national but domiciled in Polish Upper Silesia, to submit a petition against the German authorities to the German Minorities Office in Oppeln. Let it be supposed that the same person submitted a similar petition to the

²⁴ See *ante*, p. 46.

²⁵ But see Warderholt, *op. cit.*, p. 129, and *ante*, p. 42, as to the requirement of nationality.

Council under Article 147. According to the above-quoted sentence the petition would be sent to the Polish Government for its observations, for the petitioner is domiciled in Polish territory. This, however, would be an absurd result since his petition is against the Polish Government. To provide a reasonable construction, therefore, it would be necessary to read the words "in whose territory the petitioners are domiciled" as if they meant "petitioned against." But the words can scarcely bear such a construction. The resolution of September 8, 1928, and the Paris Agreement of 1929 in speaking of communications to the government under Article 147, solve the difficulty by saying simply that the petition shall "be communicated to *the government concerned* for any observations etc."²⁶ No question has ever been raised in the Council as to the accuracy of this construction.

If this is correct, must the words "in whose territory the petitioners are domiciled" be held to be mere surplusage? It will be recalled that the most important class of persons deprived of capacity in the regional procedure, were those "entitled to retain their domicile" in one part of the plebiscite area whilst acquiring the nationality of the other state.²⁷ Such persons, though protected by Article 82 of the Convention, have been held to be unable to petition against the state in which they are domiciled, on the ground that they were not nationals of that state. This produces little injustice in the regional procedure because in practice the Arbitral Tribunal has taken jurisdiction in these cases.²⁸ If, however, they are held to be excluded under Article 147, there will be no recourse whatever to the Council, for there is no appeal from decisions of the Arbitral Tribunal.²⁹ Can

²⁶ Sec. III of the resolution, and Sec. B (2) of the Agreement.

²⁷ See Articles 40-45 of the Convention.

²⁸ See *ante*, p. . .

²⁹ See O.J., 1930, p. 496 (case of Johann Mokros).

the words under discussion be construed so as to give capacity to this class of persons? It is possible to argue that in the light of these words the phrase "members of a minority" must be taken to include this class⁸⁰ but such a construction seems very doubtful to the present writer. The consideration that otherwise there will be no recourse to the Council, is neutralized by the consideration that the decision of the Arbitral Tribunal in the first instance is binding upon the state concerned, and is not merely advisory like the opinion of the President of the Mixed Commission. There is no practice of the Council on this point.

The words "all individual or collective petitions" have already been commented upon,^{80a} and it will suffice to conclude as to capacity of the petitioner under Article 147 that, subject to the above doubts, his capacity would seem to be governed by exactly the same rules as those set out in Chapter II for the regional procedure. The practice of the Council is there also set out.

II. *Competence of the Council under Article 147.* As to the acts or omissions which may ground a petition under Article 147, it is clear that all such acts or omissions committed by the authorities of the state, whether they be administrative, legislative, or judicial, and whether of inferior authorities or not, may provide a valid ground. In this respect, the competence of the Council is considerably wider than that of the regional organ, and is a necessary supplement to it.

An example of the recognition of competence in regard to

⁸⁰ See *ante*, p. 44. Moreover, it is the personal view of President Calonder that even persons not nationals of Poland or Germany might avail themselves of Article 147, though they could not avail themselves of Articles 149 *et seq.* Rights are conferred on such persons by Article 83 of the Convention which provides that "the Contracting Parties undertake to accord to all the inhabitants of the plebiscite area, full and complete protection of life and liberty without distinction of birth, nationality, language, race or religion." See also comments, *ante*, pp. 41 *et seq.*

^{80a} See *ante*, p. 54.

legislative acts may be seen in the case concerning the payment by the German Government of compensation for damage sustained by the minority during riots in German Upper Silesia.⁸¹ The petitioners complained *inter alia* of three legislative acts concerning compensation which, they alleged, injured the interests of the Polish minority. The German Government did not raise any question of competence. Judicial acts or omissions were impugned in the cases concerning the St. Julius Hospital at Rybnik in Polish Upper Silesia⁸² and the Ulitz case,⁸³ both in 1929. In both these cases there is no doubt that competence was accepted, although as a matter of expediency, the Council postponed further discussion pending the decisions of the judicial organs. In the second case, the report adopted by the Council concluded with an expression of the conviction that "the judicial authorities will do all in their power to hasten the proceedings and will avoid giving the minority to which the petitioners belong the impression that the measures in question are in any way directed against it."⁸⁴ The argument of the Polish Government in this case that judicial proceedings were sacrosanct, was clearly accepted only insofar as it indicated the inexpediency of the Council's interference *pendente lite*. In the case of a decision, or even action *pendente lite*, constituting a violation of the Convention, there can be no doubt of the Council's competence in these matters.

The acts or omissions petitioned against must, however, be official acts and not merely acts of private persons. In this respect the Council's competence is limited equally with that of the President of the Mixed Commission, and the

⁸¹ See O.J., 1926, pp. 518-9, 1418. Cf. the 1933 case concerning the Jewish minority in German Upper Silesia, O.J., 1933, p. 839.

⁸² O.J., 1929, pp. 59 *et seq.*

⁸³ O.J., 1929, p. 559.

⁸⁴ M. Ulitz was convicted in the lower courts on July 26, 1929, but acquitted by the Appellate Court on April 9, 1930. The case did not come before the Council again.

discussion of that limitation need only be referred to.⁸⁵ Finally, as with the regional organ, so with the Council, an infraction of any provision of Part III, whether Division I, Division II or Division III, may be the ground of a direct petition to the Council. This question also has already been fully discussed.⁸⁶

III. *Limitations upon the availability of Article 147 and its relation to other means of recourse provided in the Convention.* In the original text of Article 147 it stood at the head of the procedural provisions and its use seemed to be totally independent of all other means of recourse. It might be used, therefore, where the matter was within the competence of the President of the Mixed Commission, and even if it was actually pending before him; similarly, it might be used even if the President were attempting to settle the question by interceding under Article 585. Further, it might be used irrespective of the importance or triviality of the subject of complaint. In addition, therefore, to supplementing the regional machinery by reason of its wider scope, it was concurrently available for every case in which the regional machinery was available.

For obvious reasons this was not entirely a satisfactory position. It destroyed much of the value of the regional procedure if unimportant cases were not submitted to it before being given the *réclame* which results from Council procedure. Numerous cases of this kind may be found in the minutes of the Council but a rather extreme example may suffice to point the argument. On October 20, 1928, the "Union of Poles in Germany" (Zwiazek Polakow) submitted a petition under Article 147 alleging that a German

⁸⁵ See *ante*, pp. 72-6, especially p. 73, n. 35. The Council also regards its competence under the Convention as limited to acts done within the plebiscite area. See e.g. O.J., 1932, p. 1939; *id.*, 1933, p. 242.

⁸⁶ See *ante*, p. 14. In the case of Franziska Senkalla in 1932 the Council rejected a petition on the ground that it did not come within Part III of the Convention. O.J., 1932, p. 1201. Document C. 471. 1932. I.

railway official had refused to issue a ticket unless it was asked for in German. This was no doubt a serious matter for the prospective traveler, but one can sympathize with the Rapporteur (M. Adatci) and the Council in the view that it is "highly desirable that cases of this kind should be brought before the Council before recourse is had to all other legal remedies provided either by internal legislation or by the Geneva Convention."⁸⁷

The same considerations made undesirable petitions under Article 147 when the matter was already before the President of the Mixed Commission under Article 149, unless there was a reason of urgency for calling upon the Council. Thus in the 1928 case concerning the closing of certain minority schools in Polish Upper Silesia,⁸⁸ the Rapporteur "drew the attention of the Council to the fact that the closing of the schools in question had formed the subject of petitions sent to the Polish Minorities Office under Article 149 *et seq.* According to the information supplied by the Polish Government, these petitions had been sent toward the end of July and the beginning of August and were at present under examination. . . ." The Rapporteur hoped that by this means the questions "would receive at the earliest possible moment a satisfactory solution so that it would be unnecessary for the Council to examine the question at its next session." The Council ultimately decided to postpone the question, and to instruct the Secretary-General to request the President of the Mixed Commission to deal without delay with the petitions submitted to the Minorities Office.

Moreover, both the above phenomena seemed to cast upon the Council the unnecessary burden of dealing with a large number of cases much more suitable for settlement on the

⁸⁷ See O.J., 1929, p. 598. For another manifestation of dissatisfaction see O.J., 1928, p. 947.

⁸⁸ See O.J., 1928, p. 1675.

spot where all the evidence was available. At the end of the discussion in 1928 in the Krolewska-Huta case,⁸⁰ M. Zaleski, the Polish representative, expressed his regret that "the Council is obliged to occupy itself with petitions of such slight importance . . .," to which Dr. von Schubert replied: "I also am sorry that the Council is obliged to deal with these questions, on the importance of which I do not express an opinion." The problem here, in the words of M. Adatci, was one "of lightening, without departing from the provisions of the Convention, the unduly heavy burden that had hitherto been frequently laid upon the Council by the application of Article 147."⁴⁰

The above objections were further increased by the fact that a petition received under Article 147 was placed on the agenda of the next session, which meant that very often the government concerned had no time to submit its observations, nor the Rapporteur to give due attention to the matter. This is illustrated in the petition under Article 147 concerning public security in Upper Silesia submitted by the Deutsche Volksbund in 1928. The petition only reached the members of the Council and Poland early in June and came up for discussion on June 8. Since the Polish Government had been unable to present its observations, the question was postponed.⁴¹ The matter is stated as follows in the report of M. Urrutia leading up to the resolution of September 8, 1928:⁴²

"According to the procedure at present in force, petitions addressed direct to the Council under Article 147 are placed on the agenda of the next session of the Council following their receipt by the Secretariat. In several cases petitions received by the Secretariat a few weeks, or even a few days before the opening of a session of the Council, have been placed on the Council's agenda and communicated to the members almost at the same time as

⁸⁰ *Id.*, p. 947.

⁴⁰ O.J., 1929, p. 993.

⁴¹ O.J., 1928, p. 924.

⁴² *Id.*, p. 1492.

they were transmitted to the government concerned, and in any case without that government's being given reasonable time to submit its observations to the Council. I am sure the Council will realize the disadvantages of this method, which is wholly inconsistent with one of the principles of the normal procedure for the protection of minorities "that, except in urgent cases, the government concerned should be given reasonable time to submit its observations so that they may be communicated to the members of the Council simultaneously with the petition."

The remedy for this last evil was found in the resolution of September 8, 1928⁴³ and for the others in the Paris Agreement of April 6, 1929.

The scope of Article 147 as modified. As modified by the resolution of September 8, 1928, and the Paris Agreement of 1929, the scope of Article 147 may be stated as follows:

1. Urgent petitions may always be submitted under Article 147. None of the following provisions affect urgent petitions.

2. As to the nature of the acts or omissions which may be the ground of a petition under Article 147, no modification has been made. That article retains its original comprehensive character covering all legislative, judicial and administrative matters.

3. As to the importance of the subject-matter of the petition, Section B (2) of the Paris Agreement provides that a petition under Article 147 shall not be examined by the

⁴³ I.e. the general minorities procedure, as to which see Stone, *op. cit.*, pp. 75 *et seq.*

⁴⁴ The resolution of Sept. 8, 1928, modified the provisions of the Convention and as such required the consent of Poland and Germany. This was in fact given, both states being represented on the Council, and giving their assent to the resolution (O.J., 1928, p. 1493). The Paris Agreement was the outcome of direct negotiations between the governments which took place at Paris from Mar. 25, to Apr. 6, 1929, under the Presidency of M. Adatci, the Council's Rapporteur. The President of the Mixed Commission and its Secretary-General, M. Huber, also took part. The Agreement of Mar. 6, 1929, was formally approved by the two governments in letters of May 18 (Germany), and May 11 (Poland) to M. Adatci. It was approved by the Council on June 12, 1929, and then came into operation. (O.J., 1929, p. 993.)

Council if the following two conditions concur: first, if it *has not* been, but *can* be dealt with in the regional procedure under Article 149; and second, if it is not "sufficiently important to justify the examination by the Council under Article 147." If these conditions are both present, the petition will be remitted to the regional machinery.

4. As to the concurrent consideration of cases under the regional procedure and before the Council equally serious modifications have been made.

In the first place, by Section B (3) (a) of the Agreement, petitions relating to questions which are being dealt with under the regional procedure provided for in Articles 149 *et seq.* are only admissible, while such proceedings are pending, if considerable delays occur in regard to the periods prescribed for this procedure.

In the second place, by Section B (3) (b) of the Agreement petitions relating to questions regarding which the President of the Mixed Commission has approached the Agent of the government concerned in accordance with Article 585 can only be submitted under Article 147 if the authority has given an unfavorable decision, or if a period of four months from the President's intercession has elapsed.⁴⁸ It should be recalled in this connection that the power of the President under this article is not limited to acts of administrative authorities as is his competence under Article 149. This provision, therefore, restricts the right of petition even in cases where the procedure before the regional machinery under Article 149 is not competent, for instance where legislative or judicial acts are complained of. Section B (4) provides that:

"As Article 149 of the Convention only makes provision for petitions relating to the application and interpretation of the pro-

⁴⁸ The period of four months was fixed in order to give all possible opportunity for an amicable settlement.

visions of the third Part . . . by administrative authorities who receive instructions . . . petitions regarding matters not covered by that Article may be sent direct to the Council under Article 147 subject to the provisions laid down in Sec. B (3) (b)."

5. Finally, though this is nowhere expressly laid down, it would appear from the Karl Michalik case ⁴⁶ that if the jurisdiction of the Council depends upon a question, the determination of which is expressly placed by the Convention within the competence of the Upper Silesian Arbitral Tribunal, the petitioner will in practice be directed to apply to the Tribunal before coming to the Council. This is only likely to arise in the case of disputed nationality.

IV. *The progress of the petition under Article 147.* The present scope of Article 147 being thus delimited, the actual mode of proceeding under that article may be described.

a. *Communication to the Secretariat.* The petition, which may take any form, including that of a telegram, is addressed directly to the Council and is received by the Minorities Section. It should be noted that though there has been some assimilation to the general preliminary procedure, there are still important differences between the way in which the Section treats petitions under Article 147, and that in which it treats minorities petitions in the general procedure.

Thus, the Section does not apply the general conditions of receivability to petitions under Article 147. It cannot, for example, reject a petition on the ground that it does not deal with facts not recently submitted to the procedure. A striking illustration of this is to be seen in the case concerning the use of the Polish language by children in German Upper Silesian schools in 1929.⁴⁷ This point requires no elaboration. The conditions of receivability of the general procedure have no application to the Upper Silesian procedure. Secondly, there is no preliminary investigation by

⁴⁶ See *ante*, p. 43.

⁴⁷ O.J., 1929, p. 1030.

Minorities Committees of Upper Silesian petitions. Thirdly, though the time-limits for communication to the government concerned etc. are similar to those in the general procedure, they are not entirely identical.

b. *Functions of the Secretariat.* On receipt of a petition under Article 147 the first question to be decided by the Secretary-General through the Minorities Section is whether it is urgent. For according to the final sentence of the resolution of September 8, 1928:

"In extremely urgent cases the Secretary-General shall communicate the petition to the members of the Council as soon as it is received by the Secretariat and shall arrange for the question to be placed on the agenda of the next session of the Council. At the same time, he shall forward the petition to the government concerned for its observations."

It will be observed that this merely preserves for urgent cases the early practice under Article 147. As in the general minorities procedure, no standard of urgency has been laid down, and the Secretary-General uses his discretion in deciding whether a case is sufficiently urgent or not.⁴⁸

Further the Secretariat must treat exactly like urgent petitions, petitions relating to questions "which have been the subject of appeals under Articles 149 and 157 when such appeals have not been forwarded to the Council within the prescribed period of two months or in case of extension within the period fixed by the President of the Council."⁴⁹

⁴⁸ Stone, *op. cit.*, p. 74. For examples of apparently urgent petitions before the reforms see O.J., 1928, p. 925 (situation of Polish minority in German Upper Silesia); *id.*, p. 924 (entries of children to minority schools in Polish Upper Silesia). For examples after the reforms see O.J., 1929, p. 559 (arrest of M. Ulitz), O.J., 1931, p. 382 (election disturbances in Polish Upper Silesia). The Bernheim petition concerning the situation of the Jewish minority in German Upper Silesia contained an express request that it be treated as urgent, and it was so treated. O.J., 1933, pp. 798, 933.

⁴⁹ See report of M. Urrutia, O.J., 1928, p. 1492 and paragraph 2 of the resolution of Sept. 8, 1928.

It is some indication of the effectiveness of this provision that since it came into force there have been no petitions under Article 147 on the ground of the non-forwarding of appeals under Articles 149 and 157. These were numerous before the reforms.⁶⁰

If the petition does not fall within the above provisions the next task of the Section is to ascertain whether it falls under Section B (3) of the Paris Agreement. Petitions falling under this provision must "be set aside by the Secretary-General, with the approval of the Rapporteur, and will not be placed on the provisional agenda of the Council."

The first category of petitions falling under Section B (3) are "those relating to questions which are being dealt with by the local machinery provided for in Articles 149 *et seq.* . . . while such procedure is pending" unless considerable delays occur in the periods prescribed for this procedure. Doubt may exist as to whether "questions" means the actual complaint of the petitioner under Article 147, or whether it has a wider sense so as to include cases which raise similar issues of facts and of law in the case of other persons. For at least two reasons the narrower interpretation must be adopted. If this is not done, a wide discretion will be vested in the Secretariat to ascertain what are the issues involved as well before the President of the Mixed Commission as in the petition before the Council. This would be extremely undesirable, particularly as the state concerned will raise this point on every possible occasion, and a difficult position might ensue both for the Secretariat and the petitioner. Further, there is no reason for such strictness at this stage since even if the petition survives, it may still be removed

⁶⁰ This statement is made as at Jan. 1932. For examples of the use of Article 147 in this way before the reforms, see O.J., 1927, p. 376 (minority schools in Bytkow, Laziska Gorna and Wilcza Gorna, separate cases); O.J., 1928, p. 401 (minority school in Biertultowy); *id.*, p. 946 (minority high school in Königshutte); *id.*, p. 922 (minority school in Brzezinka); *id.*, p. 950 (language of German minority school registers).

from the agenda at a later stage as not being of sufficient importance. Thus late in 1929 three members of the German minority in Polish Upper Silesia submitted a petition under Article 147⁵¹ concerning the admission of their children to the minority school. The same issues were raised in all three cases. Two of the petitioners had already petitioned under the regional procedure. The Secretary-General did not therefore set aside the whole petition under Section B (3), but left it to the Rapporteur at a later stage, to move its deletion from the agenda under Section B (2).

Exactly what delays in the regional procedure are sufficient to justify the use of Article 147 under the exception to Section B (2) is again a doubtful question. In the absence of the word "considerable" there would have been no difficulty. The periods of the local procedure are fixed, even to the extent of requiring the whole course to be completed within six months.⁵² The exception would then have been a salutary influence toward greater promptitude on the part of the authorities. However broadly this word "considerable" may be interpreted it is to be hoped that the Minorities Section will not emulate to any extent the interpretation suggested by the extraordinary case of Ernst Pietsch in 1929.⁵³ In that case Mr. Pietsch submitted his petition to the Minorities Office under Article 149 on June 27, 1927. On December 3, 1927, it was forwarded to the President and comments and answer followed on February 3, and June 15, 1928, respectively. On March 28, 1928, M. Pietsch petitioned the Council under Article 147. The question was postponed at the June session of the Council pending the receipt of further particulars from the Polish Government. These particulars indicated *inter alia* that the reply of the Minorities Office to the petitioner's answer of June 15, 1928,

⁵¹ See O.J., 1930, p. 112. The petition was undated. The petitioners were Messrs. Kutschera, Foitzik and Griegieratzki. See also O.J., 1932, p. 1939.

⁵² See *ante*, pp. 88 *et seq.*

⁵³ See O.J., 1929, pp. 1029, 1685.

had only been sent to the President of the Mixed Commission on July 1, 1929.

Although this was after the Paris Agreement the report of M. Adatci, adopted by the Council, concluded as follows:

"It therefore seems to me desirable, in spite of the slowness with which the local procedure has been applied, that, in view of the complexity of the case, the Council should let this procedure, which seems to be approaching completion, follow its normal course. In these circumstances I will confine myself to proposing that the Council should not enter upon an examination of the present petition on the basis of Article 147. . . ."

The President's opinion in this case was not rendered until June 9, 1932.⁵⁴

The second category of petitions falling under Section B (3) are those "relating to questions regarding which the President of the Mixed Commission has approached the Agent of the government concerned in accordance with Article 585," unless an unfavorable decision has been given or four months from the intercession have elapsed. The word "questions" here raises a problem similar to that already discussed, but no difficulty as to the exception presents itself. The text is clear as to what delays will suffice.⁵⁵

Approval of the Rapporteur. In setting aside the above

⁵⁴ The long delays in this case are attributable to the amount of time required for the hearing of witnesses as a result of the prolonged absence of an important witness, and to the interruption of the procedure caused by M. Pietsch's petition to the Council under Article 147, when the President suspended his own action. It is of course within the complete discretion of the President as to when he shall render an opinion (Article 153, paragraph 3). See opinion of June 9, 1932.

⁵⁵ It has already been noted (*ante*, p. 71) but it may be recalled here for the sake of completeness, that the mere pendency of judicial proceedings in the state concerned on the subject-matter of the petition is no legal ground for setting it aside. For reasons of expediency, however, the Council generally postpones its consideration until the decision is known. This applies also where the pending judgment is that of the Permanent Court of International Justice, as may be seen in the cases concerning primary German minority schools in Polish Upper Silesia (O.J., 1928, p. 201; 1929, pp. 881 and 945). See on this Feinberg, *op. cit.*, pp. 199-207. See also the arguments before the *Permanent Court* in the Pless case.

two categories the Secretary-General must obtain the approval of the Rapporteur for minorities questions. On obtaining this approval he is directed not to place the petition on the provisional agenda, but to set it aside. If he has already placed it on the provisional agenda before learning of the pending regional proceedings, he will in general ask the Rapporteur to move its deletion on the adoption of the final agenda. An example may be seen in the petition of Maria and Alfons Jontza dated September 11, 1929.⁵⁶

c. *Communication to the government of petitions not set aside.* Assuming that the petition has not been set aside by the Secretary-General of the League, the latter must communicate it immediately to the government concerned for its observations. The government must communicate any observations within two months unless it requests an extension from the President. This extension is generally given as a matter of course, but it may not exceed one month.⁵⁷ On receipt of the observations of the government, or at the expiration of the time-limit, the question is placed by the Secretary-General on the provisional agenda of the next session of the Council, and the documents are translated into the official languages and circulated to all the members of the Council, including, of course, the Rapporteur.⁵⁸

It is doubtful whether the Secretary-General has a discretion to keep back any of the documents from circulation even if the state concerned alleges that they have been wrongfully obtained by the petitioner, and that their circulation would be injurious to its interests. This question was raised but not passed upon by the Council in the case of Otto Ochmann in 1930.⁵⁹ Though the Secretary-General

⁵⁶ See O.J., 1930, p. 112.

⁵⁷ Resolution of Sept. 8, 1928, paragraph 3. For an example see O.J., 1929, p. 1027.

⁵⁸ See resolution of Sept. 8, 1928, paragraph 3.

⁵⁹ See O.J., 1930, p. 550. For comment see Stone, *op. cit.*, p. 206.

did keep back the documents in that case it is very doubtful whether he would follow this precedent in the future.

D. Functions of the Rapporteur under Article 147. On receipt of the documents, the Rapporteur, in consultation with the Secretary-General, must decide whether the petition falls under Section B (2) of the Paris Agreement which provides:

"If the Rapporteur, assisted by the Secretary General, concludes that the subject of the petition is not sufficiently important to justify its examination by the Council under Article 147 . . . and, further, that the case in question may be dealt with under Article 149, he will merely propose that the Council should not examine the substance of the petition. This proposal will be mentioned in the provisional agenda.

"When the Council, on adopting its agenda, approves the Rapporteur's proposal, the petition in question will be removed and will not be placed upon the final agenda."

It should be noted that to fall under the section, a petition must be both of insufficient importance, etc., and within the competence of the President of the Mixed Commission under Article 149. If either condition is not fulfilled, the petition must go forward.

It is quite impossible to lay down any standard of importance that is followed by the Rapporteur in deciding this question. The object of the reforms was to make Article 147 truly supplementary to the regional procedure and not overlapping with it, and provided that the Rapporteur bears both these objects in view he may exercise a wide discretion in particular cases.⁹⁰

⁹⁰ Examples of cases deleted under Sec. B (2) may be seen in O.J., 1930, p. 496 (Johann Mokros); *id.*, 1931, p. 1066 (case of the "Rolnick of Ratibor" trading company); *id.*, p. 2028 (cases of Mm. Bienek and Zientek); *id.*, 1932, 1940 (cases concerning situation of Polish minority); *id.*, 1933, p. 242 (election disorders in German Upper Silesia). There may be compared with these, O.J., 1931, p. 227 (case of Pauline Sock); and *id.*, p. 228 (case of the Prince von Pless) which among others were not deleted.

Petitions removed from the agenda in this way

"will be submitted to the local procedure provided for under Article 149 *et seq.* of the Geneva Convention, and for that purpose the Secretary-General will send them in triplicate to the government concerned which will forward them as rapidly as possible to the competent Minorities Office. The period of forty-five days referred to in Article 39 of the Rules of Procedure of the Mixed Commission will take effect from the date when the petitioner submits to the Minorities Office evidence that the conditions proved for in Article 150, paragraph 1, have been fulfilled, unless such evidence is furnished by the petitioner at an earlier date."

The period of forty-five days referred to is, of course, that within which the Office must forward the petition and its observations to the President,⁶¹ and the conditions are those requiring service of prior notice on the authority competent in the matter. A provident petitioner under Article 147 should, therefore, if he is to save time, serve notice on the authority, and inform the Minorities Office thereof, when he petitions under Article 147, and this appears to be the practice of the Deutsche Volksbund. If the petition is remitted, the period will then begin to run from the date when the Minorities Office receives the remitted documents. The petition, on remission, will be dealt with in the normal course of the regional procedure already described.⁶²

If the Rapporteur decides that the petition under Article 147 is either of sufficient importance to merit consideration under that article, or that it cannot be dealt with in the regional procedure, then the matter remains on the agenda and will be examined by the Council at its next session. The Rapporteur proceeds with his duties of investigation and negotiation which have been described in dealing with the appeal under Articles 149 and 157.⁶³ He occasionally suc-

⁶¹ See *ante*, pp. 79 *et seq.*

⁶² See Chapters II, III and IV.

⁶³ See *ante*, p. 133.

ceeds far enough to cause the petitioner to request the suspension of the Council's proceedings. The Council is always ready to grant such a request in furtherance of an amicable settlement, and the petition is withdrawn from the agenda. Examples of settlements at this stage may be seen in the cases concerning Sister Klara Heinol,⁶⁴ the Krolewska Huta Benevolent Society,⁶⁵ Polish minority schools in German Upper Silesia,⁶⁶ and the insulting conduct of a German official toward Marya Hyborz and Feliks Pluczko.⁶⁷

⁶⁴ See O.J., 1929, pp. 1026-7.

⁶⁶ O.J., 1929, p. 1027.

⁶⁵ See O.J., 1928, p. 1491.

⁶⁷ *Ibid.*

CHAPTER VII

PROCEDURE IN THE COUNCIL

ONCE a case is before the Council there is no legal difference and no essential practical difference between the treatment of a petition under Article 147, and that of an appeal under Article 149. Nor is there any essential difference between the treatment of both of these on the one hand, and on the other, that of minorities questions under the general treaties. This assimilation has become even more complete since the procedural reforms of 1928 and 1929, owing to the check imposed upon direct petitions under Article 147. Those reforms, analyzed above,¹ tend to exclude from treatment by the Council, until all other avenues of procedure are exhausted, unimportant petitions, and petitions susceptible of amicable treatment.² There do exist, however, a number of differences in emphasis and these are described in the course of the present Chapter.

A. THE LEGAL POWERS OF THE COUNCIL

I. *The provisions of the Convention.* An Upper Silesian question may reach the agenda of the Council under any of three distinct provisions of the Geneva Convention. Two of these, namely, the "appeal" under Article 149, and the direct "petition" under Article 147 have already been examined. The third is contained in Article 72, paragraph 2, of the Convention³ which reads:

¹ See *ante*, pp. 144 *et seq.*

² They perform, therefore, very analogous functions to those of the Minorities Committees in the general procedure. See Stone, *op. cit.*, Chapter V.

³ See *ante*, p. 22.

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

It was pointed out in Chapter I that though procedurally Articles 147 and 149, and Article 72 cover a large common field, nevertheless Article 72 only applies by the terms of its first paragraph to "the obligations contained in the foregoing stipulations," that is, in the stipulations of Division I of Part III of the Convention which reproduces the stipulations of the Polish Minorities Treaty.⁴ Both Articles 147 and 149, on the other hand, are made applicable in respect of the whole of Part III of the Convention. Part III includes Divisions I, II and III, that is, the general stipulations of Division I as well as the special stipulations of Divisions II and III.

The legal powers of the Council in cases involving the stipulations of Division I are set out in Article 72, paragraph 2. The Council may "take such action or give such direction as it may deem proper and effective in the circumstances." What are the Council's powers when its competence is invoked in cases involving Divisions II and III, under Articles 147 and 149 of the Convention? The Permanent Court has suggested in its judgment in the case concerning the sixty children in Polish Upper Silesia⁵ that the Council's powers are different according as it is acting under Division I or under Divisions II and III.

The Court made a very sharp line of distinction between Division I of the Convention and Divisions II and III. After quoting the Preamble to Division I and noting that the "pro-

⁴ See *ante*, p. 26.

⁵ For the way in which the question was raised see *ante*, p. 27, and Judgment No. 12, *Publications of the Permanent Court*, Series A, No. 15, pp. 19-20.

visions of the agreement . . . to put into force the above mentioned principles" in Section 3 of the Preamble could only mean the provisions of Division I, and that consequently only Division I could have been intended to be placed under the guarantee of the League of Nations within Section 3, the Court continued: °

"It therefore clearly appears that it is the provisions of Division I itself which constitute the carrying out (or, according to the terms of the Preamble 'the putting into force') of the above mentioned principles laid down by the Conference of Ambassadors.

"Had it been otherwise, it would have been possible to find elsewhere in the Convention an expression of the idea that the provisions of Article 72 which unquestionably are there for the purpose of more precisely defining what is to be understood by the guarantee of the League referred to in the Preamble to Division I, should also apply to the provisions of Division II. But one searches in vain for an expression of such an idea in the Convention, which, far from putting the numerous provisions of Division II on the same footing as those of Division I, draws a very marked distinction between them.

"It is true that the resolutions by which the Council of the League of Nations declared that it undertook the guarantee of the provisions of the Geneva Convention are so generally worded that they might lead to the supposition that it was not intended to distinguish between the provisions of the two Divisions. The fact that according to Division III certain functions are conferred upon the Council with regard to the provisions of Division II as well, moreover, indicates that those provisions were considered as being guaranteed by the League of Nations, *although in a different manner from the provisions of Division I.*"

"For these reasons, the Court is unable to accept a construction according to which the guarantee of the League of Nations, as defined in Article 72 of the Geneva Convention, would also extend to the provisions of Division II."

This very clear statement was unnecessary for the deci-

° *Id.*, pp. 27-28. For text of Preamble see Appendix I.

° *Italics the writer's.*

sion of the questions at issue, but it nevertheless carries conviction in all respects except one.⁸ This is with regard to the powers conferred upon the Council, which are here concerned. If it is admitted that the content of the guarantee in respect of Divisions II and III must be found only by reference to these Divisions and particularly to Division III the following result is reached. As far as direct appeals to the Council under Article 147 are concerned "the Council . . . is competent to pronounce upon" ("statuer en ce qui concerne") them. But as to appeals from the regional procedure under Articles 149 and 157, the Council is given *absolutely no competence whatsoever*, whether to pronounce upon, decide, or otherwise deal with their subject-matter. If such were to be the legal position the whole of Division III would lose any reality, except perhaps as to Article 147. For it has been seen that the only ultimate power of the President of the Mixed Commission is to render an opinion with no binding force: and it will not appear very helpful to the petitioner that he has the right to appeal to the Council under Articles 149 and 157 when the opinion is not carried out to his satisfaction. For *ex hypothesi* the Council could do nothing, not even discuss the matter.

On the very next page of the judgment succeeding that cited above, the Court indicated without apparently being aware of it, the impossibility of substantiating such a proposition. Referring to the earlier decision of the Council on March 12, 1927, in the subject-matter now before it, the Court said: "It is . . . a resolution taken by virtue of powers conferred upon the Council by Article 149 of the Convention."⁹ It is remarkable that the Court should have made such a statement in view of the words of Article 149. *Absolutely no powers* are conferred upon the Council by that

⁸ For a vigorous dissent from the entire statement see *id.*, p. 61 (Judge Nyholm).

⁹ *Id.*, p. 29.

article, unless, indeed, they are to be implied; and if they are to be implied, where are their limits to be drawn?

It seems to the present writer that in determining the limits of these powers, both as to Articles 147 and 149, one is of necessity thrown back upon Article 72, paragraph 2, which provides that on being seised of a minorities question under that paragraph "the Council may thereupon take such action or give such direction as it may deem proper and effective in the circumstances." Whilst there is no objection to the view of the Court as to every other word of Article 72, it is most unlikely that either (1) a right of appeal to the Council was provided for in Articles 149-157 without it being intended to confer any powers whatever upon the Council, or (2) the parties to the Convention when they made it, or the Council when it assumed the guarantee, intended that the powers of the Council should differ according as it was acting under Article 72, paragraph 2, or under Article 147 or under Articles 149 and 157. If this is so, the only reasonable construction is the one which confers upon the Council, acting under Article 147, or under Articles 149 and 157, implied powers corresponding to those set out in the second half of Article 72, paragraph 2.

No doubt can be entertained that ever since 1922 the Council has regularly acted on the assumption that this was the position. In the election disturbance case of 1930 neither the Council nor Poland nor Germany found any difficulty in treating throughout as one single item on the agenda three questions raised respectively under Article 72, paragraph 2, of the Convention, under Article 147 of the Convention and under Article 12, paragraph 2 of the Polish Minorities Treaty.¹⁰ Yet this could not have been done had the Council's powers been different under each stipulation. Moreover the present writer is not aware of any occasion in which

¹⁰ See *ante*, p. 25 and *post*, pp. 191-6.

either state or the Council has ever by act or expression indicated that there might exist some difference between the powers of the Council when acting under Article 72, paragraph 2, and its powers when acting under the stipulations of Division III.

It must be concluded, therefore, that the definition of the powers of the Council given in the second sentence of Article 72, paragraph 2, equally describes the powers of the Council when it is acting under Articles 147 and 149. This is the only part of Article 72 which can be permitted to operate in respect of stipulations other than those contained in Division I. It may do so only because it must be taken by implication to be embodied in the provisions of Division III.

II. *The rule of unanimity.* The power to "take such action or give such direction as it may deem proper and effective in the circumstances" is a very wide one. It undergoes, however, an important restriction as a result of the rule of unanimity which is applicable to the action of the Council generally. Article 5, paragraph 1, of the Covenant provides that:

"Except where otherwise provided in this Covenant or by the terms of the present Treaty decisions at any meeting of the . . . Council shall require the agreement of all the Members of the League represented at the meeting."

Germany is a permanent member of the Council: Poland has been a non-permanent member since 1927. Even should she cease to be a member she will always be entitled to be represented at Council discussions of Upper Silesian cases under the penultimate paragraph of Article 4, of the Covenant which provides that:

"Any Member of the League not represented on the Council shall be invited to send a representative to sit as a Member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League."

The Council has always taken the view that a state whose observance of the general minorities undertakings was under discussion was entitled to be represented under this paragraph.¹¹ *A fortiori* its view must be that Poland, a party to a special convention not part of the general minorities system, would be entitled to be so represented. It follows that in all conceivable circumstances Poland and Germany are entitled to be represented when minorities complaints against them are being discussed. Moreover, they are entitled to take part in the voting, and since decisions must be unanimous, they can prevent any action being taken or any direction being given.

This statement of the legal position suggests that the state concerned may exercise a blunt veto upon the activity of the Council, but this is not the whole truth. The problem here is exactly similar to that which arises under the general minorities treaties, and the writer ventures to quote what he has said elsewhere in this regard.

"To say crudely that nothing can be done without the consent of the state concerned is misleading. A good deal can be done and has been done. Indeed, it can with truth be said that even if the rule of unanimity had not existed nothing more could have been done than has in fact been done.

"This seems paradoxical until it is realized that even in the absence of the rule, effective action by the Council would still be conditioned by the necessity of obtaining the compliance of the State concerned. The Council, whether acting under Article 11 of the Covenant, or under Article 12 of the Polish Treaty, has no executive arm with which to enforce its decisions. It is inconceivable that it should take charge of the judicial, administrative, or legislative organs of the State concerned in order to put into force a decision to the effect that these organs have been guilty of infractions of the minorities undertakings."¹²

The whole machinery of the Council is directed toward the production of the moral pressure necessary to obtain the

¹¹ See Stone, *op. cit.*, p. 185.

¹² See Stone, *op. cit.*, p. 187.

acquiescence of the state concerned. Publicity of the proceedings is always insisted upon, and the Council has created a number of procedural devices tending to bring about a progressively increasing pressure upon the reluctant state. For it should be noted that "matters of procedure at meetings of the Council including the appointment of Committees to investigate particular matters shall be regulated by the Council and may be decided by a majority of the Members of the League represented at the meeting."¹⁸ Under this provision the Council can and does obtain, without the consent of the state concerned being necessary, formal opinions of committees of jurists, of the Permanent Court, and of influential committees of its own members. At each stage there is a renewed discussion of the merits of the case, and the state complained against must face not only an unsympathetic Council, but also the discomfort of wide press publicity.

All these considerations, which mitigate the restrictive effect of the rule of unanimity in the general procedure, apply even more strongly to Upper Silesian cases. For here the state concerned not only faces the Council as guarantor of the minorities provisions, but is also invariably involved in somewhat strained relations with the other party to the Geneva Convention. The special character of the régime in Upper Silesia naturally increases both the vigilance and energy of the Council, and the motives for a conciliatory attitude of the state concerned.

B. THE PRACTICE OF THE COUNCIL

The work of the Council, whether it is acting under Article 147 or Article 149 or under the general minorities procedure, normally divides itself into three stages. These are, first, the

¹⁸ Article 5, paragraph 2 of the Covenant. See Stone, *The Rule of Unanimity: Practice of the Council and Assembly of the League of Nations*, in *British Year Book of International Law*, 1933, pp. 38 *et seq.*

elucidation of questions of fact; second, the bringing to bear of pressure upon the state concerned to remedy the infraction; and third, the definition of the terms of settlement, including, if necessary, supervision of the operation of the settlement. The first will be termed Investigation, the second Persuasion, and the third Settlement.¹⁴

I. INVESTIGATION

The first discussion of a question in the Council is based upon the report of the Rapporteur, who, with the aid of the Secretariat, begins his investigations before the Council session. The report is generally directed to two main objects. First, it sets out the facts which are established and notes those as to which further information is desirable. Second, it contains an appeal to the state concerned not to take any action prejudicial to the *status quo* pending the final settlement of the case by the Council. This appeal is usually effective. For instance, in the case of the Prince von Pless, the petitioner under Article 147 alleged that he had been assessed more heavily for taxation because of his membership of the minority. The matter was adjourned at the Council session in January, 1931.¹⁵ The Council was informed by a letter of May 19, 1931, from the Polish delegation to the League of Nations, that "as the examination calls for a very minute enquiry, the Polish Government has suspended until July 15 next, all measures of execution with a view to the collection of the taxes in arrears."¹⁶

There is one case, however, where for some obscure reason the Council did not insist upon the maintenance of the *status quo* even though such insistence was clearly called for. On

¹⁴ The writer has already used these terms in *International Guarantees of Minority Rights*, Chap. VIII.

¹⁵ O.J., 1931, p. 228.

¹⁶ *Id.*, p. 115. But see *post*, p. 196. For examples in the general minorities procedure compare O.J., 1924, p. 542; 1925, p. 891; 1929, pp. 973 and 1017. Stone, *op. cit.*, pp. 199-200.

August 8, 1928, shortly prior to the opening of the school year, the Deutsche Volksbund submitted a petition under Article 147 relating to the closing of certain minority schools by the Polish authorities. The observations of the Polish Government came to hand on September 21, 1928. On September 26, 1928, the Rapporteur asked the Council to postpone consideration of the question to its next session, since the time had been too short for him to elucidate the points of principle involved.¹⁷ He did not suggest, however, that the Polish Government be asked to maintain the *status quo*. Dr. von Schubert, the German representative, asked that if there were postponement, the schools should be kept open provisionally, in order that the children concerned should not suffer in consequence. The Polish representative opposed this, and the Rapporteur said that "the question itself was very complex, bound up with the interpretation of treaties. He felt great sympathy for the children who were deprived of schools, but there were principles which must be respected."¹⁸ There was a serious division in the Council, and after a short adjournment of three quarters of an hour it was decided not to make the request for maintenance of the *status quo*, but simply to request the President of the Mixed Commission to deal without delay with petitions pending before him on the same subject-matter.¹⁹

Such cases are, however, rare and in general the request for maintenance of the *status quo* is made and granted with equal readiness.

Where the information at the disposal of the Council is in some respect inadequate the Rapporteur requests the government concerned or the petitioner for further information.²⁰ The request to the government may be a straightforward request for new facts, or it may be more subtly

¹⁷ O.J., 1928, p. 1674.

¹⁸ *Id.*, p. 1678.

¹⁹ *Ibid.*

²⁰ For the channels of communication between the petitioner and the Council, see *ante*, p. 135.

motivated. The latter type of request is interesting and merits some consideration. Often, when the question involved is not one of great importance, a request to the government to supply information as to the measures it has taken to meet a palpable violation of the Convention, will receive the reply that suitable measures have been taken, or are being taken. As frequently as not, this means that the government has yielded a point without loss of dignity. Thus in the case of M. Lubos, who petitioned the Council under Article 147 on November 8, 1928, two allegations were made against the Polish Government.²¹ In the first place, it was alleged that the petitioner, a former employee of the Spolka Bracka Tarnowsky Gory, a Mines Insurance Association, had been dismissed for refusing to withdraw his children from the minority school, and that the concern was a public concern for whose acts the Polish Government was answerable. In the second place, it was alleged that improper pressure had been put upon the petitioner to the same end by the school administrative authority.

At the Council meeting of March 9, 1929, the Rapporteur, M. Adatci, after summarizing the contents of the petition, and of the government's observations of February 9, 1929, noted the government's reply to the allegations in the petition. This was to the effect that the dismissal was by a private concern not subject to governmental control; and that there had been no such pressure by the school authorities as was alleged. The report left the first question open, impliedly inviting a further communication on the subject. As to the second, the Rapporteur was "glad to state that the Polish Government has informed him of its intention to make an inquiry into this matter without delay, and to communicate the results for the information of the Council."²²

At the meeting of September 25, 1929, a new petition

²¹ O.J., 1929, p. 555.

²² *Id.*, pp. 554-6.

under Article 147 relating to M. Lubos was on the agenda of the Council. It had been submitted by the Deutsche Volksbund on his behalf on March 26, 1929, and had been communicated to the Polish Government which submitted its views on this as well as the earlier petition in letters of June 17, and September 13, 1929. As to the Spolka Bracka, the government urged that the petitioner had been dismissed for refusal to take a new position offered to him, and not for the cause alleged. As to the school officials the Polish Government "informed" the Council that measures had been taken against the school officials concerned.²³ The Council "noted" the information as to measures taken against the school officials, and again left open its decision concerning the Spolka Bracka since it involved the difficult question of the public or private nature of that concern.

This same question was involved in a petition submitted by the Deutsche Volksbund on March 30, 1929, alleging that deliberate measures were being taken to Polonize, that is, to expel the German elements from the Spolka Bracka. This petition was considered at the Council meeting of September 25.²⁴ The Council decided to postpone its consideration until its session in January, 1930, "it being certain that it would then have at its disposal the information necessary for it to pronounce upon the question."²⁵ Although in form a request for information this was really an invitation to the Polish Government to take disciplinary measures in the interval. By a letter of January 12, 1930, considered by the Council at its meeting of January 15, 1930, the Polish Government "informed" the Council that "obviously the competent authorities have never approved of any acts which actually cause—or might even have the appearance of causing—trouble or friction between different racial groups."

²³ O.J., 1929, p. 1689; *id.*, 1930, p. 275.

²⁵ O.J., 1930, p. 103.

²⁴ O.J., 1929, p. 1687.

The Council was further "informed" that Dr. Benisz, Counsellor of Mines and formerly Government Commissioner of the Spolka Bracka, had been reprimanded and admonished, it being pointed out to him that any differential treatment of members or officials of the Spolka Bracka, whether they belonged to the majority or minority was inadmissible.²⁶ The Council "took note" of the "information" and declared that the step taken by the Polish Government constituted a very satisfactory solution of the question.²⁷

Such requests for information and taking note of information indicating that the government has met the demands of the petitioner, is a subtle form of persuasion practiced with much skill by the Council. Other examples are easy to find. A petition under Article 147 from the Związek Polaków (Association of Poles in Germany) dated June 4, 1929, alleged *inter alia* that secret instructions had been issued by the Oberpräsident of Upper Silesia on April 9, 1925, informing officials dealing with the distribution of land that "they would be personally responsible" if members of the Polish minority should acquire allotments of land.²⁸ The observations of the German Government dated September 4, 1929, declared that these instructions "had been issued during the absence of the Oberpräsident, and that they had been immediately revoked as soon as he returned." The Council took note of this information.

This form of action is particularly suitable where the minority complains that discrimination is based on decrees or laws, which are in fact capable of being interpreted as either conforming to or infringing the provisions of the Geneva Convention. Thus, in the last mentioned case, the minority complained of a decree of the Minister of Social Welfare of March 6, 1927, which was certainly capable of

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ O.J., 1930, p. 104.

bearing a construction violating the Geneva Convention.³⁰ The government's observations explained that it was not applied in violation of the provisions of the Convention, but that "in order to avoid any possibility of doubt in future as to the scrupulous attention paid to these provisions," the Oberpräsident had been instructed to alter the form of declaration required by the decree of which the minority complained.³⁰

Another good instance of this is the case concerning school declarations in Poland.³¹ The Deutsche Volksbund in a petition under Article 147 dated June 1, 1928, complained that the following declaration had to be made by parents wishing to send their children to the minority schools:

"I declare on my conscience and on my own responsibility that the above child speaks only Polish German."

The Volksbund explained that this did not apparently recognize, as possibly belonging to the minority, a child who spoke both languages. The Polish Government, in its observations, interpreted it to mean that "the above child speaks only Polish" as one clause, and "the above child speaks German" as the other; the point being that inability to speak German would be a bar to entry to the minority school. It was clear, however, that the prejudicial interpretation had formerly been adopted by the school authorities. The Council noted with satisfaction the new interpretation, and expressed the hope that the government might find it possible to make the terms employed in the form still more definite.³²

A certain number of cases, therefore, are satisfactorily settled in the stage of Investigation. The proportion of such

³⁰ *Id.*, p. 105.

³⁰ *Ibid.*

³¹ O.J., 1929, pp. 63-5.

³² *Id.*, p. 65. The petitioners also complained that the declarants were asked who were their employers. The Polish Government "explained" that this was general for charitable relief statistics, but that no penalty attached for failure to answer. The Council noted this pertinent explanation also. *Id.*, p. 64.

settlements tends for a number of reasons to be greater in Upper Silesian cases than in those under the general minorities treaties. In the first place, the elaborate preliminary procedure set up under the general treaties, prevents cases reaching the Council unless the issue is one upon which the state concerned refuses any substantial concession. Under Article 147 of the Convention, on the other hand, a petition may reach the agenda of the Council without the state concerned even having had its attention drawn with any force to the complaint. Of course, this has been rendered less important by the restrictions imposed on the use of Article 147 in 1929,³³ but it must still be borne in mind, if the summary way in which many Upper Silesian cases are disposed of is to be explained. In the second place, a petition under the general procedure which is not settled during the preliminary stages, is almost invariably of very grave importance, a fact partly due to the very general terms in which substantive minority rights are laid down in the general treaties. On the other hand, the substantive rights of minority persons are so minutely described in the Geneva Convention that a fair proportion of the petitions to the Council, both under Articles 147 and 149, deal with matters of small importance. The governments find it easier in such cases to yield in a graceful way and avoid the publicity of prolonged Council discussion.³⁴

Another point of contrast between the Upper Silesian and the general procedure is worthy of notice here. The process of Investigation is, as a general rule, much shorter in the former than in the latter, even when the case is not disposed of at this stage. This again is due in part to the simple nature of many of the violations of which complaint is made,

³³ See *ante*, pp. 141 *et seq.*

³⁴ For examples of this summary treatment of cases under the Convention see O.J., 1928, p. 925; *id.*, p. 924; 1929, p. 554; *id.*, p. 557; *id.*, p. 558; *id.*, p. 559; *id.*, p. 555; *id.*, p. 1884; *id.*, 1930, p. 104.

a simplicity arising out of the detailed character of the Convention. It is also, however, partly due to the fact that in the case of "appeals" under Article 149 against the refusal of the authorities to give effect to the opinion of the President of the Mixed Commission, all the issues of fact and law have already been thoroughly explored by a competent official on the spot. His conclusions are embodied in the opinion, which is in the hands of the Council, along with the other relevant documents. Though the Council sometimes reopens the conclusions of the President on the issues of law, no case has been found where it has reopened his findings of fact.

II. PERSUASION

In cases which raise isolated and unimportant questions, the process of persuasion rarely comes into play, for the government concerned gladly makes concessions to avoid further controversy. On the other hand, where the case in itself involves grave interests, or where it is a test case which involves the maintenance or reversal of a line of governmental policy, a settlement is preceded by negotiations always complicated and sometimes painful to all the parties concerned.

The stage of Investigation comes to an end when the state of facts is ascertained. Discussion of the legal questions raised by the facts falls into the stage of Persuasion. The reason for this is not difficult to see. The whole tendency of the Council's action is towards such a solution of the difficulties as will not require the imputation of fault. Once the Council proceeds to consider whether the action of a government is in violation of the Convention, it has entered upon a path which leads almost inevitably to the imputation of fault. The process of persuasion consists of impressing this fact upon the mind of the government with progressively in-

creasing emphasis, whilst giving it frequent opportunities to make adequate concessions before the end of the path is reached.

Consolidation of cases. The same legal question may be involved in a number of cases pending before the Council. This occurs very naturally in just that type of case which challenges a definite governmental policy with regard to the minority. The first step in the process of Persuasion is to consolidate such cases for the purposes of negotiation between the government and the Council.

Thus, in 1928, the Deutsche Volksbund petitioned the Council under Article 147 of the Convention,⁸⁶ alleging that the Polish Government had refused, in violation of the Convention, to open a minority school at Biertultowy, when the requisite number of applications from the minority had been secured. The matter had been before the President of the Mixed Commission, whose opinion favored the petitioners,⁸⁷ and an appeal under Article 149 had been submitted to the Polish Government for transmission to the Council. The Polish Government delayed the transmission in view of a pending decision of the Permanent Court of International Justice on a relevant legal question,⁸⁷ and it was this delay which caused the Volksbund to petition directly under Article 147. At the Council meeting of March 7, 1928,⁸⁸ the Council postponed the case to its next session, impressing upon the Polish Government the importance of the prompt transmission of appeals.

Before the next meeting the government had forwarded the appeal, along with its observations dated May 21, 1928, and the opinion of the President of the Mixed Commission.⁸⁹

⁸⁶ O.J., 1928, p. 101.

⁸⁷ Opinion of Oct. 10, 1926, Warderholt, *op. cit.*, p. 275.

⁸⁷ See *Publications of the Permanent Court*, Series A, No. 15, Judgment No. 12.

⁸⁸ O.J., 1928, p. 101.

⁸⁹ *Id.*, p. 881.

The standpoint of the Polish Government was that many of the applications for the opening of the school at Biertultowy were void since the children concerned did not in fact speak German. It drew support from the Council resolution of March 12, 1927, which declared it undesirable for children speaking only German to be admitted to the minority schools, and from certain passages of the judgment of the Permanent Court of April 26, 1928.⁴⁰ The Rapporteur, M. Urrutia, at the meeting of June 5, 1928, concluded his report as follows:

"In view of the seriousness of the question and the importance of the resolution to be taken by the Council, I think that for the moment the Council should request two of my colleagues to help me in preparing the final report. . . . My colleagues will have seen that the same question of principle arises in the cases of the schools at Gieraltowice and Stara Wies. . . . Accordingly these cases too will be settled by the resolution to be adopted in regard to the school at Biertultowy."

Other examples of the consolidation of cases involving similar important legal questions may be seen in the treatment together of the cases concerning M. Lubos, and the Polonization of the Spolka Bracka in 1930, which has already been described,⁴¹ and in the cases concerning primary German minority schools in the Voivodie of Silesia⁴² with which was consolidated the case concerning minority schools at Wilcza-Gorna, Laziska-Gorna and Bytkow.⁴³

The committee of jurists. When it is impossible for the Rapporteur, with the assistance of the Minorities Section, to reach an agreement with the state concerned as to the legal rights involved, the Council generally proceeds to obtain the opinion of a committee of jurists appointed from among the legal advisors of its members.

⁴⁰ Judgment No. 12.

⁴¹ O.J., 1930, pp. 103 *et seq.*, and *ante*, p. 73.

⁴² O.J., 1927, p. 376.

⁴³ *Id.*, pp. 403, 593.

The opinion of such a committee may occasionally be taken when there is real doubt as to the legal situation. Thus in the case concerning the closing of certain minority schools, raised by a petition from the Deutsche Volksbund, dated August 8, 1928,⁴⁴ the Rapporteur seemed to consider the questions of interpretation involved to be so doubtful as not to justify even the request for maintenance of the *status quo*.⁴⁵ He asked the Council to appoint a committee of two or three jurists to collaborate with him in his study, since "as a preliminary to his report he must first of all be able to form an opinion based on solid legal grounds."⁴⁶ This question was settled before the next session as a result of the mediation of the President of the Mixed Commission before whom a petition on the same matter had been pending.⁴⁷ The parties agreed upon a settlement proposed by the President "while maintaining their respective legal standpoints."

Generally, however, it must be admitted that the primary aim in obtaining the opinion of jurists is to persuade the government to a course of action, rather than to solve serious legal problems. Both this object, and its frequent achievement, are well illustrated in the case concerning the non-renewal of the contracts of thirty-two doctors by the management of the Spolka Bracka at Tarnowsky-Gory, an organization whose operation has occasioned many minority complaints.⁴⁸ The Deutsche Volksbund appealed under Article 149 against the refusal of the Polish authorities to carry out the opinion of the President of the Mixed Commission of June 30, 1929, which was to the effect that the doctors ought to be reinstated.⁴⁹ The Rapporteur told the Council that no reply could be made to the question involved "unless a number of legal points are cleared up. On these

⁴⁴ See *ante*, pp. 115, 142; O.J., 1928, p. 1674.

⁴⁵ *Ibid.* Cf. also O.J., 1932, p. 1941.

⁴⁶ O.J., 1930, p. 550. See *ante*, pp. 73 *et seq.*

⁴⁷ Warderholt, *op. cit.*, p. 440.

⁴⁸ *Id.*, p. 1678.

⁴⁹ O.J., 1929, p. 65.

points highly qualified opinions differ, and I have reason to believe that at the present time the Council would be unable to reach a unanimous decision." He therefore proposed the appointment of a committee consisting of MM. Malkin, Pilotti, and Botella to study the legal questions.⁵⁰ The meeting of this committee was fixed for June 10, 1930. A few days prior to this date the Polish Government informed the committee by a letter of June 4, 1930, that "while entirely maintaining its previous view, it had decided for conciliatory reasons to accept the opinion given on June 30, 1929, by the President of the Mixed Commission."⁵¹ The committee therefore never sat, and the Council at its September session closed its examination of the question.⁵²

The legal opinion, however, does not always produce so expeditious a solution. In a petition under Article 149, dated June 1, 1928, the Deutsche Volksbund complained, *inter alia*, that, contrary to the provisions of the Convention, members of the minority were compelled to attend personally when entering their children for the minority schools; and, further, that Enrolment Committees had been set up before which they had to appear, and that these Committees were preponderantly Polish.⁵³ At the meeting of December 15, 1928, the Rapporteur asked the Council to appoint a committee of jurists, to be designated by the President, to assist him in studying these questions.⁵⁴ MM. Buero (Legal Advisor of the League of Nations Secretariat), Malkin (British Foreign Office), and Professor Burckhardt of the University of Berne, were designated, and met in Paris on February 15 and 16, 1929. Their conclusions,⁵⁵ reported to the Council on March 9, 1929, were unfavorable to the Polish position on the first point, and favorable on the second. The jurists also found that under Article 131 of the

⁵⁰ *Ibid.*

⁵¹ O.J., 1930, p. 1309.

⁵² *Ibid.*

⁵³ O.J., 1929, pp. 62-63.

⁵⁴ *Ibid.*

⁵⁵ O.J., 1929, pp. 554-5.

Geneva Convention, as interpreted by the Permanent Court in Judgment No. 12, of April 26, 1928, even where declarations regarding the language spoken by children were not in conformity with the facts, and the children consequently not able to benefit from instruction in the minority schools, nevertheless they could not be excluded from such schools. They added a suggestion that this evil might be remedied by direct negotiations between the two governments.⁶⁶

These negotiations were agreed to by Germany and Poland, and the Council therefore postponed further consideration of the matter. These negotiations took place in Paris from March 25, to April 6, 1929, under the chairmanship of the Rapporteur, M. Adatci, assisted by President Calonder.⁶⁷ Although important procedural reforms were agreed upon,⁶⁸ no agreement was achieved on the points at issue in the case under discussion. Discussion of the case was only resumed by the Council at its session in September, 1930.⁶⁹ At the meeting of September 9, 1930, the Rapporteur, M. Yoshizawa, proposed that the Council should take note of that part of the jurists' report which recognized that the setting up of Enrolment Committees was not in itself contrary to the Geneva Convention. As to the jurists' view that compulsory personal appearance of parents entering children for minority schools did infringe the Convention, he was able to inform the Council that the Polish Government had decided not to enforce such a rule in the future.⁷⁰ Here again, therefore, the government yielded to the opinion of the jurists, though only after long hesitation.⁷¹

The advisory opinion of the Permanent Court. Consulta-

⁶⁶ *Id.*, p. 555.

⁶⁷ See Document C.272.1929, I. O.J., 1929, p. 1105.

⁶⁸ See *ante*, pp. 89, 144 *et seq.* ⁶⁹ O.J., 1930, p. 1310. ⁷⁰ *Id.*, p. 1311.

⁷¹ See also the case concerning facilities for vocational training of the Polish minority in German Upper Silesia. O.J., 1932, p. 1941; *id.*, 1933, p. 242.

tion of a committee of jurists is a convenient halfway house to the request for an advisory opinion of the Permanent Court. It may be obtained more quickly, it results in a much smaller degree of publicity than an advisory opinion, but it serves exactly similar functions. Both are primarily instruments of persuasion, or from another angle, incentives to coöperation: only secondarily are they considered as a means of reaching a definitive decision of the legal questions in dispute. The general procedure and the Upper Silesian procedure do not differ in this respect.⁶²

An interesting example of the use of the advisory opinion may be seen in the case concerning the non-admission of sixty children to German minority schools in the school year 1929-30. In order to be understood, the issues of this case must be taken up in an earlier one of 1927. The President of the Mixed Commission rendered an opinion on December 15, 1926,⁶³ on a petition of the Deutsche Volksbund. This opinion held in effect that children whose parents declared under Article 131 that they spoke German, could not be excluded from the minority schools merely because the Polish authorities ascertained in fact that the declarations were false. The Polish authorities refused to carry out this opinion, and the Volksbund petitioned the Council under Article 149.

At the Council meeting of March 8, 1927,⁶⁴ the Rapporteur, M. Urrutia, asked that "in view of the great importance" of the question two other members of the Council should join with him in preparing the final report. The Italian and Netherlands representatives were appointed. The question was indeed an important one, affecting as it did, the whole theory of minority identity,⁶⁵ and both the German and Polish representatives had most pronounced

⁶² See Stone, *op. cit.*, pp. 212-5.

⁶³ For English translation see O.J., 1927, pp. 489 *et seq.*

⁶⁴ *Id.*, p. 377.

⁶⁵ See *ante*, pp. 37 *et seq.*

views on the subject. The decision taken, which will later be examined more fully, expressly reserved the question of principle, and provided for a system of enquiry into the concrete cases appearing doubtful to the Polish authorities.⁶⁶ Poland and Germany agreed to this solution, Germany, however, reserving her right "to press for a fundamental final decision" if the legal position should again be called in question. The enquiry was to be made by President Calonder, assisted by a Swiss national, expert in educational matters: M. Maurer was later appointed as such.

The sixty children (often called "the Maurer children") whose intellectual heritage was the subject of dispute in 1930, had been examined by M. Maurer between May 15, 1927, and February 11, 1928, and found not to have sufficient knowledge of German to profit from attendance at the minority schools. The Deutsche Volksbund petitioned the President of the Mixed Commission in 1929 alleging that the exclusion of these children from the minority schools in the school year 1929-30 was an infraction of the Convention. The President in an opinion of February 10, 1930,⁶⁷ held that the exclusion of these children was no longer justified, the "Maurer test" not having an indefinite force but only an immediate one, and not modifying the provisions of Article 131 of the Convention.⁶⁸ On the refusal of the Polish authorities to give effect to the President's opinion, the Volksbund appealed to the Council under Article 149.⁶⁹ In its observations of August 28, 1930,⁷⁰ the Polish Government insisted that the Council's resolution of December 8, 1927, was still in force and ought to be maintained, since it

⁶⁶ O.J., 1927, pp. 400 *et seq.* On the nature of this decision of the Council see *Publications of the Permanent Court*, Series A, No. 15, p. 30.

⁶⁷ O.J., 1930, pp. 1642 *et seq.*

⁶⁸ The President laid great stress upon the interpretation placed upon Article 131 by Judgment No. 12 of the Permanent Court in the dispute submitted to it by the German Government. See *ante*, pp. 37 *et seq.*

⁶⁹ O.J., 1930, p. 1640.

⁷⁰ *Id.*, p. 1641.

remedied a serious defect in the Convention and was not in conflict with it.

At the Council meeting ⁷¹ the Rapporteur, M. Yoshizawa, pointed out the serious legal difficulties involved and concluded:

"The study I have made of the question and the opinions I have obtained from several members of the Council have led me to the conclusion that it can only be satisfactorily settled on the basis of an advisory opinion of the Permanent Court, covering, not only the concrete question dealt with in the appeal of the Deutsche Volksbund, but also certain aspects of the question of principle of the right of entry to the minority schools of Upper Silesia which have not yet been satisfactorily settled." ⁷²

He proposed postponement until the next session, pending which he would endeavor, in agreement with the Polish and German Governments, to draft the questions to be submitted to the Court. The proposal was adopted.

The Rapporteur's ambition to settle other questions than the one in immediate issue was doomed to disappointment. He reported at the session of January, 1931,⁷³ that "as a result of conversations . . . with the representatives of these governments it has been judged preferable to keep for the moment to the question of the sixty children." A resolution was adopted without discussion requesting an opinion on the following question:

"Can the children who were excluded from the German minority schools on the basis of the language tests provided for in the Council's resolution of March 12, 1927, be now, by reason of this circumstance, refused access to these schools?"

The Court's opinion of May 15, 1931, answered this question in the negative, eleven judges concurring and one dis-

⁷¹ O.J., 1930, p. 1521.

⁷² *Id.*, p. 1522.

⁷³ O.J., 1931, p. 228.

senting.⁷⁴ At the Council meeting of May 23, 1931,⁷⁵ the Rapporteur proposed that the Council should "decide that the sixty children to whom the appeal relates should be transferred immediately to the minority schools to which their transfer has been requested." A resolution so peremptory is not often adopted in minorities questions.⁷⁶ The Polish representative, M. Sokal, "did not doubt that the Polish Government would, as usual, accept the opinion of the Supreme International Tribunal," but he asked for postponement so that it might have time to study the reasoning of the Court. This was agreed to by the Council.

At the next discussion, on September 19, 1931,⁷⁷ the Polish representative, M. Zaleski, informed the Council that the Polish Government had complied with the opinion, and had informed the parents of the children mentioned in the petition that they would be admitted to the minority schools without further formality. The German representative, Dr. Curtius, suggested blandly that he was glad to think that the penal measures taken against parents for refusing to send their children to Polish schools would be cancelled, but M. Zaleski "could make no definite statement on Dr. Curtius' suggestion." The report proposed at the May session was then adopted.

With the aid of an advisory opinion the Council had solved a question of first-rate political importance, in the face of a strongly rooted policy of the Polish Government. One may be permitted to doubt whether the Rapporteur or the Council had any doubts as to the merits of the legal issues raised by the Deutsche Volksbund, especially in view

⁷⁴ *Publications of the Permanent Court*, Series A/B, No. 40.

⁷⁵ O.J., 1931, 1151.

⁷⁶ Its tone is perhaps explained by the fact that the preceding item on the agenda had been the election disorders case, and that the Polish representative, M. Sokal, had been somewhat lacking in tact in his pronouncements thereon. See *id.*, p. 1150, and *post*, p. 195.

⁷⁷ O.J., 1931, p. 2263.

of the interpretation given in Judgment No. 12 to Article 131 of the Geneva Convention. The object of going to the Court was to obtain an advisory opinion, with which the Polish Government might be confronted in a public session of the Council. It was but another step in the process of persuasion.⁷⁸

The committee of the Council. In general the direction of the Council's action, and of the informal negotiations with the state concerned, falls almost entirely upon the Rapporteur for minorities questions. The only other Council representative who is constantly active in these questions is the other party to the Geneva Convention, who, unfortunately perhaps, generally feels that the deep interest of his state in its former nationals will not allow him to keep silent. I say unfortunately not because this action is to be deprecated, but rather because the *necessity* for it is to be deprecated. More will be said of this at a later stage. In many cases, however, owing to the gravity of a complaint, or to its wide importance, the Rapporteur feels that a joint report of two colleagues, together with himself, would carry more weight and be more calculated to secure the coöperation of the state concerned. Thus when the cases concerning admissions to minority schools in 1927 were consolidated,⁷⁹ the Rapporteur requested the Council, in view of the wide importance of the matter, to designate two other members to assist him. The Italian and Netherlands representatives were designated, and the committee thus formed succeeded in obtaining the agreement of Poland and Germany to the system of enquiries into the language spoken by the children, which eventually led to the advisory opinion in the sixty

⁷⁸ For a discussion of advisory opinions in minorities questions from the point of view of the jurisdiction of the Court see Feinberg, *op. cit.*, pp. 166-198.

⁷⁹ O.J., 1927, p. 376. For documents including the opinion of the President of the Mixed Commission see *id.*, pp. 481-505.

children case. The difference between the work of a Council committee of this kind, and that of jurists, is indicated by a passage in the report of the committee in the above cases.⁸⁰ The Rapporteur there stated "that the proposals which he had just submitted to the Council in his own name and in that of his two colleagues, . . . was inspired by their desire to find a practical solution of this extremely urgent matter, *without attempting to deal with certain legal questions.*"⁸¹

The committee had a most delicate task to perform, "mainly of a conciliatory kind,"⁸² and a glance at the speeches in the Council indicates that the difficulty had been to conciliate Germany, and not Poland, against whom the petition was brought.⁸³ To put the matter in another way, the committee was so essentially a political body that its principal task was to persuade Germany not to insist upon the legal rights of the petitioners concerned. It has been seen that the success was only temporary, and that a judgment and an advisory opinion of the Permanent Court⁸⁴ were destined to pass upon the legal situation.

A somewhat similar process may be seen in the treatment of the consolidated cases concerning the schools at Biertulow, Gieraltowice and Stara Wies in 1928.⁸⁵ It will be recalled that the issue in these cases was whether the Polish Government was justified in refusing to open minority schools when the requisite number of applications were made. The government urged that so many of the applications falsely described the mother-tongue of the children, that the requisite number of valid applications were not forthcoming. The discussion of the question was postponed pending the decision of the Permanent Court in Judgment No. 12 on the interpretation of Article 131 of the Geneva

⁸⁰ *Id.*, pp. 400-3. ⁸¹ *Id.*, p. 402. ⁸² *Id.*, p. 403.

⁸³ See the speech of Dr. Stresemann, *id.*, p. 402.

⁸⁴ *Ante*, pp. 122, 178.

⁸⁵ O.J., 1928, pp. 101, 881.

Convention, a decision which was not favorable to the Polish thesis.

At the meeting of June 5, 1928, M. Urrutia, Rapporteur, noted the decision of the Permanent Court, and after resuming the facts, requested the Council to appoint two of his colleagues to help him in preparing his final report, in view of "the importance of the resolution to be taken."⁸⁶ M. Scialoja (Italy), and M. Beerlaerts van Blokland (Netherlands) were appointed to the committee. The report of this committee⁸⁷ based itself upon the decision of the Permanent Court, and though the fact is admirably concealed behind verbal qualifications, it disposed of the Polish thesis by stating that "the declarations . . . may not be made subject to any verification, dispute, pressure, or hindrance whatever on behalf of the Polish authorities." The Polish representative regretted that the Council would not continue for the present cases the language tests instituted in the last-mentioned cases. He accepted the "invitation" of the Council to inform the persons concerned that they might submit new requests and declarations to the Polish authorities, in considering which the principles laid down in the resolution would be applied. Here again the function of the Council committee was to secure a conciliatory agreement between Poland and Germany, but the position was interestingly reversed. The Council could not ignore the decision and opinion of the Permanent Court, and its task was to reconcile the Polish representative to the recognition of the legal situation. It succeeded here as it had done in 1927.

Indeed, both in the general and in the Upper Silesian procedures the Council committee is a powerful persuasive instrument.⁸⁸ Apart from the fact that it invariably includes representatives of at least one or more Great Powers, its

⁸⁶ *Id.*, p. 881.

⁸⁷ *Id.*, p. 945.

⁸⁸ Cf. Stone, *op. cit.*, pp. 215-24.

informal manner of working adds to its effectiveness. There are no rules as to its meetings, but naturally the state concerned is generally invited to attend. It must make its choice between dignified concession to the wishes of the committee, or renewed public discussions of the question before the full Council, and dislike of the latter alternative is no mean incentive to a coöperative spirit. In no instance has a committee appointed in an Upper Silesian case failed to bring about a settlement.⁸⁹

III. SETTLEMENT

One central principle can be seen operative throughout the action of the Council in Upper Silesian cases. It is this. Germano-Polish relations must, if possible, be kept amicable. Whether this principle is to be deprecated or commended, is a matter open for debate, but the *fact* of its importance is unescapable. Solutions based on a frank compromise are therefore not infrequent. The most striking example is in the 1927 case concerning the admission of children to minority schools in Polish Upper Silesia, where the Council openly declared its unwillingness to touch the legal question, and adopted a purely political expedient.⁹⁰ Other examples may be seen in the case concerning the German minority school at Brzezinka in 1928,⁹¹ and that concerning M. Lubos.⁹²

Where, as in the question of language declarations, so recurrent throughout the cases up to 1931, the divergence of views between the governments was very serious, the Council attempted to get them to negotiate a new agreement to replace the provisions of the Convention which seemed to

⁸⁹ A Committee appointed to deal with a petition from the Association of Poles in Germany (Zwiazek Polakow) in 1926 (O.J., 1926, p. 519), changed its composition twice at the September session (O.J., 1926, pp. 1218, 1418) and has never since been heard of by the present writer.

⁹⁰ *Ante*, pp. 180-1., O.J., 1927, pp. 377, 400-2.

⁹¹ O.J., 1929, p. 67. ⁹² O.J., 1929, p. 1689; *id.*, 1930, p. 103.

be working badly. The Polish plea that it could not allow children to be sent to schools of which they could not understand the language of instruction, was met by the German insistence not only upon the letter of the Convention, but upon the danger of grave pressure being exerted on the minority, if verification of declarations were to be admitted. The direct negotiations sponsored by the Council in 1929 failed, and on the examination being resumed by the Council the letter of the Convention was maintained.⁹³

Benevolent wishes are occasionally to be found where a decision might have been more appropriate. For instance, in a case in 1928 concerning the minority school in Nowa Wies,⁹⁴ the minority complained *inter alia* of a discriminatory restriction on the accommodation supplied to it. The Council confined itself to "expressing the conviction that an equitable interpretation of the Geneva Convention demands that such restrictions on the normal operation of the schools, owing to local conditions, should be borne in an equal measure by majority and minority schools."⁹⁵

On the other hand, this important political element once acknowledged, it must equally be asserted that, on the whole, the action of the Council has been remarkably equitable and effective. In many cases it has pointed out a violation of minority rights, and secured compliance with its decision. Worthy of mention here are the following cases:

1. Concerning attacks on the Polish minority in German Upper Silesia (1928).⁹⁶
2. Concerning the public security in Polish Upper Silesia (1928).⁹⁷
3. Concerning the use of the Polish language in Polish minority schools (1928).⁹⁸

⁹³ *Ante*, pp. 174-5.

⁹⁴ O.J., 1929, p. 57.

⁹⁵ Cf. *id.*, p. 61, concerning the enforcement of time-limits for entries to minority schools.

⁹⁶ O.J., 1928, p. 925.

⁹⁷ *Id.*, pp. 924, 1489.

⁹⁸ O.J., 1929, p. 557.

4. Concerning incidents in connection with a performance of the opera "Halka" in German Upper Silesia (1929).⁹⁹
5. Concerning the minority school at Koszecin in Polish Upper Silesia (1929).¹⁰⁰
6. Concerning penalties and costs imposed in Polish Upper Silesia for failure to send children to the majority schools (1929).¹⁰¹
7. Concerning public security in German Upper Silesia (1929).¹⁰²
8. Concerning personal appearance before school enrolment committees in Polish Upper Silesia (1929).¹⁰³
9. Concerning the right of members of the Polish minority in Germany to acquire land (1930).¹⁰⁴
10. Concerning the Polonization of the Spolka Bracka in Polish Upper Silesia (1930).¹⁰⁵
11. Concerning the personal situation of Otto Ochmann in Polish Upper Silesia (1930).¹⁰⁶
12. Concerning administrative and judicial measures taken in Polish Upper Silesia against Pauline Sock (1930).¹⁰⁷
13. Concerning the case of Marthe Berger in Polish Upper Silesia (1931).¹⁰⁸
14. Concerning the non-admission of sixty children to the minority schools in Polish Upper Silesia (1931).¹⁰⁹

There have naturally also been many cases in which the petition or appeal have been found baseless either in point of fact or in point of law. Among them may be mentioned the following cases:

1. Concerning the use of the German language together with the minority language in the registers of minority schools in Polish Upper Silesia (1928).¹¹⁰
2. Concerning the secondary minority school at Krolewska-Huta in Polish Upper Silesia (1928).¹¹¹

⁹⁹ *Id.*, p. 1690.

¹⁰⁰ *Id.*, p. 1684.

¹⁰¹ *Id.*, p. 1684.

¹⁰² *Id.*, p. 1686.

¹⁰³ O.J., 1930, p. 1310.

¹⁰⁴ *Id.*, pp. 104 *et seq.*

¹⁰⁵ *Id.*, pp. 103 *et seq.*

¹⁰⁶ *Id.*, p. 1310.

¹⁰⁷ O.J., 1931, p. 227.

¹⁰⁸ *Id.*, p. 230.

¹⁰⁹ *Id.*, p. 2263.

¹¹⁰ O.J., 1928, p. 951 and cf. p. 922.

¹¹¹ *Id.*, p. 947.

(In both the above cases the Council held that the right alleged to be infringed was not granted by the Convention, and reversed the opinions of the President of the Mixed Commission to the opposite effect. See *post*, pp. 187-8.

3. Concerning the minority school at Giszowiec in Polish Upper Silesia (1928).¹¹²
4. Concerning the personal situation of Norbet Lubos in Polish Upper Silesia.¹¹³
5. Concerning alleged misconduct of the police officer Krosnik in German Upper Silesia (1929).¹¹⁴
6. Concerning the personal situation of Alfons Mrozek in Polish Upper Silesia (1929).¹¹⁵
7. Concerning the closing date for entries to minority schools in Polish Upper Silesia.¹¹⁶
8. Concerning the personal situation of Johann Wiesner in Polish Upper Silesia (1931).¹¹⁷

The Council and the President of the Mixed Commission.

In a sense the motive behind the work both of the Council and of the Mixed Commission is conciliatory. Both avoid, save in the last resort, rendering a formal decision, and placing the state concerned in the position of having to reply "yes" or "no." This is the declared policy of the President of the Mixed Commission, and it is implicit in the whole method of proceeding of the Council.

Nevertheless there is a difference between the attitudes of these two organs. The President is intent upon reconciling the minority complainant with the authorities of his state, on the basis of recognition of his legal rights, whilst, in general, the Council's attention is fixed upon the relations between Poland and Germany and between each of these and the Council, and only incidentally upon the interests of the minority. Generally speaking this difference does not lead to any difference in results, since the solicitude of the

¹¹² O.J., 1929, p. 59.

¹¹³ *Id.*, p. 1689.

¹¹⁴ *Id.*, p. 1029.

¹¹⁵ *Id.*, p. 1885.

¹¹⁶ *Id.*, p. 61.

¹¹⁷ O.J., 1931, p. 228.

other party to the Geneva Convention on behalf of the minority complainant, errs rather on the side of excess than otherwise. A settlement, therefore, which will satisfy the other party to the Convention is generally one which takes into account adequately the interests of the minority.

In a few cases, however, the different attitudes of the President of the Mixed Commission and of the Council may lead to different results. This can well be seen in the attitude taken by the Council to those opinions of the President in which he has gone beyond the express provisions of the Convention in order to achieve a fair result.

On August 3, 1926, the Deutsche Volksbund submitted a petition to the President of the Mixed Commission complaining that registers and other documents used in German minority schools were only printed in Polish, that they ought also to have a German text, and that entries ought to be allowed in German. In his opinion of October 10, 1927¹¹⁸ the President, though admitting that the Germano-Polish Convention contained no express provisions on this matter, said that this fact of itself did not justify the rejection of claims in connection therewith, because the Convention could not settle all details of school administration. From the general recognition of the right to use German in the German minority schools, and from the fact that teachers in such schools need not, under the Convention, know the official language, he concluded that the petitioner's request was justified.

When this opinion was communicated to the Polish authorities no action was taken and no comment made, though the petitioner was later informed that the government did not accept the opinion.¹¹⁹ The Volksbund thereupon petitioned the Council under Article 147.¹²⁰ At the Council

¹¹⁸ The opinion is contained in Document C.221.1928. I; Warderholt, *op. cit.*, p. 357.

¹¹⁹ O.J., 1928, p. 950.

¹²⁰ *Id.*, pp. 950 *et seq.*

meeting of June 9, 1928, the Rapporteur, M. Urrutia, after an elaborate review of the facts, concluded:

"Cases will doubtless arise in which, in spite of the absence of any precise provision, the Polish Government will find it desirable, acting in a spirit of equity . . . to take measures which have not been provided for in the Convention, since the latter could not foresee all the possible practical difficulties. Since, however, there is no definite provision applicable to the present case, I feel that I should propose that the Council should refrain from taking any action in the matter and rely upon the goodwill of the Polish Government to find a practical solution to the question."

The Polish representative assured the Council that it "might rely upon the complete goodwill of the Polish Government." The representative of Germany made no comment.¹²¹

Similarly in the case concerning the secondary minority school at Krolewska-Huta the President of the Mixed Commission rendered an opinion in favor of the petitioner on October 10, 1927.¹²² The case came before the Council at the same session as that last described, and the Council adopted the report of M. Urrutia which concluded:

"The Articles of the Convention relating to the protection of minorities do not contain . . . any stipulations which would enable the Council to take a decision regarding the legal provisions on which the composition of the teaching staff of the Krolewska-Huta secondary school should be based."¹²³

The German representative did not object to the adoption of the report.

Such cases, however, where the opinion of the President is expressly reversed by the Council, are comparatively rare. Generally the opinion is taken tacitly or expressly as the basis of the settlement by the Council. Examples of express

¹²¹ *Id.*, p. 951.

¹²² The opinion is contained in Document C.219.1928.I; Warderholt, *op. cit.*, p. 352.

¹²³ O.J., 1928, pp. 946-9, at p. 949.

confirmation may be seen in the case concerning the thirty-two doctors of the Spolka Bracka,¹²⁴ the case of Marthe Berger,¹²⁵ the case of Johann Wiesner,¹²⁶ the case concerning the minority elementary school at Koszecin (District of Lubliniec),¹²⁷ and the case of Johann Mokros.¹²⁸

The inherent difficulty of having a purely political organ like the Council as the reviewing body for the opinions of the President, whose activity has definitely taken a judicial form, is very great, but it should not be exaggerated. Articles 150, paragraph 3 and 158, paragraph 2, of the Convention, providing together that the President shall take account ("*tiendra compte*") of the resolutions of the Council, have had no great importance in practice. Only one aspect of the situation presents some difficulty, namely, the maintenance of the prestige of the President. Of this something will be said in the Conclusion.

Supervision of the operation of the settlement. In most cases coming before the Council, whether on appeal under Article 149, or by direct petition under Article 147, once agreement between the state concerned and the Council is attained, the whole matter is virtually at an end. The decision arrived at is capable of immediate execution. The wrongful closing of a school is remedied by its reopening,¹²⁹ the wrongful exclusion of children from minority schools by their re-admission,¹³⁰ isolated acts of violence or other pressure exerted on the minority by their suppression and punishment,¹³¹ wrongful penalties imposed on members of the minority by their cancellation.¹³² In such cases the Council need only ask the government concerned to keep the Rapporteur informed as to the measures which it takes to execute

¹²⁴ O.J., 1930, p. 1309.

¹²⁵ O.J., 1931, p. 230.

¹²⁶ *Id.*, p. 228.

¹²⁷ O.J., 1929, p. 59.

¹²⁸ O.J., 1932, p. 1200.

¹²⁹ See e.g. O.J., 1924, p. 529; 1927, pp. 593 and 403; 1928, p. 922.

¹³⁰ See e.g. O.J., 1928, p. 945.

¹³¹ See e.g. O.J., 1928, pp. 925, 927; *id.*, pp. 555, 557; 1930, p. 103.

¹³² See e.g. O.J., 1931, pp. 227, 230.

the decision.¹³³ Similarly a decision against the claim of the petitioner concludes the discussion so as to make any further steps unnecessary.¹³⁴

In such cases the examination of the question is closed. Should the government fail, however, to carry out the decision which it has accepted, it may always be reopened. Thus, it will be recalled that by a Council resolution of March 12, 1927, the attention of the Polish Government was drawn to "the importance of not insisting on the measures taken by the local authorities" to exclude certain categories of children from the minority schools.¹³⁵ On March 30, 1929, the Deutsche Volksbund petitioned the Council under Article 147 "concerning the way in which the Polish Government has carried into effect the resolution adopted . . . on March 12, 1927." The petition alleged that judicial costs of proceedings against persons legally responsible for children falling into the above categories were being wrongfully collected. The Council was informed by the Polish Government that such costs would not be collected, and that where already collected compensation would be made.¹³⁶ The Council "took note" of these declarations.

Sometimes, however, from the nature of the case, it is impossible to do more at Geneva than lay down the general principles upon which the settlement must proceed. The execution of the decision will involve a series of acts or the assumption of a governmental policy by the state concerned, and a period of time must elapse before the Council can be satisfied that the question has been settled in accordance with its decision. The task of supervision may be undertaken by the Council itself, or it may be delegated to the Rapporteur, or to an expert agent sent to Upper Silesia and

¹³³ See e.g. *id.*, 1931, p. 727.

¹³⁴ See e.g. O.J., 1928, pp. 949, 951; 1930, p. 106; 1931, p. 228.

¹³⁵ O.J., 1927, p. 400.

¹³⁶ O.J., 1929, p. 1884.

working in collaboration with the President of the Mixed Commission.

Supervision by the Council itself. Even when there is agreement as to the occurrence of infractions, and as to the measures required to remedy them, the Council may keep the case on its agenda until satisfied that the necessary remedial measures have been taken. The outstanding example is the consolidated case arising out of the Polish election disorders of 1930.¹⁸⁷

In the seising letters ¹⁸⁸ of the German Government it was alleged "that a large section of the German minority was deliberately prevented, by arbitrary measures of the authorities, from exercising the right to vote, and even when able to use it, could not record its vote by secret ballot." There had been, so it was alleged, "a reign of terror due mainly to the 'Union of Insurgents' which had deliberately planned and carried out a campaign against the German element. The Union works in concert with the authorities. The highest official in Polish Upper Silesia is the Honorary President of the Union, and many high officials are leading members. The police consistently neglect their duty by either not interfering at all, or by taking very inadequate measures to prevent the violence to which the minority is subjected."¹⁸⁹

Both notes referring to Upper Silesia contain appendices detailing the facts alleged. These facts are exhaustively supplemented by a petition from the Deutsche Volksbund under Article 147 of the Upper Silesian Convention. This document occupies fifty pages of the Official Journal, and among other instructive data details two hundred and fifty-five cases of alleged terrorism, in many cases with

¹⁸⁷ The account of this case in the following pages is taken *verbatim* from Stone, *op. cit.*, pp. 231-6, with the courteous acquiescence of the publishers.

¹⁸⁸ See respectively O.J., 1931, pp. 371, 378, and 449. ¹⁸⁹ *Id.*, p. 372.

official connivance. It called upon the Council to resolve that:

1. Article 75 (dealing with civil and political equality, equality before the law, and equal treatment by the authorities) and Article 83 (assuring full protection of life and liberty) of the Geneva Convention had been violated.

2. The Polish Government should take such steps against the authorities responsible for permitting the violations as would demonstrate to the Polish and German populations that there can be no repetitions of such offences.

3. The Polish Government should examine whether the privileged position of the Union of Insurgents can be maintained.¹⁴⁰

As to Poznan and Pomorze the German note of December 17, 1930, alleged that "large numbers of the German minority were excluded from the exercise of their vote by arbitrary action on the part of the Polish authorities which cannot be reconciled with the existing regulations. Where the minority was able to exercise their votes the free expression of their wishes was subjected to the most powerful pressure. This conflicts with Article 7 of the Polish Minorities Treaty."¹⁴¹

The Polish reply in a letter dated January 6, 1931,¹⁴² denied that the minority had been deprived of electoral freedom arbitrarily, admitted that disorders had taken place (but denied that they were more serious than those "incident elsewhere" to important elections), promised that all complaints would be investigated, that public officials implicated would be punished, and that injured persons would be compensated. It also undertook to bring its influence to bear on the local organizations to promote pacification. In the Council discussions on January 21, 1931, M. Zaleski, taking

¹⁴⁰ See O.J., 1931, p. 388.

¹⁴¹ *Id.*, p. 449.

¹⁴² *Id.*, pp. 432 *et seq.*

the Volksbund petition as the basis for discussion, declared that:

"1. The incidents in connexion with which the Memorandum affirms that Articles 75 and 83 have been violated are primarily offences against Polish legislation, and proceedings have been taken against the offenders.

"2. Again, in conformity with the second of the conclusions in the Memorandum severe penalties have been inflicted on the officials incriminated. Indemnities have been allowed in all cases where real damage has been shown.

"3. As regards conclusion 3 concerning the Insurgents' Union I wish to declare that to my knowledge this Union occupies no special or privileged position. In its anxiety to maintain public order my Government will not tolerate any effort on the part of a private association to arrogate special rights or occupy a dominant position.

"The Polish Government will use every means within its power to bring about peace and tranquillity in Upper Silesia. It has acted with severity, and will continue to do so against all the instigators of disorder, whatever their origin." ¹⁴³

There was from the start, therefore, no substantial disagreement as to the existence of infractions, nor as to the need of remedial measures to fulfil Poland's international obligations. The function of the Council in this situation was to consider whether the assurances of the Polish Government "can be considered adequate as reparation for every part of the wrong which has been done. The Council . . . must take all measures that the position may call for in order to ensure that reparation is actually effected. . . . Precautions must be taken to prevent the recurrence of similar incidents. The Council will have to go thoroughly into the question of the Insurgents' Union and its relations with official circles." ¹⁴⁴ In other words it had to supervise the execution of agreed measures and make certain that they were loyally carried out.

¹⁴³ O.J., 1931, p. 174.

¹⁴⁴ *Id.*, p. 170. Speech of Dr. Curtius.

In his report of January 24, 1931,¹⁴⁵ M. Yoshizawa, after stating the issues, said that the responsibility of the authorities was two-fold, direct and indirect. As to direct responsibility, he said that "the Council will desire to receive from the Polish Government before its next session a complete and detailed statement of the results of the inquiries ordered in these different cases, and also of the penalties imposed and measures of compensation that may have been taken." As to indirect responsibility (e.g. by connivance at the activities of the Insurgents' Union) the Rapporteur stated that:

"it is obvious that in regions like Upper Silesia with a mixed population, no association with an accentuated national tendency should occupy a privileged position of such a kind as to prejudice the interests of the minority. . . . The Polish Government should take the steps required to remove any special connexion that might exist between the authorities and the associations engaged in political activities, such as the association referred to. . . . The Council will certainly desire to be informed *in due time* before its next session of any decisions which the Polish Government has felt it right to take in this matter."¹⁴⁶

The minutes of the May session are most instructive as to the supervisory nature of the Council's activity in this case.¹⁴⁷ The Polish Government communicated the information requested by the Council in a letter dated May 14, 1931, with substantial appendices,¹⁴⁸ which only reached the members of the Council during the course of the session. After reviewing the somewhat involved material therein contained in the light of the Council resolution of January 24, 1931, the Rapporteur noted that "the measures reported by the Polish Government did not include the one, which, in the opinion of certain members of the Council would have afforded the most appropriate and effective means of severing

¹⁴⁵ *Id.*, p. 237 *et seq.*
¹ O.J., 1931, p. 237.

¹⁴⁷ *Id.*, pp. 1144 *et seq.*
¹⁴⁸ *Id.*, pp. 1496-1531.

such special bonds as might exist between the authorities and the 'Insurgents' Union.'” Nevertheless, he said that “there had been a real and definite relaxation of the tension, and a very marked improvement in the relations between the authorities and the minority.” Then, for some reason which does not seem to follow quite logically from his report, he proposed that “the Council now close its examination of the matter,” expressing at the same time a conviction that the Polish Government would continue its efforts in the direction of giving successful shape to the system set up by the Polish Minorities Treaty and the Upper Silesian Convention.¹⁴⁹

It is not surprising that Dr. Curtius was sternly opposed to this hasty closure. He rightly said that he had not had time to examine the documents, and in any case, it is difficult for an impartial observer to feel that the results of the Council's action were yet so clear as to warrant this optimism. There followed a somewhat heated debate in which the representatives of Poland, France and Yugoslavia joined in favor of the report. M. Sokal, the Polish representative, was indiscreet enough to say that he “was authorized to state that the Polish Government would decline all responsibility if, the Council having decided in favor of adjournment, any further tension arose.”¹⁵⁰ This attempt to cut short the Council's supervision failed largely owing to the spirited intervention of Mr. Henderson (Great Britain), the Acting-President. He sharply rebuked M. Sokal for his statement as to responsibility. He declared:

“in the name of the Council, that the Polish Government could not rid itself of that responsibility. He was not, however, sure that the medicine which had been applied since the January session, and which, as the Report had said, had produced an improvement, would not, if applied until the next session . . .

¹⁴⁹ *Id.*, p. 1145.

¹⁵⁰ *Id.*, p. 1149.

continue to produce that improvement. . . . He was not in a position to satisfy himself . . . that the information given was complete enough, and sufficiently satisfactory in character to enable him to say that the Council was now entitled to dismiss the question entirely from its agenda."¹⁵¹

The question was adjourned to the September session when a unanimous report was adopted noting the assurances of the Polish Government that it would make every effort to give the minority "the feeling of confidence without which it will be impossible to establish that coöperation between the minority and the state . . . which is a duty equally urgent for the state and the minority concerned."¹⁵² The examination of the matter was then declared closed, no member of the Council, not even Germany, making any comment. Whether this was due to the general pressure of political and economic events at the time,¹⁵³ or whether it really signified that the Council regarded its supervision as having been effective and no longer necessary, is a doubtful question. Probably both considerations were present.

In the case of the Prince von Pless the Council seems, from the beginning, to have taken the course of merely supervising the negotiations between the petitioner and the government. By a petition of January 17, 1931, under Article 147, the Prince, whose family held considerable property in Polish Upper Silesia, complained to the Council that this property had been unjustly assessed for taxes because of his membership of the minority. At its meeting of January 14, 1931, the Council, having been informed by the Polish representative that direct negotiations were in prog-

¹⁵¹ *Ibid.*, p. 1150.

¹⁵² O.J., 1931, p. 2263.

¹⁵³ The Council was largely occupied at this Session with the Sino-Japanese dispute regarding Manchuria. Mr. Henderson had ceased to be a member of the Government in Great Britain where an election was pending; Dr. Curtius was shortly to vacate the position of German Foreign Minister.

ress, postponed its consideration of the question.¹⁵⁴ When the case was next considered at the meeting of May 23, 1931,¹⁵⁵ the Council, after noting a letter from the Polish Government dated May 19, 1931, which stated that inquiries were going forward, that a very minute examination was involved, and that meanwhile no measures of execution would be taken, again postponed the question. It requested the Polish Government to "be so good as to inform the Council before the next session of the results" of the inquiries and negotiations. The German representative, though entering a mild protest at the postponement, did not formally object.

At the September session of the Council, at the meeting of September 19, 1931, the Polish Government¹⁵⁶ informed the Council that all the time-limits for the payment of the taxes of the Prince von Pless had been extended, and that the Ministry of Finance had, "under Article 31 of the Income Tax law, annulled the decision of the Commission of Enquiry appointed to examine the question of the Prince von Pless's income tax for the years 1925-9." A further enquiry had been ordered with a view to modifying certain figures previously included in the list of taxable income. A new communication dated September 12, 1931, had been received from the petitioner and communicated to the Polish Government for its observations. The question was again postponed without discussion.¹⁵⁷

At the Council meeting of January 30, 1932,¹⁵⁸ a further letter of October 16, 1931, from the Prince to the Council with the observations of the Polish Government thereon dated January 6, 1932, were considered. The letter of the petitioner complained that the annulment of the decisions of

¹⁵⁴ O.J., 1931, p. 228.

¹⁵⁵ *Id.*, p. 115.

¹⁵⁶ In a letter of Sept. 4, 1931, Document C.538.1931. I.

¹⁵⁷ O.J., 1931, pp. 2263-4.

¹⁵⁸ O.J., 1932, pp. 510, 513.

the Revising Commission of which he had been informed on August 26, 1931, did not satisfy him so long as the actual assessment remained unchanged. The reply of the Polish Government declared that the annulment of these decisions implied complete and final annulment of all the measures taken up to that date by the Finance Administration in connection with the fixing of the tax, and stated that a new assessment would be made shortly thereafter.¹⁵⁹ The government also explained that the reduction complained of by the petitioner in the quota of coal for state railways obtained from the Pless properties was not a measure of discrimination, but was made upon purely economic grounds, and was not great enough to affect their economic stability. In view of these explanations the Rapporteur (M. Sato) proposed that the examination of the question be closed. The proposal was adopted subject to a reservation by the German representative as to "the compatibility of the Assessment Commission's decisions with the provisions relative to the protection of minorities."

Although on the surface it seemed that a satisfactory settlement had been made, further petitions from the Prince von Pless dated March 26 and 29, 1932, were addressed to the Council and were placed on the agenda for the sixty-seventh session. By a letter of May 17, 1932, however, the German representative notified the Secretary-General that his government would submit to the Permanent Court of International Justice, under Article 72, paragraph 3, of the Geneva Convention, the questions arising out of the petitions then on the agenda. In view of this communication the Council took no further action in the matter.¹⁶⁰

¹⁵⁹ This implication, however, did not in fact follow, for the basis of assessment remained unaltered, and was the main ground of Germany's application to the Court.

¹⁶⁰ O.J., 1932, p. 1201. On Feb. 4, 1933, the Court made an order joining its consideration of the question of jurisdiction raised by the Polish Government with the hearing of the case on its merits. Series A/B, No. 52, p. 16.

The expert agent. The only example of the use of an expert sent *ad hoc* to Upper Silesia, is in the case concerning the admission of children to the primary German minority schools in the Voivodie of Silesia in 1927. The Council's resolution of March 12, 1927,¹⁸¹ after drawing the attention of the Polish Government to the importance of not excluding children from the minority schools merely because the parents concerned had not appeared before the Enrolment Committee,¹⁸² or because their mother-tongue had been stated to be both Polish and German (paragraph 1 (b) 1 and 2),¹⁸³ provided:

"The Council considers that it is inexpedient to admit to minority schools children who speak only Polish.

"The Council decides to institute a system of enquiry into the concrete cases falling under the categories mentioned in paragraph I (b) 1 and 2, above, which may appear doubtful to the Polish local school authorities.

" . . . The object of the enquiry will be to ascertain whether or not the child speaks the "school" language used in the minority school so that it can usefully attend the school.

"The method of enquiry will be as follows:

"In every doubtful case the local authorities shall refer the matter to the President of the Upper Silesian Mixed Commission assisted by a Swiss national who shall be an educational expert appointed by the Council of the League or by the present Committee. If, in view of the expert's opinion as to the child's knowledge of German, the President declares that it would be useless for the child to attend the minority school, the child shall be excluded from that school."¹⁸⁴

The consent of Poland was naturally required for such an enquiry on her territory, but there was no difficulty as to this since, as a matter of fact, this solution of the question was a concession to the Polish point of view.¹⁸⁵ President Calonder consented to assume the additional duties conferred on him

¹⁸¹ O.J., 1927, p. 401.

¹⁸² See *ante*, p. 174.

¹⁸³ See *ante*, p. 168.

¹⁸⁴ O.J., 1927, p. 401.

¹⁸⁵ *Ante*, p. 181.

in April 1927, and the Swiss educational expert, M. Maurer, Inspector of Schools in the Canton of Lucerne, was appointed in the same month by the committee of the Council.¹⁶⁶

The language tests were held by M. Maurer between May 25, 1927, and February 11, 1928,¹⁶⁷ in the course of which out of 1020 children proposed for examination 520 were declared insufficiently acquainted with the minority language to be able to benefit by instruction in that language in accordance with the resolution of March 12, 1927; 440 were declared qualified to do so, and 49 were not examined.¹⁶⁸ This enquiry provided a satisfactory settlement of the question for the school-years 1926-7, but the whole question was again raised before the Council and the Permanent Court and settled on another basis for the succeeding school years.¹⁶⁹

There is an interesting point of contrast between this enquiry in an Upper Silesian case, and enquiries in cases under the general minorities system. In the latter the expenses involved are borne by the League of Nations and are entered under the item "Unforeseen Expenditure" in the Council's budget.¹⁷⁰ In the present case the Council resolution provided that "the financial arrangements concerning the expert shall be made by the Rapporteur with the assistance of the Secretary-General, on the basis of payment of costs by the League of Nations subject to refund by the Polish Government."¹⁷¹ In this respect there is a close

¹⁶⁶ O.J., 1927, p. 621. The Committee consulted the President of the Swiss Confederation, M. Motta, in making this appointment. See O.J., 1928, p. 159.

¹⁶⁷ See opinion of Feb. 10, 1930, in O.J., 1930, p. 1644.

¹⁶⁸ O.J., 1928, p. 158; 1930, p. 1521. For the minutes of some of the examinations see *Publications of the Permanent Court*, Series C, No. 14-II, pp. 243 ff., 259 ff. See this volume *passim* for documentation of the schools declarations problem. See also *id.*, Series A, No. 15, pp. 14-5.

¹⁶⁹ See O.J., 1928, pp. 156-9, and *ante*, pp. 122, 178.

¹⁷⁰ O.J., 1925, p. 145, and Stone, *op. cit.*, pp. 153, 238.

¹⁷¹ O.J., 1927, p. 401.

resemblance to enquiries arising out of disputes between states.¹⁷³

During the enquiry in the case under discussion the Rapporteur maintained his general functions of guiding the action of the Council. The fourth section of the resolution of March 12, 1927, provided that "any question concerning the execution of the above provisions which the Polish Government or the President of the Mixed Commission shall desire to have investigated, shall, for greater convenience, be definitely settled by the Rapporteur, unless the Rapporteur considers it necessary to refer it to the Council."¹⁷⁸ On the basis of this section the Polish Government, by a note of October 18, 1927,¹⁷⁴ asked the Rapporteur to decide whether the system of enquiries was to apply to 735 children of the school year 1927-8. The Rapporteur after consulting his two colleagues on the Council committee answered this question in the affirmative.¹⁷⁵ This reply caused the German Government to protest by a telegram of November 14, 1927,¹⁷⁶ and on December 8, 1927, that government informed the Council that it would exercise its right under Article 72, paragraph 3, of the Geneva Convention, to bring the legal question before the Permanent Court for final decision.¹⁷⁷ The later history of this question has already been considered.¹⁷⁸

¹⁷³ See Stone, *op. cit.*, p. 153.

¹⁷⁴ O.J., 1927, p. 401.

¹⁷⁵ O.J., 1928, p. 217.

¹⁷⁶ See O.J., 1930, pp. 1310, 1642 *et seq.*; 1931, pp. 228, 1151, 2263. *Ante*, pp. 122, 178.

¹⁷⁷ *Id.*, p. 158.

¹⁷⁸ *Id.*, p. 218.

¹⁷⁹ *Id.*, pp. 156-9.

CONCLUSION

A COMPARISON of the "regional guarantees of minority rights" described in the preceding pages, with the "international guarantees of minority rights" described elsewhere,¹ should produce at least one very fruitful reflection. They present two types of procedure for the protection of minorities which are vitally different. Unless by a miracle the grave problem of minority populations disappears in the years to come, the statesmen of the world will have to decide which of these two types provides the surest safeguards for international peace. For, at bottom, the importance of the problem of minorities populations, lies in its potential dangers to peace.

This Conclusion will be devoted to an appreciation of the procedure in force in Upper Silesian cases, as contrasted with that under the general system of minorities protection.

A. THE REGIONAL PROCEDURE

The merits of the regional procedure, as contrasted with the general procedure in minorities questions, are three in number.

First among them must be placed its non-political operation. From the moment of submitting his complaint the petitioner can be confident that, unless he is given satisfaction in the meanwhile, his rights will be determined by a neutral authority, without regard to any political pressure that may be brought to bear. The other aspect of this is

¹ Stone, *International Guarantees of Minority Rights*, Oxford University Press, 1932.

equally important: minorities questions are decided before the President, quietly and in a spirit of justice and reconciliation, without instantly creating international friction and animosity as so often occurs in the general procedure and in the later stages of the Upper Silesian procedure.²

In the second place, the President's close and intimate knowledge of local conditions, and of the personal element in the administration, gives him, as compared with the Council, great skill and ample opportunity for using the methods of persuasion and reconciliation which are here, as in the general procedure, the only methods available. Moreover, his constant presence on the spot tends to be a restraining factor, and to reduce to some extent the arbitrary element in administration which was the great danger in Upper Silesia.

In the third place, again in sharp contrast with the general procedure, the President is within easy reach of the best possible evidence in every case. This is of the utmost importance. In the complicated form which these questions so often assume, they do not lend themselves easily to investigation from Geneva. On the other hand, the freedom of action of the President, his powers of inspection, of calling witnesses, and of consulting local experts and tribunals, all go to make his work of investigation of great value and reliability.

These merits are inherent. The defects, on the other hand, though very serious, could well be eradicated if a determined effort were made by the two states and the Council.

It is obvious that without some amount of coöperation by the states concerned, no machinery, however efficient, would work successfully. Even if, as is not the case, the opinion of the President had been binding on the authorities, this coöperation would still have conditioned success. What is impor-

² See Stone, *op. cit.*, pp. 231-6, 265.

tant is not that the opinion should be binding, but that the authorities should be made to feel that it is binding, and the burden of producing this belief falls partly upon the two states and partly upon the Council.

The irregular delays in the procedure, already examined at length, were a very unfortunate feature of the regional machinery before 1929, and still continue to occur. In the Paris Agreement^a it is noted that: "The President of the Mixed Commission . . . desires to reach a final settlement of every case laid before him under Article 149 within six months of the date on which the petition was lodged with the Minorities Office." Even an approximation to this standard would allow proceedings before the Mixed Commission to compare very favorably with litigation before ordinary municipal courts of law.

The very essence of a successful regional procedure lies in the spirit described by President Calonder in a declaration made during the Paris Conversations, endorsed by the representatives of the two governments and embodied in Section 4 of the Paris Agreement:

"Apart from these improvements in procedure, however, I must emphasize the need for friendly cooperation based on a desire for justice, conciliation and pacification. This moral element is far more important than any technical point of procedure. Throughout every stage in the proceedings—before the competent national authorities, before the Minorities Offices, and in the Mixed Commission—the dominant idea must always be to reach a friendly settlement of the case whenever possible, by conscientiously and equitably applying the provisions of the Convention. . . .

"The principle of settling cases on a friendly basis wherever possible must also be applied by the Mixed Commission to the cases with which it has to deal. When other authorities have failed to bring about an amicable settlement, the Mixed Commission must make one more effort to secure a compromise. *An equitable arrangement is always preferable to an opinion given*

^a Section A, 3.

by the President with the possibility of an appeal to the Council of the League of Nations; and it is preferable not merely for the sake of reaching a compromise, but because it enables a practical solution suited to the circumstances of the case to be reached without delay. Cases in which the President is forced to give an opinion should be the rarest exceptions. That is the view which I have always taken of my duties. But if the President of the Mixed Commission is to be able to bring about amicable settlements, it is absolutely essential that the Members of the Commission should personally intervene and use their good offices with the authorities of their respective countries. Indeed, this kind of co-operation is an essential part of the work of a Mixed Commission. It is further necessary that the competent authorities, as well as the petitioner, should make an effort to come to an equitable arrangement within a brief period.”⁴

There can be no doubt that the experiment of providing a regional organ readily accessible to members of the minority has been a complete success. More than one hundred opinions have been rendered by the President. Less than one-sixth of these have resulted in appeals to the Council of the League, though there is no restriction on such appeals should the petitioner not be satisfied. This fact in itself is eloquent, but its force is increased when it is remembered that an opinion is only rendered when all other efforts of the Minorities Offices and President have failed. The Item Number in the latest opinion in the writer's hands is 1022, though the Opinion Number is only 102.⁵ Admitting that a certain number of these one thousand and twenty-two cases were groundless, and that many of them were consolidated and dealt with in single opinions, it is still clear that in hundreds of cases infractions of the Convention have been settled in the quiet deliberate atmosphere of the activities of the able President Calonder. This is more than confirmed by a detailed survey of the petitions dealt with by the German Minorities Office which has been made available to the

⁴ Italics the writer's.

writer. Eighty-four petitions were submitted to that Office between January, 1924, and September, 1932. In fourteen of these cases the authorities satisfied the petitioners without the intervention of the Minorities Office. In five cases the Minorities Office secured him satisfaction. In sixty-one cases the President of the Mixed Commission successfully intervened. In only four cases did the President render an opinion. With few exceptions no international complications have arisen out of the protection of minorities in Upper Silesia. That is as it should be, for when this can be said procedure for the protection of minorities is fulfilling its purpose.

B. PROCEDURE BEFORE THE COUNCIL

By far the majority of Upper Silesian cases which have come before the Council have done so by direct petition under Article 147, whether because the complaint did not fall within the limited competence of the President of the Mixed Commission, or because the petitioner chose to go direct to the Council. Fortunately the Paris Agreement has eliminated the latter possibility.

In cases thus arising under Article 147 the Council has followed exactly the same methods as in the general procedure. All the criticisms, good and bad, which have been made of that procedure apply here with even greater force,⁶ for Upper Silesia must rank among the foremost "danger spots" of Europe. There is a constant tendency for a minorities question to degenerate into a dispute between Poland and Germany. Other members of the Council, the Rapporteur apart, rarely intervene to assert the collective responsibility of the whole Council, and indeed of the whole League, involved in the guarantee of the League of Nations. In this respect the Polish election case of 1931 must stand out as an

⁶ See Stone, *op. cit.*, pp. 263-7.

exception which demonstrates the rule. The initiative taken by the British representative, Mr. Henderson, deserves great credit, and it well merits to become a precedent as to the meaning of the word "guarantee."⁷

In dealing with appeals under Article 149, after the President of the Mixed Commission has rendered an opinion, the methods of the Council are substantially those used when dealing with petitions under Article 147. No question has ever been raised in the Council as to the wisdom of this. Is it wise? The regional procedure, culminating in the rendering of an opinion, is of proved merit and efficiency. The President has all the advantages of local investigation, personal acquaintance with every detail of the problem involved gained from long observation, and with the administrative authorities whose action is attacked. He is neutral, and has shown in his work the virtues of the judge, and none of the vices. Is it wise to take an opinion based upon such premises and bring it again into the international political arena? Would it not be better to evolve some quasi-judicial method of reviewing opinions rendered in the regional procedure?

If expediency dictates this, is there anything in the Convention to prevent the use of such a method? For, unless the parties agree, the Council must rest within its legal powers as there defined. The Council itself indicated the solution when it requested the Permanent Court for an advisory opinion in the sixty children case. Surely, if the failure of a government to carry out an opinion of the President of the Mixed Commission is justified, it must be so because the opinion does not correctly interpret the provisions of the Convention. There is no other possibility. The methods of the Council, qualified as they are by the rule of unanimity, are wasted upon a problem so narrowly defined

⁷ See *ante*, p. 195.

as that involved in the interpretation of a provision of the Geneva Convention. The way to the Permanent Court is open to the Council; why should it not act upon the principle that when a government fails to carry out an opinion, the legal question should be submitted to the Permanent Court for an advisory opinion?

Neither Poland nor Germany should object to such a course. There need be no modification of the Convention. Questions within the competence of the President of the Mixed Commission are, by definition,⁸ questions which do not in themselves affect the vital interests of either state. The objections to compulsory judicial settlement have no application here, for Article 73, paragraph 3, of the Convention already provides for compulsory jurisdiction of the Permanent Court in disputes as to the fundamental provisions of the Convention contained in Division I of Part III. Further, advisory opinions are merely advisory opinions, and where necessary the Council may always resume its normal methods, should the Court's advisory opinion not be acceptable.

The importance of this suggestion does not lie in the fact that it would increase the efficiency of the Council's action. It has already been pointed out that the Council has failed only in one or two cases to secure the coöperation of the state concerned in carrying out the opinion which is the subject of an appeal. The importance lies rather in the fact that the consideration of a case *de novo* when it comes before the Council, tends to lower the prestige of the President's opinions generally. This is very serious since it makes more difficult the work of the President in the many hundreds of cases which never reach the Council. The authorities of the two states are naturally less amenable to the representations of the President if they know that even apart from any legal

⁸ See *ante*, p. 62.

flaw in his opinion, there is a chance of exoneration if they refuse to coöperate and thus make necessary an appeal to the Council. If the Council made it clear that an appeal under Article 149 would be treated only on the basis of an advisory opinion of the Permanent Court this evil would be avoided.

C. THE FUTURE

The minorities provisions of the Geneva Convention of May 15, 1922, relating to Upper Silesia, will expire on June 15, 1937. Will they be renewed? That question is doubtful. Should they be renewed? That is a question upon which the present writer has no doubts. No one who has studied these matters not merely in documents, but in the place and among the people where they arise, can doubt the imperative necessity that they should be renewed. The necessity is one dictated not only because of the lives of the human beings which these provisions are designed to protect, but by the peace of Europe, to which events in Upper Silesia are destined to bear no remote relation. Unless there is considerable improvement in the next three and a half years, the states of Europe will, in 1937, be as deeply concerned for the future of the minorities question in this region, as they were in 1922.

Even with the present system of protection, the issues raised sometimes burst through the dams set up to bear their pressure. The action of the Council in the Polish elections case of 1930 was, in the writer's opinion, admirable in its swiftness, firmness, and impartiality. Yet it is obvious to a careful reader of the discussions, that the Council's efforts on behalf of the minority merely skimmed the surface of a much deeper disturbance. "These incidents," declared Dr. Curtius,⁹ are only one link in the chain forged in 1919 to eliminate the German element from these territories . . .

⁹ O.J., 1931, p. 172.

but my government and I myself, wish, for the moment, to confine ourselves to the recent events that occurred in Upper Silesia. If, however, M. Zaleski thinks fit to open a debate on all questions that may arise in this connection, I am prepared to follow him."

Again and again the discussions came in their tenseness to resemble those of a dispute.¹⁰ In the final result the Council was able to satisfy itself that the Polish Government was taking the necessary steps to punish those responsible for the disorders, private persons or officials, and to pacify the minority and prevent recurrence. That was as far as its duties as guarantor required it to go. Yet the tone of the discussions disclosed a situation involving not merely the feelings of the minority, but also mass opinions in both Poland and Germany, and trends of policy at both Warsaw and Berlin.

If peace is to be preserved these opinions and trends of policy cannot be ignored in the discussion of minorities questions proper. Their presence must be acknowledged, and they should be dealt with through appropriate international action. With this the present work is not concerned, save to emphasize that the problem of minority protection in Upper Silesia is inseparable from the wider questions of German and Polish policies in this area. If this is so, if even with the buffer of a most effective minorities procedure, peace is not secure, then the expiration of the Convention without renewal on June 15, 1937, will be an event of most grave import to Europe.

¹⁰ See especially *id.*, pp. 166, 169, 171, 172.

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APPENDIX I

THE GENEVA CONVENTION OF MAY 15th, 1922, RELATING TO UPPER SILESIA ¹

(Excerpts of the principal articles hereinbefore referred to)
(Translation)

PREAMBLE

Germany, of the one part and Poland, of the other part, in order to establish in Upper Silesia a conventional régime in conformity with the dispositions contained in Article II of the decision of the Conference of Ambassadors of October 20th, 1921, with a view to guaranteeing in the common interest economic life in Upper Silesia as well as the protection of minorities, . . . have agreed as follows:

PART I

GENERAL PROVISIONS

.

DIVISION II

PROTECTION OF ACQUIRED RIGHTS

Article 4

§ 1

1. Without prejudice to the dispositions of Article 256 of the Treaty of Peace of Versailles, Germany and Poland will recognise and respect rights of all kinds, and in particular concessions and privileges acquired before the transfer of sovereignty by indi-

¹ Done in French only. Save where otherwise stated the translation has been done by the writer. For French text see references *ante*, p. 8, n. 21.

viduals, societies or moral persons, in their respective parts of the plebiscite territory, and will do so in accordance with the laws (*lois*) relating to the said rights and with the following provisions.

2. Poland reserves, during a period of six months from the date of the transfer of sovereignty, the right to withdraw concessions and privileges granted after October 20th, 1921, where the beneficiary cannot demonstrate on the request of the competent Polish authorities that they were granted under conditions administratively regular.

[§§ 2, 3, 4, 5 and 6 set out the detailed provisions applicable in these cases.]

Article 5

The question whether and to what extent an indemnity must be paid by the State for the suppression or diminution of acquired rights will be settled by the Arbitral Tribunal on the complaint of the person entitled to the right.

PART II

NATIONALITY AND DOMICIL

.

DIVISION VI

MEANS OF RECOURSE

Article 55

1. For the solution of disputes concerning the interpretation or execution of the present Part, there shall be created in the Arbitral Tribunal a Conciliation Commission in matters of nationality.

2. This Commission shall be composed of a delegate of each of the two Governments.

Article 56

§ 1

Any person may appeal to the Conciliation Commission in matters of nationality who, in virtue of the provisions of the present part

1. claims or disclaims Polish or German nationality, if an administrative or military authority refuses to recognise his allegations as to his nationality;

2. claims the right of option or of conserving his domicile, if the competent authority refuses to recognise any of these rights;

3. claims that, as a result of measures taken by any authority, he has been injured in the rights flowing from his option, or right to conserve his domicile. This disposition applies equally to persons who, during the period laid down for option, lose their nationality and acquire the nationality which they could have acquired by option;

4. had demanded the annulment of his declaration of option, if the Options Office has neglected his demand;

5. shows that his nationality has not yet been determined by the competent authority three months after the question of nationality was raised before that authority, or shows that he has not received his Document of Option three months after the submission of his declaration of option.

§ 2

Persons who, in conformity with the provisions of the present Part, may validly make declarations for other persons, may equally appeal to the Conciliation Commission on matters of nationality.

Article 57

1. On being seised of a matter the Conciliation Commission, in nationality matters, informs the two State Agents. It must attempt to settle the difficulties and must investigate as far as possible the circumstances involved.

2. If the competent administrative authority in nationality

matters has not yet defined its attitude upon the matter, the Conciliation Commission will submit the matter to it, on the demand of either of the two members of the Commission.

3. Recourse to the Conciliation Commission does not prevent decision on the merits of the matter by the competent State authorities.

4. The judicial and administrative authorities must assist the Conciliation Commission.

Article 58

1. If the Conciliation Commission in nationality matters declares to the persons concerned that it cannot solve the difficulties, it shall, at their request, submit the matter to the Arbitral Tribunal.

2. On the demand of one of the State Agents the matters shall be submitted to the Arbitral Tribunal.

3. On the submission of the matter to the Arbitral Tribunal, the State Agent must inform the authority concerned with the matter, of this fact. From that moment, the authority must refrain from any decision relating to the question upon which the Tribunal is to pass.

Article 59

In Articles 55 to 58 the word "authorities" does not include tribunals, nor administrative tribunals, nor administrative authorities who do not receive orders from higher authorities (*par la voie hiérarchique*).

Article 63

When nationality has been fixed by a decision, definitive and effective *erga omnes*, of an administrative tribunal, the Arbitral Tribunal is not competent to pass upon nationality, even in cases of *évocation*.

PART III

PROTECTION OF MINORITIES ¹

DIVISION I

Whereas the Conference of Ambassadors decided on October 20th, 1921:

1. That the Treaty with regard to the Protection of Minorities, etc., concluded on June 28th, 1919, between the United States of America, the British Empire, France, Italy and Japan of the one part, and Poland of the other part, should be applicable to those parts of Upper Silesia definitely recognised as part of Poland;

2. That the principles of equity and the maintenance of the economic life of Upper Silesia demand that the German Government should be bound to accept, at least for the transitional period of fifteen years dating from the definitive allocation of the territory, stipulations corresponding to Articles 1, 2, 7, 8, 9 (paragraphs 1 and 2), 10, 11 and 12 of the said Treaty as regards those parts of Upper Silesia definitely recognised as part of Germany;

3. That the provisions of the agreement to be concluded between the German and Polish Governments in order to put into force the above-mentioned principles, constitute obligations of international concern for Germany and Poland, and shall be placed under the guarantee of the League of Nations in the same way as the provisions of the Treaty of June 28th, 1919;

The two Contracting Parties have agreed on the following provisions:

Article 64

The German Government accepts for the transitional period of fifteen years the following provisions applicable in the German portion of the plebiscite territory.

The Polish Government refers to the following provisions of the Treaty of June 28th, 1919, applicable *ipso facto* in the Polish portion of the plebiscite territory.

¹ The translation of Part III is taken from *League Document C. L. 110. 1927. I. See also ante, p. 213, n. 1.*

Article 65

(Article 1 of the Minorities Treaty of June 28th, 1919)

Germany undertakes that the stipulations contained in Articles 66 to 68 shall be recognised as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

Poland undertakes that the stipulations contained in Articles 66 to 68 shall be recognised as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

Article 66

(Article 2 of the Minorities Treaty of June 28th, 1919)

1. The German Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Germany without distinction of birth, nationality, language, race or religion.

2. All inhabitants of Germany shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.

1. The Polish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language, race or religion.

2. All inhabitants of Poland shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.

Article 67

(Article 7 of the Minorities Treaty of June 28th, 1919)

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

2. Differences of religion, creed or confession shall not

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

2. Differences of religion, creed or confessions shall not

prejudice any German national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honors, or the exercise of professions and industries.

3. No restrictions shall be imposed on the free use by any German national of any language in private intercourse, in commerce, in religion, in the Press or in publications of any kind, or at public meetings.

4. Notwithstanding any establishment by the German Government of an official language, adequate facilities shall be given to German nationals of non-German speech for the use of their language, either orally or in writing, before the courts.

prejudice any Polish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honors, or the exercise of professions and industries.

3. No restriction shall be imposed on the free use by any Polish national of any language in private intercourse, in commerce, in religion, in the Press or in publications of any kind, or at public meetings.

4. Notwithstanding any establishment by the Polish Government of an official language, adequate facilities shall be given to Polish nationals of non-Polish speech for the use of their language, either orally or in writing, before the courts.

Article 68

(Article 8 of the Minorities Treaty of June 28th, 1919)

German nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other German nationals. In particular, they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

Article 69

(Article 9, paragraphs 1 and 2, of the Minorities Treaty of June 28th, 1919)

1. Germany will provide, in the public educational system in towns and districts in which a considerable proportion of German nationals of other than German speech are residents, adequate facilities for ensuring that, in the elementary schools, the instruction shall be given to the children of such German nationals through the medium of their own language. This provision shall not prevent the German Government from making the teaching of the German language obligatory in the said schools.

2. In towns and districts where there is a considerable proportion of German nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budget, for educational, religious or charitable purposes.

1. Poland will provide, in the public educational system in towns and districts in which a considerable proportion of Polish nationals of other than Polish speech are residents, adequate facilities for ensuring that in the elementary schools the instruction shall be given to the children of such Polish nationals through the medium of their own language. This provision shall not prevent the Polish Government from making the teaching of the Polish language obligatory in the said schools.

2. In towns and districts where there is a considerable proportion of Polish nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budget, for educational, religious or charitable purposes.

Article 70

(Article 10 of the Minorities Treaty of June 28th, 1919)

Educational Committees appointed locally by the Jewish communities of Germany will, subject to the general control

Educational Committees appointed locally by the Jewish communities of Poland will, subject to the general control

of the State, provide for the distribution of the proportional share of public funds allocated to Jewish schools in accordance with Article 69, and for the organisation and management of these schools. The provisions of Article 69 concerning the use of languages in schools shall apply to these schools.

of the State, provide for the distribution of the proportional share of public funds allocated to Jewish schools in accordance with Article 69, and for the organisation and management of these schools. The provisions of Article 69 concerning the use of languages in schools shall apply to these schools.

Article 71

(Article 11 of the Minorities Treaty of June 28th, 1919)

1. Jews shall not be compelled to perform any act which constitutes a violation of their Sabbath, nor shall they be placed under any disability by reason of their refusal to attend courts of law or to perform any legal business on their Sabbath. This provision, however, shall not exempt Jews from such obligations as shall be imposed upon all other German citizens for the necessary purposes of military service, national defence or the preservation of public order.

2. Germany declares her intention to refrain from ordering or permitting elections, whether general or local, to be held on a Saturday, nor will registration for electoral or other purposes be compelled to be performed on a Saturday.

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2. Poland declares her intention to refrain from ordering or permitting elections, whether general or local, to be held on a Saturday, nor will registration for electoral or other purposes be compelled to be performed on a Saturday.

Article 72

(Article 12 of the Minorities Treaty of June 28th, 1919)

1. Germany agrees that the stipulations in the foregoing Ar-

1. Poland agrees that the stipulations in the foregoing

ticles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations.

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

3. Germany further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the German Government and any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the

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

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

3. Poland further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character un-

League of Nations. The German Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

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DIVISION II

In order that the protection of minorities in the two portions of the plebiscite territory may be based on the principle of equitable reciprocity, and in order to take account of the special conditions resulting from the transitional regime, the Contracting Parties, without prejudice to the provisions of Section I of the present Part, have agreed to the following provisions for a period of fifteen years.

The contents of Articles 65 to 72 are only repeated in the present Section for the purpose of giving a general view.

CHAPTER I

GENERAL PROVISIONS

Article 73

1. Poland and Germany undertake that the stipulations contained in Articles 66, 67 and 68 shall be recognized as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

2. The tribunals and courts of justice, including the administrative, military, and extraordinary tribunals, shall be competent to examine whether the legislative or administrative provisions are not contrary to the stipulations of the present Part.

Article 74

The question whether a person does or does not belong to a racial, linguistic or religious minority, may not be verified or disputed by the authorities.

CHAPTER II

CIVIL AND POLITICAL RIGHTS

Article 75

1. All German nationals in the German portion of the plebiscite territory on the one hand, and all Polish nationals in the Polish portion on the other hand, shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

2. Legislative and administrative provisions may not establish any differential treatment of nationals belonging to a minority. Similarly, they may not be interpreted or applied in a discriminatory manner to the detriment of such persons. The above principally concerns the supply of products subject to a centralised system of exploitation, such as articles of food, coal, fuel, paper used in the printing of newspapers, etc., the distribution of means of transport, the assignment of premises to persons, companies, or associations, the granting of official authorisations relating to transfers of real property and ownership, measures relating to the distribution of land, etc.

3. Nationals belonging to minorities shall, in actual practice, receive from the authorities and officials the same treatment and the same guarantees as other nationals; in particular, the authorities and officials may not treat nationals belonging to minorities with contempt nor omit to protect them against punishable acts.

Article 76

Nationals belonging to minorities may not be placed at a disadvantage in the exercise of their right of voting, notably in the case of a referendum, and of their rights of suffrage and eligibility as regards all elections to representative assemblies of the State and

other public bodies, as well as for elections to representative bodies dealing with social matters. In particular, a knowledge of or familiarity with the official language may not be required of the said nationals for these purposes, without prejudice, however, to the provisions concerning the official language and the language in which the meetings may be conducted.

Article 77

All nationals shall be treated on a footing of equality as regards admission to public employments, functions and honors, including military ranks, and to public establishments, and as regards the granting of degrees, distinctions, etc.

Article 78

1. Nationals belonging to minorities shall enjoy the same rights as other nationals as regards the right of association or meeting and the creation of foundations.

2. The fact that associations devote themselves to the interests of minorities as regards their language, culture, religion, ethnical character or social relations, cannot constitute a reason for prohibiting these associations, hindering their activities or preventing them from acquiring legal status.

Article 79

1. Subject to the general laws in force, nationals belonging to a minority shall be entitled to issue publications and printed matter of all kinds in their own language, as well as to import them from abroad and distribute them.

2. In so far as newspapers or periodicals are under an obligation to insert official communications, they shall be entitled to require that a translation in the language of the newspaper or periodical be supplied them with a view to insertion and that the current price for insertion be paid them. In the case of an insertion in two languages, payment may only be demanded for insertion in the official language. The publication of judgments and corrections required in virtue of a judicial decision shall not be considered as official communications.

Article 80

Nationals belonging to minorities shall be treated on the same footing as other nationals as regards the exercise of agricultural, commercial or industrial callings, or of any other calling. They shall only be subject to the provisions in force applied to other nationals.

Article 81

1. Nationals belonging to minorities shall have the right to establish, manage and control at their own expense charitable, religious, cultural or social institutions. Subject to State supervision, the existing institutions may continue to carry on their activities without hindrance. They shall retain their property and all their acquired rights in conformity with the stipulations of Article 4.

2. Institutions may bring from the territory of the other Contracting Party the ecclesiastics, teachers, doctors, sisters of charity, deaconesses, nurses and other similar personnel necessary for their activities, whatever may be the nationality of such persons. This stipulation does not, however, affect the provisions relating to the entry, residence and departure of aliens. The diplomas and professional degrees of the persons in question, which are valid in the territory of the other Contracting Party, shall also be recognised as valid for the exercise of their profession within the sphere of activity of the institutions which have introduced them.

3. The importation of the necessary books, works of edification, medical and surgical instruments, drugs, etc., is authorised, provided that the general prohibitions applicable to all the nationals of the State do not oppose it. This stipulation shall in no way invalidate the Customs regulations.

Article 82

The following articles apply to persons who are entitled to retain their domicile in one of the two parts of the plebiscite territory:

Article 76, as regards representative church assemblies or representative social bodies,

Article 77, except as regards admission to public functions and employments, including honorary functions and military ranks,
Article 78 (1), except as regards political associations,
Article 78, paragraph 2; Article 79; Article 81.

Article 83

The Contracting Parties undertake to assure full and complete protection of life and liberty to all the inhabitants of the plebiscite territory, without distinction of party, nationality, language, race or religion.

CHAPTER III

RELIGION

Article 84

§ 1

The relations of the State with the religious confessions shall be governed by the law after hearing the competent representatives of these confessions in conformity with the principles laid down in the present Chapter.

§ 2

By the term "religious confessions" in the present Chapter is meant all organised religions.

Article 85

All the inhabitants of the plebiscite territory shall be entitled to the free exercise, whether public or private, of any creed, religion or belief whose practices are not inconsistent with public order or public morals.

Article 86

1. Religious confessions, parishes and Jewish communities, as well as orders and congregations, shall be entitled to administer their affairs and to direct and supervise their institutions in full liberty, subject to the laws promulgated to maintain public order and public morals.

2. They shall be free to employ the language of their choice in all affairs of internal administration. Religious confraternities and societies may do the same.

Article 87

§ 1

Within the scope of the general laws and without prejudice to the rights of third parties or rights resulting from agreements between the State and the Holy See, religious confessions, parishes and Jewish communities, as well as orders and congregations, shall be entirely free to appoint ecclesiastics, functionaries, assistants, sisters of charity, deaconesses and other auxiliary personnel.

§ 2

They may, in so far as they belong to a religious minority, for this purpose introduce from abroad persons such as those mentioned in § 1 who need not change their nationality and whose diplomas and professional degrees shall be recognised.

§ 3

1. Religious confessions, parishes and Jewish communities, as well as orders and congregations, which include members of a racial or linguistic minority, shall be free to provide for such members divine service, the cure of souls and religious instruction in their own language.

2. In the event of persons belonging to a racial or linguistic minority forming the majority in a parish or Jewish community the provisions of § 2 shall be applicable.

Article 88

Religious confessions, parishes and Jewish communities, as well as orders and congregations, may maintain, even outside the territory of the State, relations of a purely ecclesiastical character with a view to co-operation in regard to creed, doctrine, worship and charity, and they may receive gifts for this purpose from their co-religionists abroad.

Article 89

1. Persons belonging to all confessions shall enjoy the legal holidays which were allowed them before the transfer of sovereignty. These holidays may not be abolished or changed without the consent of the competent representatives of the religious bodies in question.

2. The question of the Sabbath is settled by Article 71.

Article 90

The ecclesiastics and staff of religious confessions, parishes and Jewish communities, as well as of orders and congregations, may freely perform their duties whatever their origin or language.

Article 91

Religious confessions, parishes and Jewish communities belonging to a religious minority shall be entitled to an equitable share of the sums provided for religious or spiritual purposes in the State, municipal or other budgets, taking into account the requirements of the nationals belonging to the religious minorities.

Article 92

The Contracting Parties undertake to permit parishes and Jewish communities to take copies of the State tax returns to serve as a basis for the allocation of church taxes in the said parishes or communities.

Article 93

1. All religious confessions, parishes and Jewish communities and all orders and congregations existing and recognised in the plebiscite territory shall continue to be recognised therein.

2. Taking into account the change of sovereignty, they shall be obliged to bring their organisation into line with the laws promulgated to maintain public order and public morals and with the provisions of the present Chapter.

3. For the purposes of this adjustment they shall be allowed a transitional period lasting until July 1st, 1923. This stipulation

does not apply to the agreement which has been or may hereafter be concluded between the Polish State and the Holy See. It shall also not apply to the provisions of Article 95.

Article 94

1. Ecclesiastics, church functionaries, sisters of charity and deaconesses at present performing their duties may continue to do so without let or hindrance.

2. With the object of developing mutual good feeling, the Contracting Parties shall make representations to the ecclesiastical authorities with a view to an exchange of Catholic priests between the two parts of the plebiscite territory in conformity with the provisions of canon law.

Article 95

Parishes and Jewish communities, as well as their ecclesiastics, functionaries and pensioners, may freely settle their economic relations with the ecclesiastical provident institutions (funds, etc.) to which they belong on the date of the transfer of sovereignty, and continue these relations as long as it remains impossible to substitute institutions able to replace them completely. The same shall apply to the survivors of the persons mentioned above.

Article 96

§ 1

Establishments, foundations and other institutions with religious or charitable aims whose activities extend to the two parts of the plebiscite territory may continue to exercise such activities until separate institutions have been organised for each part of the territory.

§ 2

In the event of parishes or Jewish communities being divided by the frontier line between the two parts of the plebiscite territory, those concerned may take the necessary measures with a view to sharing in the upkeep of the movable and immovable property of the said parishes or communities.

APPENDIX I
CHAPTER IV

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EDUCATION

First Section.—Private Education

Article 97

For the purposes of the present Chapter, the term private education includes the teaching given by private schools and private educational establishments, whether they take the place of State schools or whether they do not, as in the case of the popular universities, academies of music, etc., as well as private teaching given out of school or at home.

Article 98

1. Nationals who belong to minorities may establish, manage, supervise and maintain at their own expense private schools or private educational establishments and give private teaching, provided that the requisite conditions for the safety of the children are fulfilled and provided that the teachers or tutors possess the legally necessary qualifications, are domiciled in the territory of the State in which the teaching is given, and do not take advantage of their profession to engage in activities hostile to the State. In cases in which an authorisation is required, it shall be granted if the conditions specified above are fulfilled.

2. Private instruction out of school given by teachers, tutors of good moral character or by parents is authorised.

3. The questions whether the private instruction referred to in paragraphs 1 and 2 is necessary or not may not be taken into consideration.

Article 99

1. The official language may not be imposed as the language of instruction in the private schools of linguistic minorities or in private teaching.

2. The official language may only be imposed as a part of the curriculum in private schools taking the place of State schools of the same category.

Article 100

1. Any person who proves, by means of an official diploma, that he or she possesses the status of public teacher in one of the two States shall be considered as duly qualified to give instruction in a private school. To give private teaching out of school or to teach subjects in school not forming part of the regular curriculum, it is sufficient to produce a certificate of capacity to give such teaching delivered by a competent authority of one of the two States.

2. The other provisions relating to the admission of aliens to act as teachers in private schools shall be so applied that the private schools of a minority can recruit some of the members of their teaching staff from abroad.

Article 101

German nationals domiciled in Polish Upper Silesia may not be forbidden from attending private schools or private educational establishments in Polish Upper Silesia. Similarly, Polish nationals domiciled in the German part of the plebiscite territory may not be forbidden from attending private schools or private educational establishments in the German part of the plebiscite territory.

Article 102

The right granted to a minority to supervise private schools in no way invalidates the right of supervision belonging to the State authorities.

Article 103

1. Children belonging to a minority and receiving, at home or in a private school, a sufficient private education shall not be obliged to attend a State school.

2. The Government educational authorities shall decide whether the private teaching in question is or is not sufficient to take the place of public education.

Article 104

The special provisions relating to private professional or supplementary instruction will be found in Article 115; and those relating to private secondary and higher teaching in Articles 128-130.

SECOND SECTION.—PUBLIC ELEMENTARY EDUCATION

Article 105

§ 1

For the purposes of the present Chapter elementary schools shall be taken to mean schools, other than extension schools, which children must attend if the prescribed teaching is not given to them in any other manner.

§ 2

The needs of the minorities as regards public elementary education shall be supplied by means of the following educational institutions:

- (a) Elementary schools employing the minority language as the language of instruction—*i.e.* minority schools;
- (b) Elementary classes employing the minority language as the language of instruction, established in the elementary schools employing the official language—*i.e.*, minority classes;
- (c) Minority courses, including:
 - (1) Teaching of the minority language (minority language courses);
 - (2) Religious teaching in the minority language (minority religious courses).

Article 106

§ 1

1. A minority school shall be established on the application of a national supported by the persons legally responsible for the

education of at least 40 children of a linguistic minority, provided these children are nationals of the State and that they belong to the same school district (*Schulverband—związek szkolny*), that they are of the age at which education is compulsory, and that their parents intend to send them to the said school.

2. If at least 40 of these children belong to the same denomination or religion, a minority school of the denominational or religious character desired shall be established on application.

3. Should the establishment of a minority school be inexpedient for special reasons, minority classes shall be formed.

§ 2

The applications mentioned in paragraphs 1 and 2 of § 1 shall be complied with as expeditiously as possible, and not later than the beginning of the school-year following the application, provided the latter has been submitted at least nine months before the beginning of the school-year.

Article 107

1. On the application of a national supported by the persons legally responsible for the education of at least 18 pupils of an elementary school who are nationals of the State and belong to a linguistic minority, minority language classes shall be established as soon as possible for these pupils.

2. In the same circumstances, if at least 12 of these pupils belong to the same denomination or religion, minority religious courses for these pupils shall be established on application.

Article 108

§ 1

1. Minority educational institutions may not be closed unless the number of their pupils for three consecutive school-years is less than the number required for their establishment.

2. Nevertheless, the school may be closed at the end of one school-year if throughout that year the number of pupils has been lower than half the number required.

§ 2

If a minority educational institution is closed, the minority may maintain the institution in question on a private footing. When circumstances permit, the premises and school material employed may be left at its disposal.

Article 109

§ 1

The maintenance of minority educational institutions shall be provided for according to the same principles as the maintenance of other State elementary schools. The competent State authority shall be responsible for seeing that their maintenance is provided for.

§ 2

1. The communes (or *Gutsbezirke*—*obszary dworskie*, as the case may be), with State aid, shall be responsible for the maintenance of the State elementary schools. It is possible that several communes may be grouped in *Gesamtschulverbände*—*zbiorowe związki szkolne*, for the maintenance of schools. State aid will consist either in making grants or subsidies or in assuming direct responsibility for part of the maintenance of the schools.

2. The salaries of the teaching staff of minority educational institutions, together with replacement expenses, shall be paid by the same organisations as those of the staff of the other State elementary schools.

Article 110

§ 1

1. The minority schools shall receive a share, proportionate to the number of their pupils, of the funds allowed from the budgets of the school districts for the ordinary maintenance of elementary schools, apart from general administration expenses and grants-in-aid. As regards special expenses (transformations and extensions of the school organisation, important building operations, etc.), the competent State authority shall see that the minority schools

are not placed at a disadvantage in the allocation of the credits provided for this purpose in the budgets of the school districts.

2. In case of dispute, the State educational authorities shall decide what expenses are to be considered as general administration expenses.

§ 2

In the distribution of the funds assigned to public elementary education in general by the State or by public organisations other than school districts, minority schools shall be treated on the same footing as the other elementary schools. As regards the sums derived from the funds whose employment is left to the discretion of the administration, minority schools shall in the same circumstances receive the same allocations as the other elementary schools.

Article 111

1. A school committee shall be established for each minority school and for minority classes, to share in their administration. More than half the members of this committee shall be elected by the persons legally responsible for the education of the pupils of the school or classes in question.

2. If there are several minority schools belonging to the same denomination or religion in a school district, a joint school committee may be established for all these schools.

3. If, in a school district, all the schools belong to the same minority, it shall not be necessary to establish a school committee. The delegation of the school district (*dozór szkolny, deputacja szkolna—Schulvorstand, Schuldeputation*) shall in this case be invested with the attributions of the school committee.

Article 112

1. The school committees shall have an equitable share in both the internal and external administration of the minority schools. They shall, in particular, be responsible for supervising the condition of the premises and school material.

2. The school committees may vote when decisions are taken

relating to the use of the funds assigned to minority educational institutions.

3. Before the appointment of teachers in minority schools or classes, the school committee shall have an opportunity of making recommendations with regard to the choice of candidates, without prejudice to the prerogatives of the State educational authorities in the matter of appointments. The delegation of the school district shall have no voice in the discussions. If the educational authority does not act on the school committee's recommendations it shall, as a general rule, communicate the reasons for its attitude to the said committee if the latter so requests.

Article 113

With a view to ensuring a sufficient supply of teachers for the educational institutions of linguistic minorities, the Contracting Parties agree to take the following measures:

1. As a general rule, only teachers belonging to the minority and perfectly acquainted with its language shall be appointed to minority schools.

Language courses shall be established for teachers appointed or about to be appointed to minority schools who are not sufficiently acquainted with the minority language.

2. A sufficient number of institutions shall be established in conformity with the legislation of the State concerned, for the general training of future teachers, in which the language of instruction shall be the minority language.

3. The diplomas required of a teacher for appointment to a public elementary school of one of the Contracting States shall be sufficient to qualify him to act as teacher of the minority in the portion of the plebiscite territory belonging to the other State. Nevertheless, the acquisition of that State's nationality may be required.

Article 114

1. The German Government shall take the necessary steps to establish in the German portion of the plebiscite territory, during

the school-year 1922-23, the minority educational institutions provided for in the present chapter.

2. The Polish Government shall see that, in Polish Upper Silesia, the teaching given in German to German pupils, in so far as minority educational institutions are provided for in the present chapter, is not interrupted, unless difficulties of educational administration render this impossible.

THIRD SECTION.—VOCATIONAL TRAINING AND EXTENSION CLASSES

Article 115

The Contracting Parties shall not be obliged to create vocational schools or extension classes for a minority. If, however, private classes exist, at which the members of a minority can receive adequate vocational and supplementary training, attendance at these classes shall free them of any obligation to attend the corresponding State schools.

FOURTH SECTION.—SECONDARY AND HIGHER EDUCATION

Article 116

1. Whereas the special position of the plebiscite territory demands that the needs of the minority as regards secondary and higher education should receive particular attention during the period of transition, the Governments of the two Contracting Parties undertake to use all the influence at their disposal with a view to the adoption of the principles of Articles 117 to 130 by the competent bodies.

2. Until such time as these bodies have settled the question, the two Governments undertake to apply the following provisions.

Article 117

§ 1

For the purposes of the present Chapter, secondary and higher schools shall be taken to mean schools of all kinds of the secondary and higher grades within the meaning of the regulations in force in the plebiscite territory on the date of the transfer of

sovereignty. Schools of new types subsequently created, out of the same grade, shall also be considered as such.

§ 2

The needs of the minorities in regard to secondary and higher public education shall be met by means of the following educational institutions:

- (a) Secondary and higher schools employing the minority language as the language of instruction—*i.e.*, minority schools;
- (b) Parallel classes employing the minority language as the language of instruction, established in the public schools employing the official language—*i.e.*, minority classes.
- (c) Minority courses, including:
 - (1) Teaching of the minority language (minority language courses);
 - (2) Religious instruction in the minority language (minority religious courses).

Article 118

§ 1

1. In localities in the plebiscite territory in which there is a higher State school, a minority State school of the same grade shall be established if an application to that effect is made and is supported by the persons legally responsible for the education of at least 300 pupils.

2. Minority classes shall be established in the higher State schools if an application to that effect is supported by the persons legally responsible for the education of at least 30 pupils in each of the four lower classes and of at least 20 pupils in each of the higher classes.

3. Minority language courses shall be established if an application to that effect is supported by the persons legally responsible for the education of at least 25 pupils, and minority religious courses if the application is supported by the persons legally responsible for the education of at least 18 pupils.

§ 2

An application may be supported by the persons legally responsible for the education of pupils of a linguistic minority who are nationals of the country in which the educational institution is situated, who reside in the part of the plebiscite territory belonging to that country, and who are entered or apply to be entered in a higher school.

Article 119

1. The minority school may be established in another locality if this is compatible with the needs of the pupils belonging to the minority.

2. If the minority school is installed in a separate building, it shall have its own headmaster belonging to the minority. If it is situated in the same building as a higher school in which the language of instruction is the official language, its external administration may be entrusted to the headmaster of that school; but as regards all matters of teaching administration, it shall have its own headmaster belonging to the minority.

Article 120

Minority educational institutions under the State may be replaced by communal institutions of the same grade.

Article 121

1. The competent authorities of the two Contracting Parties shall be bound to use all their influence and authority with the communes in which there are higher communal schools with a view to the establishment by the said communes of the minority educational institutions mentioned in Articles 118 and 119, if the conditions stipulated in these Articles are fulfilled.

2. The same applies to minority institutions for secondary education. Nevertheless, the application must be supported by the persons legally responsible for the education of at least 200 pupils as regards the establishment of a minority secondary school, and of at least 35 pupils in the case of the formation of a minority class.

Article 122

1. Minority educational institutions may be closed if for three consecutive school years the number of their pupils is lower by at least 20 per cent than the number required for their establishment.

2. If during one year the number of pupils is less than half the number required for its establishment, the educational institution may be closed at the end of the school year.

Article 123

In public minority schools and classes of the secondary and higher grades, instruction shall only be given as a rule by teachers belonging to the minority and thoroughly acquainted with the minority language.

Article 124

With a view to the application of the principles of Article 123, each Contracting Party declares its willingness to engage teachers belonging to the teaching staff of the other Contracting Party on the following conditions:

(a) The appointment shall be made for a period extending until the end of the school year 1936-1937. Nevertheless, even before the end of this period, the State may terminate a contract as from the end of each school year upon giving six months' notice, and the teacher may terminate the contract at any time upon giving three months' notice.

(b) The State must pay teachers a salary at least equal to that which they would receive in their own country.

(c) Teachers shall not be obliged to take the oath to the State required of public officials. They may, however, be required to make a written declaration giving the State a pledge that they will faithfully and conscientiously perform their professional duties.

(d) The State may transfer teachers from one minority school to another minority school of the same grade, or to minority classes of the same grade. Such transfers may only take place in the plebiscite territory.

(e) From the point of view of their own authorities, teachers shall be regarded as on leave. They shall retain their rights to pensions and to relief for their surviving dependents. On relinquishing their employment in the foreign country, they shall be automatically reinstated in their posts in the teaching staff of their own country. Their period of service abroad shall be considered for the purposes of salary and promotion as service performed in their own country.

Article 125

1. In places where there are minority schools or classes, the persons legally responsible for the education of the pupils who attend them shall be adequately represented in the school committees (*Kuratorien, Deputationen—kuratorja, deputacije*), if any.

2. The school committees of communal schools shall have an equitable share in both the internal and external administration of these schools; they shall, in particular, be responsible, for supervising the condition of the premises and school material. These school committees may vote when decisions are taken relating to the use of the funds assigned to minority educational institutions.

Article 126

The school fees charged for attendance at State minority schools shall not be higher than those charged for attendance at corresponding schools using the official language. No additional fees shall be charged for attendance at minority classes or courses.

Article 127

The official examinations in minority schools and classes shall be held in the minority language.

Article 128

If the teaching given in private minority schools corresponds to that given in the State secondary or higher schools, these private minority schools shall be recognised as secondary or higher schools, and their certificates, particularly school-leaving certifi-

cates, shall have the same value as those granted by the public secondary or higher schools.

Article 129

If a private minority school replaces a State secondary or higher school existing on the date of the transfer of sovereignty, it shall be entitled to a grant from public funds:

(a) Provided that the income of the school does not cover its necessary expenses. Income derived from school fees shall be estimated on the basis of at least the school fee charged in State schools of the same kind;

(b) And provided that the number of pupils who are nationals of the State amounts to either a total of 150, or an average of 30 per class in the four lower classes or 20 in the other classes.

Article 130

§ 1

1. State grants shall be made on the same principles as the grants made by the State to communal or private schools of the same kind or grade.

2. In calculating the amount of these grants, account may be taken of the differences between the financial burdens on State and private schools.

§ 2

1. Grants may only be made by communes or groups of communes (*Kommunalverbände—związki komunalne*) if the commune or group of communes in whose area the private school is situated makes grants to State or private schools of the same grade, or if its expenditure on its schools of the same grade is not covered or is only partly covered by the income of these schools.

2. One of the bases for calculating these grants shall be the average amount of the grants or expenses disbursed per pupil. Only pupils of the private school who are nationals of the State and who reside in the commune or group of communes in question shall be counted.

§ 3

If the State, commune or group of communes declares its willingness and is actually prepared to admit a certain number of the pupils of the private school to a State minority school or minority classes in the same locality, the amount of the grant to be made to the private school shall be reduced by a sum proportionate to this number of pupils.

FIFTH SECTION.—GENERAL PROVISIONS

Article 131

1. In order to determine the language of a pupil or child, account shall only be taken of the verbal or written statement of the person legally responsible for the education of the pupil or child. This statement may not be verified or disputed by the school authorities.

2. Similarly, the school authorities must abstain from exercising any pressure, however slight, with a view to obtaining the withdrawal of requests for the establishment of minority schools.

Article 132

§ 1

By language of instruction or language considered as a subject of the curriculum is meant correct literary Polish or German as the case may be.

§ 2

When a minority language is the language of instruction, it shall be used for the teaching of all subjects except for the teaching of Polish in the Polish part of the plebiscite territory and for the teaching of German in the German part of that territory, when instruction in these languages forms part of the school curriculum.

§ 3

Minority courses in the minority language shall be given in that language.

Article 133

1. The Contracting Parties undertake not to authorise in any school in their respective parts of the plebiscite territory the use of books or pictorial teaching material liable to offend the national or religious sentiments of a minority.

2. Similarly, each of the Contracting Parties shall take the necessary measures to ensure that, in the lessons given at school, the national and intellectual qualities of the other Party are not improperly depreciated in the eyes of the pupils.

CHAPTER V

LANGUAGES

Article 134

The Contracting Parties guarantee to the minorities the free use of their language both in their individual or economic relations and in their collective relations. No provision may limit the exercise of this freedom. The same shall apply as regards the free use of minority languages in the Press and in publications of all kinds, and at public or private meetings.

FIRST SECTION.—OFFICIAL LANGUAGE OF ADMINISTRATION

Article 135

In verbal relations with the civil authorities of the plebiscite territory, all persons shall be entitled to use either the German or the Polish language.

Article 136

Petitions addressed to the civil authorities of the plebiscite territory may be drawn up in German or in Polish. The reply may be made in either of these languages. If it is made in the official language, a translation must be attached if the petition was not drawn up in that language and if the petitioner has so requested.

Article 137

The official communications of the civil authorities in the plebiscite territory shall be made in the official language. A translation

in the minority language shall be attached to these communications in all places in which this procedure was employed on January 1st, 1922. The competent authorities shall nevertheless be free to settle this point in a different manner.

Article 138

1. Subject to the regulations concerning the use of the official language and in particular the language in which minutes, motions, etc., must be drawn up, nationals belonging to the minorities may speak in their own language in the *Kreistag*, in the *sejmik powiatowy*, and in the municipal and communal councils of the plebiscite territory.

2. The same shall apply to the *sejm* of the Voivodship of Silesia and to the *Provinziallandtag* of Upper Silesia for four years from the date of the transfer of sovereignty.

3. The provisions of paragraphs 1 and 2 shall be applicable to any representative assemblies which may hereafter replace the assemblies mentioned above.

Article 139

1. The provisions of the present section shall not apply to the administrations of the railways and of the posts, telegraphs, etc.

2. In direct relations with the public, and particularly at railway ticket offices and post offices, the convenience of the population shall as far as possible be considered, so far as the minority language is understood by the employees.

SECOND SECTION.—LANGUAGE EMPLOYED IN LEGAL
PROCEEDINGS

Article 140

1. In the ordinary courts of the plebiscite territory, any person shall be entitled to use verbally or in writing either the German language or the Polish language instead of the official language. The same shall apply to petitions addressed to the ordinary courts of the plebiscite territory which must be forwarded for decision to

a higher court sitting outside this territory, so far as the petition can be admitted by the court to which it is addressed. Without prejudice to the special measures contemplated by the Polish Government for the period of transition following upon the entry into force of the treaty, this privilege shall not be enjoyed by advocates or persons who professionally represent third parties before the courts, except in cases when they are acting on their own behalf.

2. In case of need, that part of the proceedings which does not take place in the official language shall be translated by the President of the Court, by one of its members, or by an interpreter called by the court.

3. The court shall decide whether it is advisable to insert in the records or as an annex statements or evidence produced in a minority language, or to attach to the records a translation certified by the interpreter. A party may not, however, demand that an annexed record should be drawn up in the language of a minority.

Article 141

The Minister of Justice may decree that complaints, petitions or other declarations of a party, drawn up in the minority language and which must be officially notified *ex officio*, shall be accompanied by the number of copies necessary for such notification.

Article 142

1. The official notification of complaints, or other documents relating to a case, drawn up in the minority language shall only be valid if it is made in the other State or in the plebiscite territory.

2. If the notification in the minority language is without effect, and if official notification must be made *ex officio*, a translation of the complaint or document in question must be arranged for by the court and forwarded for purposes of notification; a copy of the original must be attached; the notification of the translation shall in this case have the same effects as a valid notification of the document translated.

Article 143

Without prejudice to the provisions of Article 146, applications for entries in the land register or other registers kept by the courts, as well as declarations of consent relating thereto, must, if they are drawn up in the minority language, be accompanied by a translation by a sworn interpreter, whose text shall be taken as authentic in case of divergence.

Article 144

In the ordinary courts of the plebiscite territory the Polish language may, if the court deems necessary, be employed in the hearings in the German part, and the German language in the Polish part, provided that the parties, witnesses and other persons concerned understand it sufficiently. Even in such case, judgment shall be delivered in the official language, and the records shall be drawn up in that language. The provisions of paragraph 3 of Article 140 shall apply.

Article 145

The above-mentioned provisions shall also be applicable to commercial courts, trade councils, trade union arbitration tribunals, social insurance administrative tribunals, conciliation and arbitration committees, conciliation offices for rent and lease cases, and *Versorgungsgerichte*. These provisions are also applicable to relations between the public and bailiffs, arbitrators, persons qualified to draft wills in cases of urgency, and village courts.

Article 146

The above provisions in no way invalidate any regulations already issued, or which may hereafter be issued, authorising in a still larger measure the use of the Polish language in the German part, or the use of the German language in the Polish part. In particular, the option granted to notaries under paragraph 2245 of the German Civil Code shall be maintained.

DIVISION III

RIGHT OF PETITION AND METHODS OF APPEAL

Article 147

The Council of the League of Nations is competent to pronounce on all individual or collective petitions relating to the provisions of the present Part and directly addressed to it by members of a minority. When the Council forwards these petitions to the Government of the State in whose territory the petitioners are domiciled, this Government shall return them, with or without observations, to the Council for examination.

Article 148

In order to ensure that petitions emanating from members of a minority and relating to the interpretation or application of the provisions of the present Part should receive uniform and equitable treatment from the administrative authorities in each of the two parts of the plebiscite territory, each of the two Governments shall establish a Minorities Office in its part of the plebiscite territory.

Article 149

As regards the application and interpretation of the provisions of the present Part by the administrative authorities who receive orders from higher authorities, members of a minority may submit a petition to the Minorities Office of their State for examination, in conformity with the following provisions. In accordance with the special stipulations contained in the following articles, the Minorities Office shall then forward these petitions to the President of the Mixed Commission for his opinion. If the petitioners are not satisfied with the action taken in the matter by the administrative authorities, they may appeal to the Council of the League of Nations.

Article 150

1. All petitions must be forwarded to the Minorities Office in triplicate. They may only be addressed to the Office under the following conditions:

(a) After the complaint has been brought before the administrative authority which ranks as the highest competent instance in the plebiscite territory as regards the matter in question; or

(b) If the case is within the competence of the autonomous communal authorities (*kommunale Selbstverwaltungs-körper—komunalne ciała samorządowe*), after the complaint has been laid before the State authority responsible for communal supervision which ranks as the highest competent instance in the plebiscite territory; or

(c) In the case of a dispute as to whether the requisite conditions for the establishment or maintenance of a minority school, class or course have not been fulfilled, after the matter has been laid before the State authority competent with regard to schools; or

(d) In a case in which the first complaint must be addressed to an administrative authority outside the plebiscite territory, or for which the competent authority of the first instance is outside the said territory, after the complaint has been laid before the proper higher authorities competent in the matter.

2. A petition addressed to the Minorities Office before the conditions prescribed in paragraph 1 have been fulfilled shall be rejected without examination.

Article 151

If a member of a minority establishes a *prima facie* case that the matter which concerns him has not been settled within a reasonable time by the administrative authorities, or that the matter is one which requires urgent settlement, he may demand that his petition should be examined even before appealing to the administrative authorities mentioned in paragraph 1 of Article 150.

Article 152

1. In all the cases provided for in Articles 150 and 151, if the Minorities Office does not succeed in giving satisfaction to the

petitioners, it shall forward the petition with its observations to the President of the Mixed Commission for his opinion.

2. Each Minorities Office shall represent the authorities of its country in relations with the President of the Mixed Commission.

Article 153

1. The President of the Mixed Commission shall be free to make all enquiries he may consider useful and appropriate. He shall give the petitioners and the Minorities Office an opportunity of submitting their observations verbally or in writing.

2. After examining the case and giving the members of the Mixed Commission an opportunity of expressing their views, the President shall communicate to the Minorities Office his opinion on the manner in which the case may be settled in conformity with the provisions of the present Part, the provisions of paragraph 2 of Article 158 being applicable *mutatis mutandis*.

3. The opinion may indicate a final, a provisional or a partial solution. The President may also declare that he will only state his opinion at the end of a certain period.

Article 154

The Minorities Office shall forward the opinion of the President of the Mixed Commission to the competent administrative authorities, and shall as soon as possible inform the President of the Mixed Commission of the decision of the authorities, stating whether and in what manner they have taken his opinion into account.

Article 155

The time-limits for proceedings shall be fixed by the President of the Mixed Commission.

Article 156

The proceedings shall not be public. The President of the Mixed Commission shall decide whether and when his opinion may be communicated to the petitioner by the Minorities Office. He shall also decide whether and when its publication shall be allowed.

Article 157

The appeal to the Council of the League of Nations provided for in Article 149 shall be addressed to the Minorities Office. The latter shall arrange for its transmission to the Council by the Government.

Article 158

1. If, in the cases referred to in Article 588, the judgment or decision depends on the interpretation of the provisions of the present Part, the question of interpretation shall be submitted to the President of the Arbitral Tribunal alone in case of "evocation" (removal from the jurisdiction of the courts). "Evocation" may be applied for by the member of a minority concerned or by the opposing party.

2. The interpretation given by the President of the Arbitral Tribunal shall take into account, *inter alia*, such resolutions of the Council of the League of Nations as may refer to similar cases in Upper Silesia. The question whether any national laws are compatible with the provisions of the present Part may not be examined.

PART VI

MIXED COMMISSION AND ARBITRAL TRIBUNAL OF
UPPER SILESIA

DIVISION I

ORGANISATION

Article 560

1. The Mixed Commission has its seat at Katowice and is composed of two German members, two Polish members, as well as a President of another nationality.

2. The members must be natives of Upper Silesia or be particularly familiar with affairs in Upper Silesia, whether by reason of their profession or activity as officials, or through residence there over several years.

3. The Mixed Commission takes its decisions (*résolutions*) in accordance with the dispositions of the present Convention.

Article 564

1. The German and Polish Governments will jointly address to the Council of the League of Nations a request to nominate the Presidents of the Mixed Commission and the Arbitral Tribunal.

2. The German Government nominates the German members of the Mixed Commission and the German arbitrator; the Polish Government nominates the Polish members and the Polish arbitrator.

Article 566

1. If the President of the Mixed Commission or the President of the Arbitral Tribunal is prevented for a certain time from exercising his functions, the German and Polish Governments will request the Council of the League of Nations to nominate a substitute, in consultation, if necessary, with the President who is to be replaced.

2. If a member of the Commission or an arbitrator cannot sit, the government nominating him will nominate the substitute. Substitutes for members of the Mixed Commission or the Arbitrators must have similar qualifications to those originally required. Substitutes for the Arbitrators may not exercise any other function except judicial or academic functions. They may not exercise the profession of advocate or counsel.

Article 568

1. The President of the Mixed Commission and the President of the Arbitral Tribunal, appoint on an equal basis and after agreement with the two governments, the necessary officials and assistants.

2. They fix similarly, after agreement with the two governments, the official titles of the officials.

3. The Chiefs of the two offices must be neither German nor Polish.

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5. The President will not dismiss an official or employee of Polish or German nationality, before he has referred the matter to the government concerned.

6. The Mixed Commission and the Arbitral Tribunal draw up their own *règlement intérieur*.

Article 569

1. Each government appoints a State Agent to represent before the Mixed Commission and the Arbitral Tribunal the interests over which it must watch. . . .

Article 570

1. The Mixed Commission and the Arbitral Tribunal, the Presidents and members of the Mixed Commission and Arbitral Tribunal, as well as the officials and employees in the service of the Mixed Commission and the Arbitral Tribunal, enjoy, in penal matters, upon the territory of the Contracting States, the same special protection as officials of the respective States.

2. The President of the Mixed Commission and the President of the Arbitral Tribunal are respectively competent to initiate any prosecution (*Strafantrag*) for offences (*délits*) committed against the Mixed Commission, the Arbitral Tribunal or the members and officials thereof.

Article 571

The members and officials of the Mixed Commission or the Arbitral Tribunal of Polish or German nationality, are punished for offences committed in the exercise of their functions, by the authorities of their state, in the same way as if they were officials of that state.

Article 572

1. The Contracting Parties guarantee diplomatic privileges and immunities to the Presidents, members of the Mixed Commission,

the Arbitrators, Chiefs of the two offices, as well as to the State Agents. If these persons are nationals of one of the Contracting States, they will only be entitled to such diplomatic privileges and immunities when on the territory of the other state.

2. The officials and employees in the service of the Mixed Commission, the Arbitral Tribunal or the State Agents—when on the territory of the state of which they are not nationals—are exempted

1. from all taxes (*impôts et taxes*) on their salary or other emoluments from their services with the Mixed Commission or the Arbitral Tribunal, except taxes to the commune, or church or educational taxes;
2. from the ordinary jurisdiction in all that concerns their official activity, and from preventive detention, save in prosecutions for crime;
3. from the obligation to testify as to facts concerning their official activity, unless the President of the Mixed Commission or of the Arbitral Tribunal, or the State Agent, as the case may be, authorises the testimony.

3. The quarters (*logaux*) of the Mixed Commission and the Arbitral Tribunal are inviolable.

Article 576

The use of the official language of the Mixed Commission and Arbitral Tribunal is regulated as follows:

§ 1

Language of Discussion

1. The Presidents use the language familiar to them. Other persons officially participating in the discussions use either German or Polish.

2. Declarations, requests, resolutions and decisions must be translated into German or Polish, and if necessary into both.

3. Persons other than officials participating in the proceedings use either German or Polish, unless they know neither.

4. Translation shall be done by the President, a member of the Commission or an Arbitrator, and where necessary by an interpreter.

5. The minutes are drawn up in German and in Polish.

§ 2

Language of Internal Service

1. In the internal service, each may use German or Polish.

2. Service circulars of a general character, notices in the offices, etc., shall be drawn up in German and Polish.

3. The official language of the country where the Mixed Commission or Arbitral Tribunal is shall have precedence.

§ 3

Language of External Service

Requests addressed to the Mixed Commission or the Arbitral Tribunal must be drawn up either in German or Polish. The reply will be in the same language, unless the addressee renounces it. For the rest, all documents, communications, official notifications, citations, etc., addressed to a German authority or to Germany, must be drawn up in German, and all documents . . . etc. addressed to a Polish authority or to Poland, must be drawn up in Polish.

DIVISION II

PROCEDURE AND COMPETENCE

CHAPTER I

THE MIXED COMMISSION

Article 580

1. The Mixed Commission is authorised to request from the Arbitral Tribunal and from the judicial and administrative author-

ities of the German and Polish parts of the plebiscite territory, reasoned opinions (*consultations motivées*).

2. The administrative authorities are bound to give effect to such requests.

Article 585

1. If there come to the knowledge of the President of the Mixed Commission facts, circumstances, or situations which, in his opinion, are not in conformity with the dispositions of the present Convention, the President is free to draw the attention of the competent State Agent thereto.

2. The State Agent is then bound to transmit the communication without delay to his government.

Article 588

§ 1

1. If, in an Upper Silesian case, the judgment or decision depends on the interpretation of an article of the present Convention, either party to the case may, up to the conclusion of the proceedings in the second instance, demand that the question of interpretation be submitted to the Arbitral Tribunal (*évocation*).

2. An Upper Silesian case shall mean a case brought in the first instance before any tribunal, including administrative tribunals, in the plebiscite area, or before administrative authorities of the said area who do not receive orders from higher authorities. An Upper Silesian case shall also mean a case brought in the first instance before any tribunal, including administrative tribunals, outside the plebiscite area, or before administrative authorities who do not receive orders from higher authorities, provided that such case emanates from a part of the plebiscite area which is subject, in the first instance, to the jurisdiction of the said tribunals or authorities.

§ 2

The tribunal or authority in question shall reject the demand for evocation, if it considers that its judgment or decision does not

depend upon interpretation, or if evocation does not appear to it admissible under the provisions of the present Convention. It may reject the demand, if the question of interpretation has already been settled by the Arbitral Tribunal and published in its official gazette, or if manifestly the purpose of the demand is solely dilatory.

§ 3

An error in the application of the provisions of paragraph 2 shall be regarded by the tribunals and authorities of both countries as an essential fault of procedure.

§ 4

Unless otherwise explicitly provided in the present Convention, the interpretation of the Arbitral Tribunal shall be binding on the tribunals and authorities of both countries in their judgments or decisions.

CHAPTER III

DISPOSITIONS COMMON TO THE MIXED COMMISSION AND THE ARBITRAL TRIBUNAL

Article 596

§ 1

The Mixed Commission and Arbitral Tribunal elaborate their own rules of procedure, taking into account the principles and dispositions contained in the present Part.

§ 2

1. The rules of procedure must be published in the *Reichsgesetzblatt* and the *Dziennik Ustaw Rzeczypospolitej Polskiej*. They will enter into force fifteen days after publication in these two organs.

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§ 3

The same applies to amendments to the rules.

Article 601

§ 1

1. The Mixed Commission and the Arbitral Tribunal may collect the evidence they deem necessary and may *inter alia* hear under oath witness and experts residing in the plebiscite area. The summons shall act as a free conduct.

2. The form of oath shall conform to the provisions of the civil procedure in force in the country where the witnesses and experts are heard. Perjury and false declarations shall be punished by the Contracting Parties as if they were offences committed before their own authorities.

§ 2

1. Within the limits of the plebiscite territory, the Mixed Commission and the Arbitral Tribunal may collect all necessary evidence, either themselves, or through a member designated for that purpose, or through the competent State Agent. Outside the plebiscite territory, the President must have recourse to the intermediary of the State Agent to cause all the necessary evidence to be taken by the competent authorities.

2. All Polish and German authorities are bound to accord free aid to the Commission and the Tribunal. All expenses and costs collected by these authorities shall be carried immediately by them to the credit of the Mixed Commission and the Arbitral Tribunal. Nevertheless, the expenses necessitated by a consultation or expert enquiry will be reimbursed by the international instance to the national authorities.

Article 602

1. Disciplinary punishments for non-appearance before the Mixed Commission or the Arbitral Tribunal and for unjustified refusal to testify or take the oath are fixed by the laws relating to judicial organisation and civil procedure in force in the country of which the delinquent is a national.

2. Such punishments shall be inflicted on the request of the

Mixed Commission or the Arbitral Tribunal by the *Amtsgericht* or the *sad powiatowy* of the place where the delinquent resides. These tribunals will follow their usual procedure.

3. The amount of fines imposed is retained by the state collecting them.

Article 604

1. The Mixed Commission and the Arbitral Tribunal exercise their competence *ex officio*.

2. If the Mixed Commission has declared itself competent or incompetent in a matter, the Arbitral Tribunal is bound by this decision.

Article 605

1. If contrary to the national authority, the Mixed Commission or Arbitral Tribunal admit or deny their competence, their decision prevails.

2. The legal effects of this decision are governed like that of questions concerning the internal jurisdiction of the state.

FINAL DISPOSITION

Article 606

1. The activity of the Mixed Commission, that of the Arbitral Tribunal, as well as that of the Conciliation Commissions provided for in the present Convention, ceases after fifteen years from the date of the transfer of sovereignty.

2. After this date the Mixed Commission shall take no further resolutions.

5. The two governments reserve to themselves the regulation by a special agreement of the liquidation of the property of the Mixed Commission and the Arbitral Tribunal.

FINAL PROTOCOL

III

The two contracting Parties can, by common agreement, modify or abolish all the provisions of the transitional régime.

XV

No disposition of the Convention shall in any way modify the stipulations of Articles 65 to 72.

APPENDIX II

RULES OF PROCEDURE OF THE MIXED COMMISSION
FOR UPPER SILESIA ¹

*(Extract of the rules applicable to procedure in minorities
questions)*

PART I

PROCEDURE BEFORE THE ENTIRE MIXED COMMISSION

Article 9

1. All complaints and communications to the Mixed Commission are to be written in German or Polish. They will be answered in the same languages provided the remitter does not renounce it. In all other cases all documents, communications, memoranda of service (*Zustellungen*), and citations, addressed to a Polish authority or to be delivered in Poland, will be written in Polish, and all documents, communications, etc. addressed to a German minority or to be delivered in Germany, will be written in German.

2. The Commission may attach to all its communications and documents a translation into the other language.

Article 10

The forwarding of documents and communications etc., will, upon the request of the President, be taken care of by that deputy to whose State they are to go. The regulations of procedure in force of the Court at the place of destination are applicable.

Article 12

If the documents submitted are incomplete or unclear the Commission may ask for written supplementary explanations. The

¹ Translation (based upon a translation of M. W. Royse) from the German text, published in II *Reichsgesetzblatt*, 1923 (Feb. 15, 1923), 63-67, in accordance with Article 596 (2) 1 of the German-Polish Convention relating to Upper Silesia.

Commission can also, at the hearing, put questions to the parties in order to clear up the facts. The answers are to be recorded in a protocol.

Article 13

The Commission decides on its own judgment if and how far facts, evidence and contentions which have not been set out in the briefs are to be considered.

Article 14

The Commission asks for evidence which it considers necessary at whatever time it deems fit.

Article 15

1. The Commission may ask for evidence which it considers necessary upon its own initiative or upon the request of the parties.

2. Within the plebiscite area the Commission can collect the necessary evidence itself, or through a Member appointed by it, or through the intervention of the respective State Agent. Outside the plebiscite area the President must avail himself of the intervention of the State Agent to have the necessary evidence collected by the respective State authorities.

3. Witnesses and experts summoned by the Commission to any part of the plebiscite area have, by virtue of this summons, free conduct.

4. The examination of the witnesses and experts, especially the administration of the oath, has to correspond to the provisions of the law of civil procedure of the place in which the examination takes place. Perjury and the giving of false statements under oath shall be punished by the Contracting Parties as if this offence had been committed before their own authorities.

5. All German and Polish authorities are obliged to give free official aid to the Mixed Commission. The costs and expenses which the State authorities are entitled to collect are immediately to be credited to the Mixed Commission. However, the expenses for expert opinions will be returned to the state authorities by the Mixed Commission.

Article 16

1. The imposition of fines for non-appearance, for misbehavior, as well as for unjustified refusal of testimony or oath, shall be regulated by the provisions of the law on the organisation of the courts and the law of civil procedure of the state to which the offender belongs.

2. Upon the request of the Mixed Commission these fines shall be imposed by the "Amtsgericht" or "Sad powiatowy"² of the locality where the offender stays. In this the ordinary procedure of these courts shall be decisive.

3. Money fines are retained by the state which collects them.

Article 17

1. The Commission is entitled to request the Arbitral Tribunal as well as the courts and administrative authorities in the Polish and German parts of the plebiscite area for a reasoned opinion.

2. The administrative authorities are obliged to comply with the request.

Article 21

The Commission examines *ex officio* whether it has jurisdiction in the case. It can pass upon this at any time of the procedure after hearing the parties.

Article 22

After the President has declared the written procedure closed he fixes a date for the oral hearing.

Article 25

The President uses the language most convenient to him. Other officials use either Polish or German.

Article 26

Unofficial persons have to use the German or Polish language during the negotiations unless they are unable to speak both of these languages.

² The lowest courts in the respective States.

Article 27

Explanations, motions, resolutions and decisions will be translated into Polish or into German, and if necessary into both languages.

Article 28

Translation will be done by the President, by a member of the Commission, or if necessary by an interpreter.

Article 29

After the conclusion of the hearing the Commission confers in private session.

Article 30

The protocol will be drawn up in German and Polish.

Article 31

The non-appearance of one or both parties does not prevent the Commission from taking a decision. It can also decide upon a postponement.

Article 32

The Commission weighs all evidence according to its own judgment.

Article 37

1. In the interpretation and application of the rules of procedure, the provisions of the Convention shall in the first place be considered. Where no applicable rule can be found either in the Convention or in the present Rules, the Commission will decide in the manner which it considers just and equitable in view of the nature of the case.

2. In view of the special nature of a particular case, or for reasons of justice and equity, the Commission can deviate from the provisions of these rules of procedure.

PART II

PROCEDURE BEFORE THE PRESIDENT OF THE MIXED COMMISSION
IN MATTERS CONCERNING THE PROTECTION OF MINORITIES*Article 38*

In each case concerning the minorities protection granted in the Convention of May 15th, 1922, the President must take a decision and submit and reason out his opinion in a written report.

Article 39

If unable to give satisfaction to the complainants regarding complaints submitted under Article 150 of the Convention, the Minorities Offices for Polish Upper Silesia and German Upper Silesia respectively are obliged to forward these complaints to the President with written observations. This forwarding has to take place at latest within 20 days after the receipt of the complaints by the Minorities Offices.^a

Article 40

1. The President communicates the written observations of the Minorities Office to the complainants for their reply. Replication and duplication take place only if the President deems it necessary.

2. After the close of the written proceedings the President orders a hearing if he deems it necessary. The hearing is not public. At the hearing or in connection therewith the President may ask the Minorities Office or the complainants for written explanations regarding any matters. He may invite witnesses and experts to attend the hearing.

Article 41

The other four members of the Commission take note of the contents of the files and are present at the hearing. This hearing can also take place even if all four members are not present; but at least one German and one Polish member must be present.

^a Prolonged by amendment to 45 days on August 3rd, 1928; see *Reichsgesetzblatt*, 1928, Part II, p. 539.

Article 42

1. The President can procure for himself all information which he deems necessary and suitable in the case. *The President can also have witnesses examined by the Secretary-General or other members of the Secretariat, but these cannot administer the oath to witnesses. A second examination may in all cases take place whether under the direction of the President himself or on the request of a member of the Mixed Commission or of one of the parties.*⁴

2. Upon his own initiative or upon the request of the parties, the President can ask for all evidence which he deems necessary. He can in particular ask for expert opinion, inspection and the examination of witnesses.

Article 43

1. After the President has examined the case and has taken note of the opinions of the remaining members of the Commission, he communicates to the Minorities Office his decision as to the manner in which the case is to be regulated in conformity with the provisions of the Convention.

2. The decision of the President may be a final, provision or partial solution. The President may also declare that he will give a decision only after the expiration of a certain period of time.

Article 44

1. As soon as the Minorities Office receives the opinion of the President it must forward it to the administrative authority concerned.

2. Within 20 days the administrative authority concerned shall inform the Minorities Office how it has settled the case, and if and how the decision of the President has been taken into account. The Minorities Office shall forward immediately to the President, and simultaneously to the complainants, this communication as to the manner in which the administrative authority has settled the case.

⁴ Amendment of 1929 published in the *Reichsgesetzblatt*, 1929, Part II, p. 504.

Article 45

If special reasons do not direct otherwise the President will also communicate his decision to the complainants.

Article 46

The complainants can appeal to the Council of the League of Nations if the settlement of their complaint by the administrative authority does not satisfy them.

Article 47

The report concerning the decision of the President will be forwarded in a copy signed by the President and the Secretary-General.

Article 48

The following provisions of Part I are to be applied where applicable: Articles 9, 10, 12-17, 21, 22, 25-32, 37.

PART III

PROCEDURE ACCORDING TO ARTICLE 585 OF THE CONVENTION

Article 49

The President may at any time draw the attention of the Agent of the State concerned to facts, circumstances and conditions which in his opinion do not correspond to the provisions of the Convention (Article 585). In doing so he is not bound to follow any special mode of procedure.

CLOSING PROVISIONS

Article 50

1. These Rules of Procedure come into force 15 days after publication in the *Dziennik Ustaw Rzeczypospolitej Polskiej* and in the *Reichsgesetzblatt*.

2. Subject to the Convention of May 15th, 1922, the Commission can alter or complete these Rules of Procedure.

APPENDIX III
COUNCIL REPORT AND RESOLUTION OF
SEPTEMBER 8, 1928

APPLICATION OF PART III, DIVISION III (RIGHT OF PETITION AND
METHODS OF APPEAL) OF THE GERMANO-POLISH CONVEN-
TION OF MAY 15TH, 1922, RELATING TO UPPER SILESIA.

*(Extract from the Minutes of the Fifty-first Session of the
Council)*

Protection of Minorities in Polish Upper Silesia: Petitions ad-
dressed to the Council in virtue of Article 147 of the Ger-
mano-Polish Convention of May 15, 1922, concerning Upper
Silesia.

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M. Urrutia read the following report and draft resolution: ¹

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II

"I will . . . ask the Council to allow me to make a few sugges-
tions in connection with two more general points relating to the
application of certain provisions in the Geneva Convention to
which reference has been made in the case now before us. I
allude, in the first place, to the forwarding to the Council, by the
Government concerned, of appeals lodged with the minority under
Articles 149 and 157 of the Convention; and, secondly, to the
procedure applicable to petitions addressed direct to the Council
under Article 147 of the Convention.

"1. Article 157 of the Geneva Convention, which provides for
the forwarding to the Council, by the Government concerned, of

¹ Document C. 468. 1928. I; O.J., 1928, pp. 1491-3.

appeals lodged by the minority under Article 149, reads as follows:

“The appeal to the Council of the League of Nations provided for in Article 149 shall be addressed to the Minorities Office. The latter shall arrange for its transmission to the Council by the Government.’

“I would recommend the Council to accept the interpretation of this article given by the Polish Government, namely, that the transmission of appeals therein provided for should not be purely formal and automatic, but that at each stage of the procedure the Government should have an opportunity of settling the question in accordance with the wishes of the minority. On the other hand, as I pointed out in the report adopted by the Council on March 7th, 1928, concerning the school of Biertultowy, in Polish Upper Silesia, it is highly important for the efficient operation of the system of minority protection instituted in Upper Silesia by the Geneva Convention that appeals from the minority under Articles 149 and 157 of the Convention should be forwarded to the Council without delay by the Government concerned. Indeed, I think it would be most desirable for the Council to go so far as to specify the period within which such appeals should as a rule be forwarded by the Governments, provided always that, in exceptional cases, the Government might ask for an extension of the period—to be granted at the discretion of the President of the Council—for not more than one month. I suggest that the period in question should be two months. Furthermore, it would seem reasonable that when, on any question, an appeal has been lodged under Articles 149 and 157 of the Convention, it should not be permissible to address a petition on the same question direct to the Council under Article 147 of the Convention unless the Government concerned, having failed to settle the question in accordance with the wishes of the minority, has neglected to forward the appeal to the Council within the period prescribed.

“2. According to the procedure at present in force, petitions addressed direct to the Council under Article 147 of the Geneva Convention, are placed on the agenda of the next session of the Council following their receipt by the Secretariat. In several cases

petitions received by the Secretariat a few weeks, or even a few days, before the opening of a session of the Council have been placed on the Council's agenda and communicated to its Members almost at the same time as they were transmitted to the Government concerned, and in any case without that Government's being given reasonable time to submit its observations to the Council. I am sure the Council will realise the disadvantages of this method, which is wholly inconsistent with one of the principles of the normal procedure in regard to the protection of minorities—that, except in urgent cases, the Government concerned should be given reasonable time to submit its observations so that they may be communicated to the Members of the Council simultaneously with the petition.

“To obviate these disadvantages, the Polish Government suggested in its note of August 20th, 1928, that the principles of the normal procedure in regard to the protection of minorities should be applied to petitions addressed to the Council under Article 147 of the Geneva Convention. One of the fundamental principles of this procedure—that to which I have just referred—should, I think, apply also to these petitions. I consider that a time-limit should be laid down for the period which may elapse between the date on which a petition lodged under Article 147 of the Geneva Convention is communicated to the Government concerned and the date on which it is distributed to the Members of the Council and placed on the agenda. In this case it would seem reasonable to lay down the same period—two months—as has been fixed by the Council for the normal procedure, provided always that the Government concerned has the option of asking for an extension—to be granted at the discretion of the President of the Council—of not more than one month. In extremely urgent cases, of course, this time-limit would not operate; the petition would be communicated to the Members of the Council and the question placed on the agenda at the same time as the petition was forwarded to the Government concerned. The same rule would apply in the case of petitions relating to questions which have been the subject of appeals under Articles 149 and 157 where such appeals have not been forwarded to the Council either within the prescribed period

of two months or, in case of extension within the period fixed by the President of the Council.

III

"Having regard to the foregoing considerations, I propose that the Council adopt the following resolution:

"'1. The transmission provided for in Article 157 of the Geneva Convention relating to Upper Silesia of appeals lodged by the minority under Article 149 of that Convention shall be made within two months from the date on which the appeal is lodged with the Minorities Office. This period may be extended by the President of the Council at the request of the Government concerned, such extension not to exceed one month.

"'2. When the question has been the subject of an appeal under Articles 149 and 157 of the Convention, no petition on the question may be addressed direct to the Council under Article 147 unless the Government concerned has failed to settle the question in accordance with the wishes of the minority and has neglected to forward the appeal to the Council within the prescribed period of two months. In this case the petition shall be circulated to the Members of the Council and the questions placed on the agenda at the same time as the petition is communicated to the Government concerned.

"'3. Petitions addressed direct to the Council by the minority under Article 147 of the Geneva Convention shall be communicated by the Secretary-General to the Government concerned for any observation it may wish to make, as soon as they are received by the Secretariat. The Governments concerned shall be given a period of two months from the date on which the petition is transmitted to them in which to send their observations to the Secretariat. The petitions shall be communicated to the Members of the Council and the questions to which they relate shall be placed on the agenda of the Council as soon as the observations of the Government concerned are received by the Secretariat; should these observations not be received within the period prescribed, the petition shall be communicated to the Members of the Council and the question placed on the agenda on the expiry of the time-

limit. The time-limit may be extended by the Acting President of the Council at the request of the Government concerned, such extension not to exceed one month. In extremely urgent cases the Secretary-General shall communicate the petition to the Members of the Council as soon as it is received by the Secretariat, and shall arrange for the question to be placed on the agenda of the next session of the Council. At the same time he shall forward the petition to the Government concerned for its observations.' "

The draft resolutions were adopted.

APPENDIX IV

PARIS AGREEMENTS OF APRIL 6, 1929

*(Extract from the Minutes of the Fifty-fifth Session of
the Council)*

I. MEETING HELD ON JUNE 12TH, 1929

M. Adatci read the following report and draft resolution: ¹

"At the meeting on March 9th last,² I had the honour to inform the Council . . . that the German and Polish Governments had agreed to engage in direct negotiations for the purpose of settling a certain number of points of interpretation also relating to the Geneva Convention of May 15th, 1922. The representatives of the two governments and the Rapporteur had, in fact, for some time been discussing the possibility of making certain arrangements in regard to the procedure applicable to petitions from Upper Silesia. It seemed advisable to consider the possibility of improving and accelerating the local procedure laid down by Article 149 and also of lightening—without departing from the provisions of the Geneva Convention—the unduly heavy burden that had hitherto frequently been laid upon the Council by the application of Article 147.

"These negotiations took place at Paris. They began on March 25th last and continued until April 6th. The German Government was represented by Dr. Noebel, of the Ministry for Foreign Affairs, assisted by M. Gürich, Baron von Grünau and M. van Husen. The Polish Government was represented by M. Sokal, Minister Plenipotentiary, Permanent Delegate of Poland accredited to the League of Nations, assisted by M. Morawski and M. Gwiazdowski. M. Calonder, President of the Mixed Commission for Upper Silesia, assisted by M. Huber, Secretary-General of the Commission, also took part in the conversations, and the Secre-

¹ Document C. 272. 1929. I; O.J., 1929, pp. 993ff.

² See O.J., 1929, p. 554.

tariat of the League of Nations attended. I had the honour to preside over the negotiations, and was myself assisted by M. Sato, Minister Plenipotentiary, Director of the Imperial Japanese Bureau accredited to the League of Nations. The negotiations, which proceeded from the outset in a most satisfactory atmosphere of cordiality, ended on April 6th with the conclusion of certain agreements which were signed by the delegates of the Polish Government and the delegates of the German Government, subject to the subsequent approval of their respective Governments. I would ask the Council to take note of the terms of these agreements.^a In my view they are to be regarded as a tentative effort to find practical solutions in connection with the application of certain clauses of the German-Polish Convention relating to Upper Silesia, the delegates of the two Governments having accepted these agreements with reservations as to their respective attitudes on certain legal points. The agreements relate principally to the procedure for the application of Articles 147, 149 and following. That is to say, they concern the right of petition and remedies, the form in which petitions are to be transmitted, proceedings before the Mixed Commission, time-limits, etc.

"I must now inform the Council the M. von Schubert and M. Sokal have sent me letters ' dated, respectively, May 18th and May 11th last, officially informing me that the Paris Agreements have been approved by the Berlin and Warsaw Governments.

"I have accordingly the honour to announce to the Council the happy issue of the conversations. I regard the outcome as satisfactory. Proceedings in connection with petitions and appeals made under Articles 147 and 149 will undoubtedly be made easier in the future. The Council will no longer be called upon to pronounce on the substance of certain questions which are not really important enough to justify a direct appeal under Article 147. These questions will, in the first place, be submitted to the local procedure which now becomes more efficient and more practical.

"Such is the immediate outcome of the German-Polish conversations, of which I give the Council a brief account: I am quite

^a See Annex.

^{*} See O.J., 1929, p. 1106 (Annex 1135a to the Minutes of the Fifty-fifth Session of the Council).

sure that these arrangements will help to facilitate relations between the minorities of Upper Silesia and the competent authorities, to render the procedure more effective and rapid and to promote mutual trust and confidence on both sides, without which the Convention in force would hardly be adequate to settle the various questions involved.

"I must specially mention the statement made by M. Calonder in the course of the negotiations regarding the need for a spirit of close and friendly co-operation on both sides in examining and settling questions relating to minorities in Upper Silesia. The fact that this statement by the President of the Mixed Commission, which had its effect on the agreements themselves, was most favorably received both by the Polish and the German delegations is a particularly significant circumstance to which I would draw the Council's attention.

"In communicating the above to the Council, I am fulfilling a twofold duty: I am informing the Members of the Council of the satisfactory outcome of the negotiations, and at the same time asking for their approval, which is essential to enable the texts in question to enter fully into force.

"I have therefore the honour to propose to the Council the adoption of the following resolution:

"The Council gives its approval, where that approval is required, to the Paris Agreement relating to the application of certain provisions of the Convention dated May 15th, 1922, regarding Upper Silesia, as set forth in the documents attached to the present report.'"

The draft resolution was adopted.

ANNEX

GERMAN-POLISH CONVERSATIONS CONCERNING THE APPLICATION OF CERTAIN CLAUSES OF THE CONVENTION OF MAY 15TH, 1922, RELATING TO UPPER SILESIA (PARIS AGREEMENTS OF APRIL 6TH, 1929).

The delegates of the German Government and the delegates of the Polish Government met at Paris from March 25th to April 6th, 1929 under the Chairmanship of His Excellency M. Adatci,

representative of Japan on the Council of the League of Nations, acting in his capacity of Rapporteur on minorities questions, and with the assistance of M. Calonder, President of the Mixed Commission for Upper Silesia, and of the Secretariat of the League, to consider certain points connected with the application of the German-Polish Convention of May 15th, 1922, relating to Upper Silesia.

RIGHT OF PETITION AND REMEDIES

At the issue of their deliberations, the delegates of the German Government and the delegates of the Polish Government came to an agreement upon the arrangements and provisions set out below.

These arrangements are to be regarded as an attempt to find practical solutions, and they have been accepted by the delegates of the two Governments with reservations as to their respective attitudes on certain legal questions.

A. PROCEDURE FOR THE APPLICATION OF ARTICLES 149 AND FOLLOWING

1. Time-limits

(a) The Minorities Offices are bound to adhere strictly to the maximum period of forty-five days laid down in Article 39 of the Rules of Procedure for the transmission of petitions to the President of the Mixed Commission.

(b) The Minorities Offices are bound to submit the observations referred to in Article 152 of the Geneva Convention at the same time as they forward the petitions.

(c) In particular cases affected by the foregoing paragraphs, the President of the Mixed Commission may apply the provisions of Article 37 of the Rules of Procedure.

(d) The Minorities Offices are bound to furnish, within the period specified by the President of the Mixed Commission, such additional information as he may require.

(e) The Minorities Offices are bound to adhere strictly to the time-limits laid down by the President of the Mixed Commission, or, where necessary, to apply for such extension as circumstances may dictate.

(f) Should the time-limits laid down not be adhered to, the President of the Mixed Commission shall be entitled to take such steps as he may think fit to hasten the procedure and arrive at a solution. He might, for example, in particularly urgent cases, begin the proceedings, open the oral debates, and establish the presumptive truth of the facts alleged by the Minorities Offices or by the petitioners.

(g) The Minorities Offices are bound to adhere to the time-limit of twenty days laid down for them to state whether the opinion of the President of the Mixed Commission is accepted by the competent administrative authorities.

2. Forwarding of Petitions

The Minorities Offices are bound to forward every petition to the President of the Mixed Commission if they cannot succeed in satisfying the petitioners; it will, however, be open to them in every case to raise the question of competence.

3. Proceedings before the Mixed Commission

(a) It is desirable that proceedings conducted in writing should be shortened as much as circumstances allow in each case. In this matter the provisions of Article 37 of the Rules of Procedure may be applied.

(b) The President of the Mixed Commission states that he desires to reach a final settlement of every case laid before him under Article 149 within six months of the date on which the petition was lodged with the Minorities Office.

4. Co-operation

On this point the President of the Mixed Commission made the following statement:

"In our discussions on local procedure, we have endeavored to make that procedure under Articles 149 and following more efficient and more expeditious, and, in particular, to eliminate certain delays and obstacles in the work of the Minorities Offices. We may entertain the hope that the procedure upon which we have agreed will effect a valuable saving of time in the settlement of

cases in which applications may be made under Articles 149 and following.

"Apart from these improvements in procedure, however, I must emphasize the need for friendly co-operation based on a desire for justice, conciliation and pacification. This moral factor is far more important than any technical point of procedure. Throughout every stage of the proceedings—before the competent national authorities, before the Minorities Offices, and in the Mixed Commission—the dominant idea must always be to reach a friendly settlement of the case wherever possible, by conscientiously and equitably applying the provisions of the Convention. I would refer to the general statement on the principles of co-operation which I had the honour to make in my speech on February 18th, 1929, when Secretary of State, M. Morawski, became a member of the Mixed Commission.

"As regards more especially that task of the President and the Polish and German members of the Mixed Commission, I should like to repeat here the actual words I used on that occasion:

"The principle of settling cases on a friendly basis wherever possible must also be applied by the Mixed Commission to the cases with which it has to deal. Where other authorities have failed to bring about an amicable settlement, the Mixed Commission must make one more effort to secure a compromise. An equitable arrangement is always preferable to an opinion given by the President with the possibility of an appeal to the Council of the League of Nations; and it is preferable not merely for the sake of reaching a compromise, but also because it enables a practical solution suited to the circumstances of the case to be reached without delay. Cases in which the President is forced to give an opinion should be the rarest exceptions. That is the view that I have always taken of my duties; but if the President of the Mixed Commission is to be able to bring about amicable settlements, it is absolutely essential that the members of the Commission should personally intervene and use their good offices with the authorities of their respective countries. Indeed, this kind of co-operation is an essential part of the work of a Mixed Commission. It is

further necessary that the competent authorities, as well as the petitioner, should make an effort to come to an equitable arrangement within a brief period.'

"I am sure that the Polish and German delegates will join with me in asking their Governments and authorities to give me their effective support in my efforts at conciliation."

M. Sokal, on behalf of the Polish delegation, and Dr. Noebel on behalf of the German delegation, expressed their complete agreement with the ideas of the President of the Mixed Commission.

5. Appeal to the Council

When an appeal is made to the Council under Article 149, the Rapporteur may, before the opening of the Council session, enter upon an examination of the substance of the question raised by the appeal with a view to the preparation of his report.

B. PROCEDURE FOR THE APPLICATION OF ARTICLE 147

(1) Urgent petitions will still be subject to the procedure laid down in the Council resolution of September 8th, 1928 (Chapter III, third paragraph).

(2) Petitions which are not urgent, as soon as they reach the Secretariat, will be communicated by the Secretary-General to the Government concerned for any observations it may desire to make. They will be placed on the provisional agenda of the Council under the conditions laid down in the same resolution of September 8th, 1928 (Chapter III, third paragraph).

These petitions, together with the observations of the Government concerned, will be sent to the Rapporteur for examination. If the Rapporteur, assisted by the Secretary-General, concludes that the subject of the petition is not sufficiently important to justify its examination by the Council under Article 147 of the Convention and, further, that the case in question may be dealt with under Article 149, he will merely propose that the Council should not examine the substance of the petition. This proposal will be mentioned in the provisional agenda.

When the Council, on adopting its agenda, approves the Rap-

porteur's proposal, the petition in question will be removed and will not be placed upon the final agenda.

Petitions so removed will be submitted to the local procedure provided for under Articles 149 *et seq.* of the Geneva Convention, and for that purpose the Secretary-General will send them in triplicate to the Government concerned, which will forward them as rapidly as possible to the competent Minorities Office. The period of forty-five days referred to in Article 39 of the Rules of Procedure of the Mixed Commission will take effect from the date when the petitioner submits to the Minorities Office evidence that the conditions provided for in Article 150, Section 1, have been fulfilled, unless such evidence is furnished by the petitioner at an earlier date.

(3) The procedure laid down in (2) above will not be applicable to petitions in any of the cases referred to below under (a), first paragraph, and (b), first paragraph. These petitions will simply be set aside by the Secretary-General, with the approval of the Rapporteur, and will not be placed on the provisional agenda of the Council.

(a) Petitions relating to questions which are being dealt with under the local procedure provided for in Articles 149 *et seq.* of the Geneva Convention, while such procedure is pending.

If, however, any considerable delays occur in regard to the periods prescribed for this procedure, the petitions in question may be submitted directly to the Council under Article 147. The Council will then take a decision in regard to them.

(b) Petitions relating to questions regarding which the President of the Mixed Commission has approached the official agent of the Government concerned in accordance with Article 585 of the Geneva Convention.

In such cases petitions cannot be sent directly to the Council under Article 147, until a decision on them has been taken by the administrative authorities; or, if no such decision has been taken, until the expiration of a period of four months from the date when the President of the Mixed Commission applies to the Government agent in question. The fixing of this period of four months cannot, however, be taken to imply an obligation on the part of

the Government concerned to give effect to the action taken by the President of the Mixed Commission.

(4) As Article 149 of the Geneva Convention only makes provision for petitions relating to the application and interpretation of the provisions of the third part of that Convention by administrative authorities who receive instructions through the proper official channel, petitions regarding matters not covered by that article may be sent direct to the Council under Article 147, subject to the provisions laid down in paragraph (3) (b).

Whenever the Council of the League is asked to give a decision on the substance of a petition from a minority in German or Polish Upper Silesia, the Rapporteur may, with a view to the preparation of his report, begin to examine the substance of the question raised in the petition even before the opening of the session of the Council.

II. MEETING HELD ON JUNE 13TH, 1929

The President, speaking as Rapporteur for minorities questions, said that at the public meeting on the previous day, the Council had adopted a report which he had submitted to it dealing with certain arrangements relating to the procedure to be applied to petitions from minorities in Upper Silesia. These arrangements had been concluded in the course of conversations between representatives of Germany and Poland which had taken place in Paris under his chairmanship.

He desired to inform his colleagues that certain points connected with the questions which had formed the subject of public conversation had also been dealt with in two letters addressed to him by M. Sokal, on behalf of the Polish delegation, and by Dr. Noebel, on behalf of the German delegation. Those letters were dated May 11th and 18th, 1929, respectively.

The two governments in those letters had declared that the proposals which the Rapporteur might submit to the Council under paragraph 2, sub-paragraph 2, of the document, embodying the arrangement for dealing with unimportant questions brought before the Council under Article 147 of the Convention of Geneva,

would not give rise to any objections on the part of the representatives of the two Governments.

Further, the two Governments had declared that they would facilitate as far as possible the task of the Rapporteur, if he should think it necessary either to procure supplementary information from the Governments or to question the petitioners. It was understood that, in the latter case, the German and Polish Governments would undertake respectively to forward to the petitioners the questions which the Rapporteur would formulate in writing, and would send to the Rapporteur the replies of the petitioners, which could be made either verbally or in writing at their discretion.

The German and Polish Governments had also declared that they would continue to carry out, as rapidly and completely as possible, the recommendations and wishes of the Council of the League of Nations concerning the questions affecting minorities in German and Polish Upper Silesia respectively. He was glad to be able to give this supplementary information to the Council.

APPENDIX V

CONSTITUTION OF THE DEUTSCHE VOLKSBUND FÜR POLNISCH-SCHLESIEŃ (t.z.)¹

Name and Seat

§ 1

The German People's League for Polish Silesia is a registered association. Its seat is in Katowice.

Object

§ 2

The object of the Association is to support and foster German culture and economic life, in particular to watch over the rights of the German population under the minorities treaty and legislation in force for the time being.

Membership

§ 3

The following may become members of the Association:

1. all district associations of the German People's League for Upper Silesia;
2. all unions concerned with the object set out in § 2.

Admission follows written application by decision of the Administrative Council on the proposal of the Directorate (*Vorstand*).

Membership ceases through

- (1) voluntary withdrawal;
- (2) expulsion.

Expulsion may take place on the proposal of the Directorate by decision of the Administrative Council, when a member pursues a policy opposed to the object of the German People's League.

¹ Translation from a copy supplied by the Volksbund. The writer was unable to obtain a copy of the constitution of the Związek Polaków.

The expelled member may, within two weeks of the decision, call for a General Meeting of members.

The expulsion of a member may not be the subject of inquiry in a court of law.

Organs of the Association

§ 4

The organs of the Association are:

1. the General Meeting of members,
2. the Administrative Council,
3. the Directorate.

General Meeting

§ 5

The General Meeting must be convened at least once annually. It shall be summoned by written communication from the Directorate on the instructions of the Administrative Council. On the request of at least four members the Council must order the Meeting to be summoned.

The General Meeting may act when at least half its members are present.

Each member sends to the Meeting one representative for each thousand of its individual constituents or part thereof. There shall be not less than two nor more than ten representatives of each member.

The duties of the General Meeting are as follows:

- (1) election of the Administrative Council,
- (2) election of the Directorate,
- (3) adoption of the annual report, the accounting, and discharge of the Directorate,
- (4) establishment of the budget.

The minutes of the General Meeting will be kept by the President of the Administrative Council and a secretary designated by him.

Administrative Council

§ 6

The Administrative Council consists of:

- (a) the President,
- (b) two Vice-Presidents,
- (c) from fifteen to thirty members to be elected,
- (d) at least one representative of each member of the Association.

Directorate

§ 6a

The Directorate consists of

- (1) the Director,
- (2) the Treasurer,
- (3) the Syndic,
- (4) one other member.

The members of the Directorate will be elected by secret ballot.

The period of office of the Director is three years. Members may be reelected.

The Directorate represents the Association for legal and other purposes. A declaration of the Director suffices for validity of legal documents. If he is prevented that of two other members jointly shall be necessary.

The Directorate meets whenever necessary. Three constitutes a quorum. Minutes shall be kept.

The Directorate acts within the adopted lines of policies and decisions of the General Meeting and Administrative Council.

Voting

§ 7

Decisions are taken by a majority of votes. In case of an equal division the proposal is rejected.

Dissolution and Amendments to Constitution

§ 9

The dissolution of the German People's League can only be brought about by decision of the General Meeting summoned for this purpose. This Meeting will also decide as to the disposal of the property of the Association.

Dissolution may only take place if all the district associations and at least two-thirds of the other members vote in favour.

If a General Meeting summoned to consider dissolution cannot act, then a new Meeting may be called after at least two weeks, which shall be competent without regard to the number of members present.

A vote of at least two-thirds of the district associations and of the other members is necessary for amendments of the constitution.

Katowice, November 8, 1921,
July 1, 1922, January 26, 1925.

APPENDIX VI

OPINIONS OF THE PRESIDENT OF THE MIXED COMMISSION, 1922-1932

Opinion No.	Date	Petitioner	Subject-matter	Minority	Reference ¹ to Opinion
1	May 1, 1923	P. Pogrzeba	Education of his son	German	W. 147
2	May 1, 1923	Paul Gawlik	Education of his son	German	W. 148
3	May 1, 1923	Johann Wosnitza	Insult by teacher of his son	German	W. 151
4	June 19, 1923	Pastor Reinhold	Accommodation for minority schools	German	W. 152
5	Oct. 29, 1923	Johann Hübner	Minority school in Kopalinia Boera	German	W. 163
6	Nov. 2, 1923	Evangelist Church Council, Rybnik	Closing of the church school in Rybnik	German	W. 166
7	Nov. 6, 1923	German Schools Association, Lubliniec	Accommodation for minority schools in Lubliniec	German	W. 167
8	Nov. 26, 1923	Deutsche Volksbund	Minority middle and high schools	German	W. 172
9	Dec. 14, 1923	Ignatz Dybol	Wrongful prosecution	Polish	W. 179
10	Dec. 14, 1923	Emanuel Biskupek	Compensation for losses by disorders	Polish	W. 181
11	Dec. 20, 1923	August Kühnel <i>et al.</i>	Admission of their children to minority schools	German	W. 183
12	Jan. 3, 1924	August Jung <i>et al.</i>	Minority school, Lubliniec	German	W. 184 ^a
13	Jan. 3, 1924	Johann Wosnitza	Education of his son	German	W. 199
14	Jan. 29, 1924	Michael Wagner	Compensation for losses by disorders, etc.	German	W. 200
15	Jan. 29, 1924	Robert Kaliga	Education of his daughter	German	W. 206
16	Mch. 15, 1924	Zwiazek Polakow	Minority school in Zaborze	Polish	W. 207

¹ See also Appendix VII, note. The initial "W." indicates the private collection of opinions in J. P. Warderholt, *op cit.*
^a English and French translations in *Publications of the Permanent Court*, Series C, No. 14-II, pp. 193-216.

Opinion No.	Date	Petitioner	Subject-matter	Minority	Reference to Opinion
17	Mch. 20, 1924	Deutsche Volksbund	Illicit pressure concerning school entries	German	W. 212
18	Mch. 22, 1924	Franz Kohlbrenner (through "Katholik Verlag")	Discriminatory leasing provisions	Polish	W. 214
19	Apr. 22, 1924	Philipp Moczygemba	Compensation for losses by disorders	Polish	W. 216
20	Apr. 22, 1924	Richard Rutz <i>et al.</i>	Application for erection of minority school in Katowice	German	W. 218
21	Apr. 22, 1924	Deutsche Volksbund	Investigation of signatures on school applications	German	W. 220
22	June 30, 1924	August Jung <i>et al.</i>	Minority schools in Lubliniec	German	W. 222 ¹
23	Nov. 18, 1924	Zwiazek Polakow	Illegal searches	Polish	W. 225
24	Nov. 24, 1924	Zwiazek Polakow	Violation of election rights	Polish	W. 227
25	Nov. 27, 1924	Hedwig Skladny	Compensation for losses by disorders	German	W. 229
26	Dec. 31, 1924	August Machura	Establishment of minority school in Kamien	German	W. 234
27	Jan. 12, 1925	Hubert Kühne	Compensation for losses by disorders	German	W. 239
28	Feb. 17, 1925	Karl Michalik	Losses suffered through disorders	German	W. 241
29	Sept. 15, 1925	Lawyer Kudriscz (through Zwiazek Polakow)	Membership of the Zwiazek Powstancow Slaskich	Polish	W. 243
30	Oct. 10, 1925	Deutsche Volksbund	Closing of minority school in Laziska Gorna	German	W. 249
31	Sept. 15, 1925	Otto Ulitz	Language of school registers	German	W. 253
32	Dec. 16, 1925	Deutsche Volksbund	Minority school in Bytkow	German	W. 256
33	Dec. 20, 1925	Deutsche Volksbund	Minority school in Wilcza Gorna	German	W. 260 ^a
34	Feb. 1, 1926	Anastasia Czerner <i>et al.</i>	Losses by disorders	Polish	W. 265
35	July 27, 1926	Deutsche Volksbund	Rozdzien minority school	German	W. 267

¹ French translation in Series C, No. 14-II, pp. 316-20.

^a French and English translations in Series C, No. 14-II, pp. 291-9.

<i>Opinion No.</i>	<i>Date</i>	<i>Petitioner</i>	<i>Subject-matter</i>	<i>Minority</i>	<i>Reference to Opinion</i>
36	Sept. 15, 1926	Deutsche Volksbund	Kalety minority school	German	W. 270
37	Sept. 20, 1926	Josef Pelka (through Związek Polaków)	Discriminatory police action	Polish	W. 273
38	Oct. 10, 1926	Deutsche Volksbund	Non-opening of school at Biertultowy	German	W. 275
39	Oct. 11, 1926	Boleslaus Drozdowski (through Związek Polaków)	Wrongful arrest	Polish	W. 279
40	Dec. 15, 1926	Deutsche Volksbund	Rejection of entries for minority schools 1926-7	German	W. 284 ¹
41	Dec. 16, 1926	Deutsche Volksbund	Non-opening of school at Bobrowniki-Piekary-Rudne	German	W. 300
42	Jan. 7, 1927	Deutsche Volksbund	Non-establishment of school in Brzozowice	German	W. 304
43	Jan. 25, 1927	Deutsche Volksbund	Non-establishment of school in Rydułtowy Dolne	German	W. 306
44	Feb. 10, 1927	Josef Pelka (through Związek Polaków)	Wrongful arrest	Polish	W. 308
45	Feb. 12, 1927	Johann Sobotta (through Związek Polaków)	Wrongful pressure	Polish	W. 311
46	Mch. 31, 1927	Deutsche Volksbund	Non-establishment of school at Brzozowice	German	W. 314
47	Mch. 31, 1927	Deutsche Volksbund	Non-establishment of school at Rydułtowy Dolne	German	W. 315
48	Mch. 31, 1927	Deutsche Volksbund	Non-opening of school in Bobrowniki-Piekary-Rudne	German	W. 316
49	Apr. 23, 1927	Deutsche Volksbund	Non-opening of school in Ligota-Woźnicka	German	W. 317

¹ French and English translations in *id.*, pp. 116-44.

<i>Opinion No.</i>	<i>Date</i>	<i>Petitioner</i>	<i>Subject-matter</i>	<i>Minority</i>	<i>Reference to Opinion</i>
50	Apr. 25, 1927	Zwiazek Polakow	Investigation of members of the Z. P. by police officials	Polish	W. 320
51	June 15, 1927	Deutsche Volksbund	Minority school in Konczyce	German	W. 324
52	July 22, 1927	Deutsche Volksbund	Minority school in Zaleze	German	W. 328
53	July 15, 1927	Zwiazek Polakow	Local boards and aldermen	Polish	W. 331
54	Oct. 5, 1927	Deutsche Volksbund	Agitation against minority schools in Godow	German	W. 341
55	Oct. 5, 1927	Deutsche Volksbund	Wrongful refusal to recognize full power	German	W. 346
56	Oct. 10, 1927	Deutsche Volksbund	Rights of unmarried mothers	German	W. 349
57	Oct. 10, 1927	Deutsche Volksbund	Minority high school in Krolewska Huta	German	W. 352
58	Oct. 10, 1927	Deutsche Volksbund	Language of minority school registers	German	W. 357
59	Oct. 12, 1927	Deutsche Volksbund	Non-establishment of minority school at Gieraltowice	German	W. 360
60	Dec. 2, 1927	Deutsche Volksbund	Wrongful arrests	German	W. 363 ¹
61	Nov. 30, 1927	Deutsche Volksbund	Non-opening of minority school in Stara Wies	German	W. 369
62	Dec. 14, 1927	Deutsche Volksbund	Minority schools in Brzezinka	German	W. 373 ²
63	Jan. 30, 1928	Deutsche Volksbund	Minority school in Janow	German	W. 376
64	Jan. 31, 1928	Deutsche Volksbund	Minority school in Pszowskie Doly	German	W. 379
65	Jan. 31, 1928	Deutsche Volksbund	Non-admission of children of M. Mich- alski to minority school in Mala Da- browka	German	W. 381
66	Feb. 25, 1928	Deutsche Volksbund	Singing of the "Rota-Leides"	German	W. 384
67	Feb. 20, 1928	Deutsche Volksbund	Minority schools in Nowa Wies	German	W. 389

¹ French and English translations in Series C, No. 14-II, pp. 299-306.

² French and English translations in *id.*, pp. 307-11.

<i>Opinion No.</i>	<i>Date</i>	<i>Petitioner</i>	<i>Subject-matter</i>	<i>Minority</i>	<i>Reference to Opinion</i>
68	Mch. 29, 1928	Königshütter Fürsorgegesellschaft in Krolewska Huta ¹	Discriminatory treatment	German	W. 391
69	June 1, 1928	Deutsche Volksbund	Insulting treatment of minority	German	W. 395
70	June 21, 1928	Deutsche Volksbund	Non-admission of children to minority schools in Swierkhaniec, etc.	German	W. 399
71	June 21, 1928	Turngemeinde Katowice (through Deutsche Volksbund)	Police prohibition of certain associations	German	W. 402
72	June 1, 1928	Deutsche Volksbund	Wrongful arrest of teacher	German	W. 405
73	July 10, 1928	Deutsche Volksbund	Minority school in Koszein	German	W. 409
74	July 12, 1928	Deutsche Volksbund	Agitation against the minority school in Gieraltowice	German	W. 411
75	July 19, 1928	Deutsche Volksbund	Non-establishment of minority school in Golkowice	German	W. 414
76	July 23, 1928	Deutsche Volksbund	Closing of class in Krolewska Huta minority high school	German	W. 416
77	July 23, 1928	Deutsche Volksbund	Non-establishment of minority school in Glinica	German	W. 419
78	July 23, 1928	Deutsche Volksbund	Non-establishment of minority school in Godow	German	W. 422
79	July 23, 1928	97 persons (through Deutsche Volksbund)	Non-admission of their children to minority schools	German	W. 424
80	Feb. 15, 1929	Stanislaus Schrötter <i>et al.</i> (through Deutsche Volksbund)	Non-admission of 172 "Maurer" children to minority schools	German	W. 428
81	Apr. 15, 1929	Deutsche Volksbund	Non-admission of 109 children to minority schools; language declarations	German	W. 434

¹ In Polish the "Krolewska Huta Spolka Pieczy" (Krolewska Huta Benevolent Society).

<i>Opinion No.</i>	<i>Date</i>	<i>Petitioner</i>	<i>Subject-matter</i>	<i>Minority</i>	<i>Reference to Opinion</i>
82	June 30, 1929	Deutsche Volksbund	The dismissal of doctors of the Spolka Bracka	German	W. 440
83	Aug. 19, 1929	Gregor Sakry (through Deutsche Volksbund)	Non-admission of his children to minority school	German	Unpublished
84	Nov. 12, 1929	Johann Niechoj (through Deutsche Volksbund)	Wrongful dismissal from post	German	Unpublished
85	Jan. 31, 1930	Deutsche Volksbund	Dismissal from employment of Adolf Klima	German	Unpublished
86	Feb. 10, 1930	Joseph Kawulok <i>et al.</i> (through Deutsche Volksbund)	Non-admission of 60 children to minority schools	German	Unpublished
87	Mar. 1, 1930	Deutsche Theaterngemeinde (through Deutsch Volksbund)	Accommodation for minority performances	German	Unpublished
88	Mar. 1, 1930	Zwiazek Polakow	Accommodation for minority performances	Polish	Unpublished
89	Mar. 24, 1930	Karl Wladasch (through Deutsche Volksbund)	Use of minority language in official correspondence	German	Unpublished
90	June 21, 1930	Johann Wiesner (through Deutsche Volksbund)	Dismissal from employment	German	Unpublished
91	July 7, 1930	Albin Schneider	Discrimination in employment	German	Unpublished
92	July 8, 1930	Paul Michalik (through Deutsche Volksbund)	Discrimination in land distribution	German	Unpublished
93	July 16, 1930	Paul Besuch (through Deutsche Volksbund)	Wrongful dismissal from position	German	Unpublished
94	July 17, 1930	Martha Slodczyk (through Zwiazek Polakow)	Wrongful conduct of Doctor Janus	Polish	Unpublished
95	Aug. 1, 1930	Marthe Berger (through Deutsche Volksbund)	Non-admission of child to minority school	German	Unpublished

<i>Opinion No.</i>	<i>Date</i>	<i>Petitioner</i>	<i>Subject-matter</i>	<i>Minority</i>	<i>Reference to Opinion</i>
96	May 26, 1931	Bruno Lipka	War pensions discrimination	Polish	Unpublished
97	May 30, 1931	Bruno Lipka	War pensions discrimination	Polish	Unpublished
98	May 30, 1931	Johann Mokros	Dismissal from employment	German	Unpublished
99	May 30, 1931	Otto Misch	Dismissal from employment	German	Unpublished
100	July 22, 1931	Johann Kotzurek	Discriminatory police action	Polish	Unpublished
101	June 9, 1932	Ernst Pietsch	Dismissal from employment	German	Unpublished
102	July 20, 1932	Guido Bienek	Compensation for expulsion from Po- land	German	Unpublished

APPENDIX VII

APPEALS TO THE COUNCIL OF THE LEAGUE OF NATIONS UNDER ARTICLE 149, 1922-32

<i>Short Title</i>	<i>Date of Appeal</i>	<i>President's Opinion</i>	<i>Council Documents</i> ¹
1. School in Kopalnia Boera	Dec. 10, 1923	Oct. 29, 1923 (no. 5)	<i>O. J.</i> , 1924, pp. 529, 685.
2. Minority middle and high schools	Jan. 7, 1924	Nov. 26, 1923 (no. 8)	<i>O. J.</i> , 1924, p. 686.
3. Karl Michalik	May 7, 1925	Feb. 17, 1925 (no. 28)	<i>O. J.</i> , 1926, p. 517. Doc. C. 714, 1925, I.
4. Entries to minority schools 1926-7	Jan. 15, 1927	Dec. 15, 1926 (no. 40)	<i>O. J.</i> , 1927, pp. 376, 476, 491-505, 621; <i>id.</i> 1928, pp. 156, 218.
5. School at Janow	June 18, 1928	Jan. 30, 1928 (no. 63)	<i>O. J.</i> , 1929, p. 57.
6. School at Nowa-Wies	June 3, 1928	Feb. 29, 1928 (no. 67)	<i>O. J.</i> , 1929, p. 57. Doc. C. 551, 1928, I.
7. School at Swierkianiec, etc.	Sept. 21, 1928 Oct. 8, 1928	June 21, 1928 (no. 70)	<i>O. J.</i> , 1929, pp. 58-221, 229-32; Doc. C. 587, 1928, I.
8. Doctors of the Spolka Bracka	Sept. 25, 1929	June 30, 1929 (no. 82)	<i>O. J.</i> , 1930, pp. 106, 550, 1309; Doc. C. 6, 1930, I.
9. The 60 children case	June 5, 1930	Feb. 10, 1930 (no. 86)	<i>O. J.</i> , 1930, pp. 1301, 1521, 1642-6.
10. Paul Michalik	Aug. 9, 1930	July 5, 1930 (no. 92)	<i>O. J.</i> , 1931, p. 230; Doc. C. 656, 1931, I.
11. Marthe Berger		Aug. 1, 1930 (no. 95)	<i>O. J.</i> , 1931, p. 230; Doc. C. 668, 1930, I.
12. Johann Mekros		May 30, 1931 (no. 98)	<i>O. J.</i> , 1931, p. 1201; Doc. C. 350, 1932, I. (<i>id.</i> , 1930, p. 496).

All the above, except No. 3, concern the German minority in Polish Upper Silesia.

¹ These documents usually include French and English translations of the opinion concerned.

APPENDIX VIII

PETITIONS DIRECT TO THE COUNCIL OF THE LEAGUE OF NATIONS UNDER ARTICLE 147, 1922-32

A. GERMAN MINORITY

<i>Subject-matter</i>	<i>Date of Petition</i>	<i>Petitioner</i>	<i>Document</i>
1. Non-opening of school in Wilcza Gorna.	Jan. 13, 1927	Deutsche Volksbund	<i>O. J.</i> , 1926, pp. 376, 403, 592.
2. Non-opening of school in Bytkow.	Jan. 18, 1927	Deutsche Volksbund	<i>Ibid.</i>
3. Non-opening of school in Laziska-Gorna.	Jan. 18, 1927	Deutsche Volksbund	<i>Ibid.</i>
4. Closing of school in Gieraltowice.	Dec. 16, 1927	Deutsche Volksbund	<i>O. J.</i> , 1928, p. 946.
5. Closing of school in Stara Wies.	Jan. 16, 1928	Deutsche Volksbund	<i>Ibid.</i>
6. Non-opening of school in Biertultowy.	Jan. 30, 1928	Deutsche Volksbund	<i>O. J.</i> , 1928, pp. 401, 881, 945.
7. Non-opening of school in Brzezinka.	Apr. 26, 1928	Deutsche Volksbund	<i>O. J.</i> , 1928, p. 922.
8. Minority high school in Krolewska Huta.	Apr. 26, 1928	Deutsche Volksbund	<i>O. J.</i> , 1928, p. 946.
9. Language requirements in minority schools.	Apr. 26, 1928	Deutsche Volksbund	<i>O. J.</i> , 1928, p. 950.
10. Public security.	May 19, 1928	Deutsche Volksbund	<i>O. J.</i> , 1928, p. 925.
11. Intimidation during entries for schools in Godulahutte.	May 25, 1928	Messrs. Pant and Rosumek	<i>Ibid.</i>
12. Intimidation during entries for schools.	June 1, 1928 Aug. 24, 1928	Deutsche Volksbund	<i>O. J.</i> , 1928, p. 1491; <i>id.</i> , 1929, pp. 61, 232, 241, 244, 252, 554, 993; <i>id.</i> , 1930, p. 1310.
13. Property Rights in St. Julius Hospital, Rybnik.	July 20, 1928	Krolewska Hucka Spolka Pieczy (Königshutte Fürsorgesellschaft)	<i>O. J.</i> , 1929, p. 59.
14. Rights of the Krolewska Hucka Spolka Pieczy.	Aug. 3, 1928	Deutsche Volksbund	<i>O. J.</i> , 1928, p. 1491.
15. Closing of six schools.	Aug. 8, 1928	Deutsche Volksbund	<i>O. J.</i> , 1928, pp. 1764, 1767; <i>id.</i> , 1929, p. 65.

<i>Subject-matter</i>	<i>Date of Petition</i>	<i>Petitioner</i>	<i>Document</i>
16. Non-admission of children to school at Gieszowiec.	Sept. 12, 1928	Joseph God	<i>O. J.</i> , 1929, p. 66.
17. Non-opening of school at Koszecin.	Sept. 28, 1928	Deutsche Volksbund	<i>O. J.</i> , 1929, p. 65.
18. Non-opening of school at Brzezinka.	Sept. 28, 1928	Deutsche Volksbund	<i>O. J.</i> , 1929, p. 67. (<i>Cf. 7 supra</i>)
19. Pressure as to education of his child.	Nov. 8, 1928	Norbet Lubos	<i>O. J.</i> , 1929, pp. 555, 756, 764.
20. Passport visa of Sister Klara Heinol.	Dec. 31, 1928	Krolewska Hucka Spolka Pieczy	<i>O. J.</i> , 1929, p. 1026.
21. Arrest of Dr. Ulitz.	Feb. 13, 1929	Deutsche Volksbund	<i>O. J.</i> , 1929, pp. 559, 775, 776.
22. Non-opening of school in Koszecin.	Mar. 22, 1929	Deutsche Volksbund	<i>O. J.</i> , 1929, p. 1684. (<i>Cf. 17 supra</i>)
23. Non-opening of school in Brzezinka.	Mar. 22, 1929	Deutsche Volksbund	<i>See supra 7</i> and 18.
24. Personal situation of Norbet Lubos.	Mar. 26, 1929	Deutsche Volksbund	<i>O. J.</i> , 1929, pp. 1688-90. (<i>Cf. 19 supra</i>)
25. Personal situation of Ernst Pietsch.	Mar. 28, 1929 Aug. 1, 1929	Deutsche Volksbund	<i>O. J.</i> , 1929, pp. 1029, 1685.
26. Improper schools prosecutions.	Mar. 30, 1929	Deutsche Volksbund	<i>O. J.</i> , 1929, p. 1684.
27. Polonization of the Spolka Bracka at Tarnowskie Gory.	Mar. 30, 1929	Deutsche Volksbund	<i>O. J.</i> , 1929, p. 1687; <i>id.</i> , 1930, p. 103.
28. Personal situation of Alfons Mrozek.	Apr. 2, 1929	Alfons Mrozek	<i>O. J.</i> , 1929, p. 1688.
29. Elections to Employees Committee of Richter Pit.	July 8, 1929	Johann Wiesner	<i>O. J.</i> , 1930, p. 106; <i>id.</i> , 1931, pp. 142, 227, 1066, 2025.
30. Non-admission of children to school.	Sept. 11, 1929	Maria and Alfons Jontza	<i>O. J.</i> , 1930, pp. 61, 112.
31. Non-admission of children to school.	1929 (undated)	Johann Kutschera <i>et al.</i>	<i>See supra</i> , 30.
32. Withdrawal of Otto Ochmann's license to practise.	Sept. 25, 1929	Deutsche Volksbund	<i>O. J.</i> , 1930, pp. 550, 1310.

<i>Subject-matter</i>	<i>Date of Petition</i>	<i>Petitioner</i>	<i>Document</i>
33. Personal situation of Johann Mokros.	Dec. 3, 1929	Johann Mokros	<i>O. J.</i> , 1930, p. 496.
34. Personal situation of Paul Besuch.	Aug. 8, 1930	Paul Besuch	<i>O. J.</i> , 1931, pp. 229-33, 1066.
35. Wrongful imposition of fines.	Sept. 5, 1930	Pauline Sock	<i>O. J.</i> , 1931, pp. 142, 227.
36. Election disorders.	Jan. 7, 1931	Deutsche Volksbund	<i>O. J.</i> , 1931, pp. 165-6, 171 ff., 237 ff., 381 ff., 1144 ff., 2044, 2162-3.
37. Pless properties.	Jan. 7, 1931	Prince von Pless	<i>O. J.</i> , 1931, 176 ff., 228, 1151-2, 2044, 2263-4; <i>id.</i> , 1932, pp. 510, 513, 1201.
38. Election disorders.	Aug. 14, 1931	Deutsche Volksbund	<i>O. J.</i> , 1931, pp. 2245 ff., 2445-7, and <i>see supra</i> 35.
39. Personal situation of Franziska Senkalla.	Jan. 4, 1932	Franziska Senkalla	<i>O. J.</i> , 1932, p. 1201.

B. POLISH MINORITY.¹

Subject-matter

	<i>Date of Petition</i>	<i>Petitioner</i>	<i>Document</i>
1. Application of laws as to compensation.	May 26, 1925	Zwiazek Polakow	<i>O. J.</i> , 1926, pp. 518, 1418.
2. Disorders.	Apr. 2, 1928	Zwiazek Polakow	<i>O. J.</i> , 1928, p. 924.
	Apr. 3, 1928		
3. Use of Polish language.	Oct. 20, 1928	Zwiazek Polakow	<i>O. J.</i> , 1929, pp. 556, 765.
4. Use of Polish language.	Oct. 22, 1928	Zwiazek Polakow	<i>O. J.</i> , 1929, pp. 557, 767.
5. Passport hindrances.	Oct. 23, 1928	Zwiazek Polakow	<i>O. J.</i> , 1929, pp. 558, 770, 772.
6. Use of Polish language.	Dec. 21, 1928	Zwiazek Polakow	<i>O. J.</i> , 1929, p. 1029.
7. Minority schools.	Dec. 22, 1928	Zwiazek Polakow	<i>O. J.</i> , 1929, p. 1027.
8. Insulting conduct of official.	Dec. 28, 1928	Marya Ryborz and Feliks Placzko	<i>O. J.</i> , 1929, p. 1021.
9. Use of Polish language.	Mar. 25, 1929	Zwiazek Polakow	<i>O. J.</i> , 1929, p. 1030.
10. Public security.	Mar. 26, 1929	Zwiazek Polakow	<i>O. J.</i> , 1929, p. 1086.
11. Use of Polish language.	Mar. 29, 1929	Katharina Pluta	<i>O. J.</i> , 1929, p. 1444.
12. Incidents at theatre.	Apr. 30, 1929	Zwiazek Polakow	<i>O. J.</i> , 1929, p. 1690.
	May 8, 1929		
	July 27, 1929		
13. Acquisition of land by Poles.	June 4, 1929	Zwiazek Polakow	<i>O. J.</i> , 1929, p. 1691; <i>id.</i> , 1930, p. 103.
	July 26, 1929		
14. Personal situation of M. Jaiko.	Aug. 4, 1929	Zwiazek Polakow ²	
15. Situation of Polish minority.	Nov. 10, 1931	Zwiazek Polakow ³	<i>O. J.</i> , 1932, pp. 1201, 1939-40, 2146-88, 2190-2220, 2221-4.
	Mar. 14, 1932		
16. Facilities for vocational training.	Apr. 7, 1932	Polish Catholic School Association	<i>O. J.</i> , 1932, pp. 1041, 2225-8, 2228 ff.
17. Election irregularities and disorders.	June 18, 1932	Zwiazek Polakow	<i>O. J.</i> , 1933, pp. 242 ff.

¹ For an unclassified petition see *ante*, p. 183.

² This petition is mentioned in von Truhart, *Völkerverbund und Minderheiten-Petitionen*, but no reference thereto is to be found in League documents.

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