and, in particular, the life of a population which, like that of Danzig, is part of a nation, cannot in the long run be cramped by articles and paragraphs fabricated in the days of Germany's deepest political and spiritual distress. Though almost throughout its independent existence, the fate of the Free City of Danzig has been determined by the League of Nations, we nevertheless hope that, in Geneva, where political realities are given such very great weight, the fact that the distribution of political power in Europe has been fundamentally changed cannot continue to be ignored. Particularly is this true in comparison with the time when as the result of the Marxist revolt, Germany lay prone and powerless, and when, through this same betrayal, the Free City of Danzig was set up. Articles and paragraphs have no meaning unless there are men of flesh and blood at hand who are determined to respect them as a rule of life which has been committed to writing. To-day the cause of Danzig's severance from the Motherland, which was to provide the newly-created Republic of Poland with a free outlet to the sea, is spontaneously respected by the German people and also by the Free City of Danzig, as a political law. Discussion regarding the continued existence and development of this severed territory is therefore no longer the exclusive privilege of the organs of the League and, indeed, were such the case, the principle of the self-determination of peoples would be devoid of meaning. In sober recognition of the realities of the interplay of political forces in Europe, the Free City of Danzig will, in the future as in the past, pursue its policy of direct negotiation and agreement with Poland. To the satisfaction of the Senate, the friendly relations of the two States, which were troubled for a short period in the course of last summer, have again been restored. Relations are good and friendly, and there is every prospect of further progress in the same direction.

We particularly rejoice in the fact that the relations of Germany our Motherland, with Poland, our neighbour, are on the same friendly footing. To say that between Berlin and Danzig the best possible relations are maintained would be superfluous. How could it be otherwise between National-Socialist Germany and the one German State outside the frontiers of the Reich which is ruled by a National-Socialist Government ? The economic and national revival in our Motherland not only fills us with inward satisfaction, but gives us that steadfastness of heart which is necessary if we are to triumph over our own hard fate.

We National Socialists are not the kind of men to pursue a mere day-to-day policy—an ostrich policy We know that it is only through a gloomy present that we can win through to a better future. We know that struggle is the essence of all life. As soldiers of the National-Socialist revolution, well tried in the stern years of conflict, we stand at our post and will never desert it. If the Opposition believed that by rumours of the resignation of some members of the Senate they could sap the strength of the present Government, I might retort that, in the National-Socialist movement, there is no such thing as resignation. A National Socialist is recalled or else he falls. With us, decisions of the Opposition carry no weight. Nothing counts but the orders of our leaders. These leaders will never allow the forces of discord and disintegration to regain the upper hand. We stand here, therefore, as the men of the new epoch in German history resolute in action and rejoicing to bear our heavy load of responsibility in the consciousness that, in accordance with the old Danzig tradition, we are maintaining the bonds between this, our homeland, and the German nation.

ANNEX 1583.

C.19.1936.VII.

FREE CITY OF DANZIG.

PETITIONS FROM THE SOCIAL-DEMOCRATIC PARTY THE CENTRE PARTY AND THE GERMAN NATIONAL PEOPLE'S PARTY CONCERNING THE GENERAL ELECTIONS TO THE POPULAR ASSEMBLY OF THE FREE CITY ON APRIL 7TH, 1935.

LETTER, DATED DECEMBER 21ST, 1935, FROM THE HIGH COMMISSIONER OF THE LEAGUE OF NATIONS AT DANZIG TO THE SECRETARY-GENERAL TRANSMITTING THE FOLLOWING COMMUNICATIONS:

(1) *Petition, dated November 26th, 1935, from the Social-Democratic Party the Centre Party and the German-National People's Party*

(2) *Observations of the Senate of the Free City dated December 13th, 1935, relating to the Petition dated November 26th, 1935*

(3) *Letter from the Petitioners, dated December 10th, 1935, transmitting a Statement of the Difficulties which the Carrying-out of a Referendum with a View to securing the Dissolution of the Popular Assembly would Encounter*

(4) *Supplementary Petition, dated December 4th, 1935, from the Social-Democratic Party, the Centre Party and the German National People's Party.*

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Danzig, December 21st, 1935.

I have the honour to enclose herewith a joint petition from the Social-Democratic Party the Centre Party and the German National People's Party urging that general elections to the Volkstag which were held on April 7th, 1935, should be declared invalid on the grounds stated.

It will be observed that the Senate when asked for its observations on the petition confines its reply [1] to the statement that, as the High Court of Danzig has already given a decision with regard to these elections, the matter can go no further, except in so far as may be provided by Article 9 of the Constitution. Article 9 states:

> " The Popular Assembly may be dissolved before the end of its term of office (*a*) by its own decision, (*b*) by a referendum. "

Apart from the merits of the case which is made by the petitioners, the reply of the Senate gives me no alternative but to request that the matters should be considered by the Council in view of the guarantee of the Constitution by the League of Nations.

The first paragraph of Article 10 of the Constitution states:

> " All petitions against the election of members (of the Popular Assembly) shall be decided by the Supreme Court of the Free City of Danzig. Such cases shall be heard in open Court. "

It will be recalled that the Council of the League of Nations, in a report adopted on January 18th, 1934,[2] declared that:

> " The Council must remain sole judge of its own action in every case that may be submitted to it, in virtue of the League of Nations guarantee of the Constitution."

It will also be recalled that questions relating to the Constitution were before the Council at its May session [3] when a committee of distinguished jurists was appointed to consider the questions, including that relating to the Decree for the Protection of the Good Name of National Associations and the Decree relating to the Wearing of Uniforms.

These two decrees were found by the Committee of Jurists to be unconstitutional,[4] but the Senate had submitted that the Council should consider itself unable to concur in the view of the Committee of Jurists, since to do so would involve dissenting from four judgments of the Criminal Chamber of the Danzig Supreme Court, of which the Senate communicated the text to the Council. The Council's report continues: [5]

> " The passage which I have just quoted from the report approved on January 18th, 1934, shows that the Council has no desire to substitute itself for or become a court of appeal from the Danzig courts, but, on the contrary fully recognises their function in regard to the interpretation of the Constitution and the necessity of maintaining their authority. It also, in my opinion, shows that the League of Nations, in its capacity as guarantor of the Constitution of Danzig, while according to the judgments of the courts the respect and authority which must be due to them, cannot be prevented by a decision of any organ of the Free City whether judicial, legislative or executive, from intervening in cases where it considers such intervention to be necessitated by a breach of the Constitution."

The Senate in its reply also refers to the possible procedure of Article 9 of the Constitution, which provides, *inter alia*, for the dissolution of the Popular Assembly by a referendum. The text of the law laying down the method by which a referendum may be held is also attached.

Prior to the receipt of the Senate's reply I had already received a document from the petitioners [6] dealing with the difficulties which they allege would exist in the attempt to attain their object by means of a referendum, and another document (dated December 4th) [7] relating to their petition with special reference to the position of the National-Socialist Party in Danzig and its leader, M. Albert Forster.

The last two documents have been forwarded to the Senate for its observations and I shall transmit immediately any observations the Senate may make thereon.[8]

(Signed) Sean LESTER.

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[1] See page 188.
[2] See *Official Journal*, February 1934 (Part I), page 139.
[3] See *Official Journal*, June 1935, page 649.
[4] See *Official Journal*, November 1935, pages 1293 and 1297.
[5] See *Official Journal*, November 1935, page 1187.
[6] See page 189.
[7] See page 191.
[8] See page 198.

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(1) *Petition, dated November 26th, 1935, from the Social Democratic Party, the Centre Party and the German National People's Party.*

[*Translation from the German.*] Danzig, November 26th, 1935.

To the High Commissioner of the League of Nations.

The undersigned representatives of the Social-Democratic Party, the Centre Party and the German National People's Party in the Free City of Danzig, beg to submit the following petition to Your Excellency:

I.

In its judgment annexed hereto,[1] dated November 14th, 1935, the First Civil Chamber of the Supreme Court of the Free City of Danzig pronounced upon the complaints submitted against the validity of the elections to the Danzig Popular Assembly. Of the seven parties and groups which took part in the election, five—that is to say in addition to the parties undersigned, the Plenikowski group (Communists) and the Pietsch group (Independent ex-Servicemen)—have contested the constitutionality of the election. The Polish group did not associate itself with this proceeding, but as appears in Your Excellency's report of May 6th, 1935, to the Council of the League of Nations regarding the elections to the Popular Assembly (reproduced with annexes in the June number of the *Official Journal*, pages 819 ff.), the diplomatic representative of the Polish Republic entered a formal protest with regard to a large number of election incidents affecting the Polish group.

As an indication of the petitions based on these various complaints, we further append a copy of the address [1] delivered during the oral proceedings before the Supreme Court on October 30th, 1935, by counsel for one of the complainants; in that address, the particulars of the petitions are systematically set out and discussed from the legal point of view.

After hearing exhaustive arguments on the facts and grounds of the complaints, the Supreme Court found that, though in certain particulars these were not proved and of no great importance, in other respects, they were both proved and of a very serious character. The Judgment of the Court includes the following specific findings:

1. In eighteen rural districts there were "flagrant infringements of the electoral provisions of the Danzig Constitution" and "other serious procedural irregularities" (pages 20 ff. of the Judgment). The Supreme Court declared the election in these districts invalid. In other electoral districts, cases of violation of the secrecy of the ballot were also established (pages 18 ff. of the Judgment) which led the Court to rectify the result of the count.

2. In a few cases, polling irregularities led to the invalidation of individual votes (page 26 of the Judgment).

3. The petitioners' complaint that the principle of electoral freedom was violated through unlawful pressure on electoral opinion, in particular through official propaganda on behalf of the National-Socialist German Workers' Party (N.S.D.A.P.), interference with the election campaign, and the inertia of the police, was found by the Court to be justified in a number of particulars.

As regards the Court's findings under Nos. 1 and 2, we shall confine ourselves in the present petition to referring, amongst the various points in regard to which the question of a violation of the Constitution might arise, to the problem of the electoral qualifications of Danzigers resident abroad. That this is a constitutional question is obvious on *two* grounds. The right of Danzigers resident abroad to vote was recognised in a Legislative Decree of July 7th, 1933 (*Legal Gazette*, page 323), which was based upon the Law for the Relief of the Distress of People and State of June 24th, 1933 (the so-called Enabling Law). The question of the constitutionality of the Enabling Law has been touched upon by the Council of the League of Nations on a number of occasions, but has not so far been decided. On this point, the parties undersigned have expressed their opinion in a memorandum submitted to the Permanent Court of International Justice at The Hague with regard to the questions relating to penal legislation referred to the Court for an advisory opinion by the Council's decision of September 21st, 1935. That part of the memorandum which relates to the Enabling Law is to be found in an annex to the present petition.[1] The recognition of the right of Danzigers resident abroad to vote is, however, also a constitutional problem in virtue of the principle of the universality and equality of electoral rights as laid down in Article 8 of the Danzig Constitution. The justice of the attitude of the undersigned parties in this matter appears from the considerations set out on pages 14 ff. of counsel's address as reproduced in Annex 2.[1]

The most important part of the Supreme Court's judgment, however, consists of the findings, referred to under 3 above, to the effect that the principle of freedom of election had been violated. As the Court's conclusions in this connection form the chief basis and cause of the present petition, it may be appropriate to give a short summary of these findings:

[1] *Note by the Secretary-General.* — The document in question has been deposited in the archives of the Secretariat and is at the disposal of the Members of the Council.

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(a) Undue electoral pressure was brought to bear in that the Senate lent the State Relief Service, the Municipal Fire Brigade and Telegraph employees to put up National-Socialist decorations on streets and houses (page 33 of the Judgment).

(b) Undue electoral pressure was brought to bear in that the Senate permitted the N.S.D.A.P to decorate streets and official buildings with a lavish display of party emblems (Judgment, page 33).

(c) Undue electoral pressure was brought to bear in that the Senate placed rooms in State and municipal buildings at the disposal of the National Socialists for the holding of at least thirty election meetings for State employees during working hours (Judgment, page 33).

(d) Undue electoral pressure was brought to bear in that the State broadcasting station which —to use the words of the Judgment, page 34—" is unique in its effectiveness as a means of propaganda " was made exclusively available for the propaganda of the N.S.D.A.P., its use being refused to all other parties.

(e) Undue electoral pressure was brought to bear in that, by order of the Senate, the postal authorities ignored the provisions of the laws in force and distributed three postal circulars on behalf of the N.S.D.A.P propaganda organisation, while refusing the Centre Party's request for similar treatment on the grounds that this would be contrary to the law.

(f) Undue electoral pressure was brought to bear in that Forster, the District Leader of the N.S.D.A.P in Danzig, who moreover is a German national, a Prussian State Counsellor and a Member of the German Reichstag, declared—according to the uncontradicted reports of two newspapers—in a speech to officials and public employees: " Those who serve the Social Democrats, those who help the Centre Party and those who assist the German Nationals, are helping the international authorities, and thus forfeit their right to remain officials. After April 7th, such officials will be dismissed without a pension " A further finding, the significance of which extends beyond the immediate purpose of the judgment, and which is indeed of fundamental and decisive importance as regards the whole position in Danzig, was that, though the district leader had no official standing, it was immaterial from the point of view of official pressure on the elections " whether such influence was exerted by a person in authority or by someone who, like the district leader, had influence over such persons " (Judgment, page 35).

(g) Undue electoral pressure was brought to bear in that in a number of communes the regulation roll-call for relief workers, which everywhere was associated with a march-past in front of the swastika flag—the general legality of such roll-calls from the point of view of the freedom of opinion guaranteed in Article 79 of the Constitution the Supreme Court left undecided—" was improperly used to bring to bear undue pressure on the voters of the other parties " (Judgment, page 59). In various communes, electoral pressure was also brought to bear through other official measures (Judgment, pages 38 ff.) in this connection, the Court (page 59) was particularly severe in its condemnation " of the attempted use of such measures in certain cases to bring pressure to bear on candidates of the other parties to induce them to withdraw their candidatures "

(h) As to the complaints regarding the conduct of the police, it was found that a meeting of the Social-Democratic Party had been unjustifiably dissolved (Judgment, pages 43 and 44), that as regards the treatment of posters of the Social-Democratic and Centre parties by the Chief of Police " the complaint regarding flagrant discrimination had been shown to be justified " (Judgment, page 44), and that the police had failed in its duty in a number of cases (Judgment, page 48), which were " calculated to create among the voters of the other parties an impression of defencelessness and which must therefore be regarded as a serious instance of official influence on the election " (Judgment, page 59).

(i) In the last place, the Judgment mentions (page 57) as a case of unwarranted and arbitrary action on the part of the police, the fact that it did not apply to the N.S.D.A.P the Decree of August 18th, 1934, regarding the prohibition of public collections *(Legal Gazette*, page 673).

To the numerous and serious infringements of the constitutional principes of electoral freedom and equality as established by the Supreme Court may be added a number of other complaints which the Court, placing a restrictive interpretation on the powers granted it under the Constitution, believed it was unable to entertain on account of untenable material considerations and, in one case, as the result of an error. We shall only deal here with cases involving important questions of principle:

(a) In passing judgment, the Supreme Court went upon the principle (Judgment, page 28) that whenever the facts underlying complaints had been the subject of administrative and legal proceedings, it was itself bound by the decisions of the appeal instances, even when such decisions had only been come to after the election. Whenever there was a possibility of appeal proceedings and such proceedings had not yet been taken, the Supreme Court refused to consider the facts complained of, even though, had the decision been reversed, the consequences of the infringement might still have been remedied.

The Supreme Court's attitude in this matter is incompatible with Articles 8, 10 and 71 of the Danzig Constitution. According to Article 10, it is the Court's duty to examine the validity of an election from the point of view of whether the principles laid down in Article 8 as determining such

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validity have been observed. According to Article 71, the Court is bound, when considering election petitions, to base its judgment—in addition to the provisions laid down in Article 8—on the "fundamental rights and duties" When hearing election petitions, the Court has therefore an inherent right, and also duty to examine any complaints brought before it. This also follows indisputably from the fact that, when hearing election petitions, the Court must be guided by the very special provisions of Article 8 of the Constitution which do not arise in the decisions of other instances. Even when confirmed by the Senate as the second instance, a police decree may violate the principle of electoral freedom and also—in the case, for example, of the prohibition of a newspaper—the constitutional principle of the freedom of the Press. In such cases, the Supreme Court would have all the less justification for declining jurisdiction, as, according to its own findings in a large number of cases, the authorities, including those of the highest rank, have done everything in their power (Judgment, pages 58 and 59) to assist the N.S.D.A.P and hamper the other parties. There is therefore every possibility that decisions even of the higher instances may have been influenced by this attitude, at least during the election period.

That the Supreme Court's view was untenable is particularly clear in regard to the treatment of the prohibition of newspapers (Judgment, page 45). The *Danziger Volksstimme*, the organ of the Social-Democratic Party was prohibited for four days on March 23rd, 1935, and confiscated on April 4th and April 6th (the latter being the day before the elections). The petition lodged against these measures was rejected by the Senate on April 27th, 1935—*i.e.*, twenty days after the elections. The Supreme Court considers it is precluded by the Senate's decision from considering whether these prohibitions of the paper were unwarrantable interferences with the elections and offences against Article 79 of the Constitution. If the Supreme Court had taken into consideration the numerous prohibitions and confiscations of newspapers and election literature (as described above) —the prohibitions of the *Volksstimme* were only one case amongst many (see Annex 2, page 7)— it could not have failed to find other serious cases of the exercise of official influence on the elections.

The same thing is true of the cases of protective arrest, the complaint in connection with which is that candidates of the S.P.D were taken into protective arrest before the elections without any justification. The Supreme Court declines to deal with these cases, on the ground that the parties concerned did not lodge any appeal. The finding of the Court in this respect is in conflict with the facts. Thomat and Neumann lodged appeals on March 29th, 1935, and Noetzel and Kuschel on April 1st, 1935, through their respective counsel. The decision with regard to the appeal in the cases of Thomat and Neumann was taken in the Senate's resolution of April 20th, 1935, and the decision in regard to the appeal in the two other cases was taken in the Senate's communication of April 10th, 1935, after the parties had been released from arrest. Had the Court not fallen into this error as to the facts, it could not have failed to find serious electoral offences in connection with these cases also, as shown by its finding in another case, where it described action taken against candidates as particularly serious (Judgment, page 59).

(*b*) The point of complaint taken in the appeal proceedings was that the elections took place under the operation of the Decrees of October 10th, 1933, on the Protection of the Reputation of National Associations (*Legal Gazette*, page 502) and the Decree of April 4th, 1934, on the Wearing of Uniform (*Legal Gazette*, page 221), which decrees have since been declared unconstitutional by the Council of the League of Nations (see Annex 2, page 6). (The Supreme Court, in its decision, notes on two occasions (page 29 and page 30) that the Committee of Jurists set up by the League had declared the decrees in question to be unconstitutional, but it omits to mention that the Council of the League embodied the jurists' report in a Council resolution on September 23rd, 1935.)

The Supreme Court's arguments in support of its failure to deal with the complaints brought forward cannot be reconciled either with political experience or in part with the Court's own findings in other connections.

The Supreme Court finds in its judgment (page 57) that the electoral campaign of the National-Socialist Party against the Opposition parties was conducted to the accompaniment of the gravely calumnious catchwords "Traitors and Separatists" which were continually repeated both in writings and in speeches. It observes in this connection that the Opposition parties were free to defend themselves by the usual electoral means. In presence of these findings of the Court, it is impossible to understand the Court's attitude to the unconstitutional Decree of October 10th, 1933, under which anyone describing this electoral "slogan" as what it was—namely, a demagogic calumny—became liable to penal proceedings and arrest. The effect on the voters of the wearing of uniform by a single party only is obvious. It places such a party in a privileged position, and the National-Socialist Party was well aware of its effect as such as in the case of processions and meetings, or it would never have needed to introduce the Decree of April 4th, 1934 (see Annex 2, page 6), the effect of which is to prohibit the uniforms hitherto worn by non-National-Socialist associations, in particular organisations of young people.

The far-reaching findings of the Supreme Court, taken in conjunction with its wrongful omission to deal with the complaints above described, render it intelligible that the undersigned parties should have needed no legal arguments to conclude that the Supreme Court was in conflict with the Constitution when it found an offset to the many serious electoral offences in the fact of its having disqualified 3% in the town, and 10% in the country of the votes cast for the National Socialists.

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Under Article 10 of the Constitution, the electoral court is entrusted with the decision as to the *validity of elections*. It has to decide, in the first place, the validity of individual votes; in the second place, the validity of the elections in the separate constituencies, and, thirdly the validity of the election as a whole: that is to say in the entire voting area—*i.e.*, in the State. The Supreme Court acted in accordance with this principle in the two first cases, but took a different line in respect of the election as a whole. A decision which says: " It is true there have been serious, indeed very serious, offences against the principles of free and equal voting in numerous cases, but I nevertheless declare the election as a whole to be valid " is inconsistent alike with Article 8 and with Article 10.

The percentage calculations of the Supreme Court are without precedent of any kind in German electoral law. The decisions of the Electoral Court, which the Supreme Court adduces, relate to the German Reich in the period before 1918. At that time, individual candidates were elected in self-contained constituencies. But, even at that period, there was a so-called lenient procedure under which, in the event of the exercise of official influence on an election, the *whole* of the votes given against a candidate in a constituency so influenced were deducted both from the total votes polled and also from the total votes in favour of the candidate (HATSCHEK, *Das Parlamentsrecht des Deutschen Reiches*, Vol. I, page 565). Apart from the fact that, even in that period, there was never any question of percentage calculations, the principle of such percentages is quite inapplicable to the system of proportional representation which prevails in the Free City.

The Supreme Court itself, in two other passages of its judgment, brings forward considerations which militate against the applicability of its own method.

(*a*) In its examination of the electoral offences in particular districts (Judgment, pages 20 ff., the Court concludes against the validity of the election in the whole district in a number of cases, on the grounds that " such a large percentage of the voters—the exact number cannot be clearly ascertained—voted publicly that the regularity of the entire electoral proceedings is adversely affected " (Judgment, page 22, case 35); that " a large number of voters—how large is not known—voted at this side table, with the result that the election must be invalidated " (Judgment, page 23, case 36); that, " having regard to the large number of these offences—the exact number cannot be ascertained—and to the reasons for such offences, the entire electoral proceedings appear in this case also to have been irregular " (Judgment, page 23, case 37); and that " the record of the poll can no longer be regarded as sufficient proof of the results of the voting, and the results of the poll cannot be ascertained with certainty on other grounds " (Judgment, page 23, case 38). The Court pronounces against the validity of the elections in certain cases —*e.g.*, case 37 and case 38—even though the number of proved invalid votes in these cases was relatively small. It is not therefore clear or intelligible why the Court should have departed from the principles which it itself asserted in the scrutiny of particular electoral districts, when it came to consider the election as a whole.

(*b*) On page 28 of the judgment, the Court observes that it is constrained to avoid any intervention in political issues in regard to which an electoral court, like any other court, has to maintain a detached attitude. But, in the arguments which precede the Court's determination of the percentages (Judgment, page 60), it is compelled to bring forward political considerations in defence of the smallness of the percentual deductions—that is to say, to resort to the very course which it previously very properly rejected, a course which the authors of the Constitution were at pains to withdraw from its purview when they decided that only two clear and perspicuous decisions should be open to the Court in respect of elections—viz., either for or against their validity A decision in favour of the validity of an election in spite of offences against constitutional electoral principles is a contradiction in itself.

In its arguments with regard to the possible influence of electoral offences, the Supreme Court does not take into account the smallness of the area of the Danzig State, the effect of which is that any official exercise of influence on the elections is at once known and has its effect in the remotest village in the territory Above all, the Court ignores the cumulative effect on the voter of a number of individual electoral improprieties. It was the combined effect of the improper proceedings and omissions which occurred, with the co-operation or toleration of the Government and governmental authorities, during the period of preparation for the elections which was bound to have the most serious reactions on the election prospects of the Opposition parties.

The number of undecided voters is greatly underestimated by the Supreme Court. District Leader Forster, at a public meeting, put the number of " genuine National Socialists " in Danzig at 5,000. If that figure is compared with the number of votes obtained by the National-Socialist Party—viz., over 139,000—it will be seen how considerable was the scope left for agitation by the Opposition parties, had conditions been in accordance with the Constitution, and how far the Supreme Court's estimate is from corresponding with the facts of the case.

The sole object of these comments on the Supreme Court's arguments is to show that the percentage calculations of the Court cannot be upheld from any standpoint. The present petition is based on the Constitution—it could not be otherwise—and the provisions of the Constitution require that elections, at which such serious and extensive offences against the principles of free and equal voting as are shown by the Supreme Court's own judgment to have taken place at the elections to the Popular Assembly on April 7th, 1935, cannot stand.

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II.

The undersigned parties have considered whether there is any means open to them under Danzig law of attaining the object of this petition—namely the holding of new elections—without troubling Your Excellency in the matter. After mature consideration, the parties are convinced that the only possible method of so doing—viz., by resort to a referendum—is not practicable.

A referendum under Danzig law involves a great many formalities. In the first instance, a petition is required with the signatures of 2,000 qualified voters whose right to vote has to be attested in each case by the communal authority If the petition is allowed, signatures have to be obtained to published lists on the issue of holding the referendum. The holding of the referendum is approved if one-tenth of the qualified voters have appended valid signatures in favour of the proposal. It is not until this process is complete that the referendum is held. Voting in the referendum must be "aye" or "no" The referendum is approved if the "ayes" are in a majority. Decisions of the Popular Assembly cannot be overridden by a referendum unless the majority of the qualified voters take part in the voting.

Moreover, the Senate, in connection with the referendum held in 1932, on the issue of the dissolution of the Popular Assembly took the line that the consultation of the voters on the holding of a referendum must first pass the Popular Assembly and that the majority of the qualified voters must vote in the subsequent referendum before the latter can be valid.

The opponents of a referendum are thus enabled to instruct their adherents to refrain from voting. Where such instructions are issued (as it may confidently be assumed they would be by the National-Socialist Party in the present instance), the voting on the referendum — which formally is secret under the law—becomes in fact open, since the identity of all those in favour of the referendum is then known.

The findings of the Supreme Court's judgment on the question of the contested election results are sufficient to show that the marked influence exercised by the authorities, and by bodies enjoying the favour of the authorities, to which the Court alludes may be expected, in the case of a referendum, to have a particularly powerful effect on the voters' attitude owing to the possibility of checking the voting. A referendum conducted under such circumstances could not give a correct picture of the true feeling of the population.

The undersigned parties accordingly request Your Excellency to take steps with a view to a declaration to the effect that the elections to the Popular Assembly of April 7th, 1935, are not in accordance with the Constitution.

For the Social-Democratic Party:	For the Centre Party:	For the German National People's Party:
(Signed) Artur BRILL.	*(Signed)* Dr. R. STACHNIK.	*(Signed)* WEISE.

2. *Observations of the President of the Senate of the Free City.*

Danzig, December 13th, 1935.

[*Translation from the German.*]

To the High Commissioner of the League of Nations.

With reference to communication No. 21/44 of November 28th, 1935, and to the petition of the Social-Democratic Party the Centre Party and the German National People's Party transmitted to me therewith, I have the honour to state as follows:

The Senate asks for the rejection of the petition submitted to you by the aforesaid parties, in which you are requested to take steps to obtain a declaration to the effect that the elections to the Popular Assembly of April 7th, 1935, are not in accordance with the Constitution.

In conformity with Article 10 of the Danzig Constitution, which is placed under the guarantee of the League of Nations, all petitions against the validity of elections are to be decided by the Supreme Court of the Free City of Danzig. The Supreme Court, with the composition required by the Constitution and the laws, gave a final decision (by a judgment of the First Civil Chamber of the Supreme Court of November 14th, 1935, in which, under Article 61 of the Constitution, independent judges, subject only to the law alone took part) on the petitions submitted by the Opposition parties contesting the validity of the elections, and this decision was originally accepted by the Opposition parties themselves. There is no legal remedy against this judgment, since no provision is made in the Constitution for an appeal.

The League of Nations, under whose guarantee the Danzig Constitution has been placed, must also recognise the organs of the Constitution which it has guaranteed. If the courts provided for by the Constitution have pronounced final judgment, the League cannot disregard that judgment. The rights and duties of the League of Nations are exhaustively stipulated in Article 103 of the Treaty of Versailles and Articles 42 and 49 of the Danzig Constitution. In view

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of the foregoing, it is superfluous to examine the arguments, incidentally quite untenable, adduced by the Opposition parties contesting the judgment of the Supreme Court, since that judgment has the force of *res judicata*.

If the minority parties desire to obtain the dissolution of the Popular Assembly they must employ the means provided in the Constitution (Article 9). Should these constitutional means fail to achieve their object, the dissolution of the Popular Assembly cannot take place. It would be contrary to every parliamentary and democratic notion on which the Danzig Constitution, with the League's approval, is based, if the League were to comply with the wishes of a parliamentary minority and, by a pronouncement which is not provided for in the Constitution placed under the League's own guarantee, and which is therefore unconstitutional, were to order the dissolution of the Danzig Popular Assembly Such a dictatorial encroachment on the Danzig administration of justice would make any legal security impossible in Danzig for the future. The Senate accordingly requests that the petition of the minority parties be rejected.

(Signed) GREISER.

3. *Letter from the Petitioners, dated December 10th, 1935, transmitting a Statement of the Difficulties of holding a Referendum for the Dissolution of the Popular Assembly.*

Danzig, December 10th, 1935.

To the High Commissioner of the League of Nations.

With reference to the petition submitted to you by the Social-Democratic Party the Centre Party and the German National People's Party on November 26th, 1935, and as a supplement to the latter part of this petition, the above-mentioned parties have the honour to submit to you a memorandum which is annexed to the present letter. The purpose of this memorandum is to lay special stress on the importance of the legal and practical difficulties already mentioned in the petition of November 26th, 1935, which, in the opinion of the three parties, make it impossible to hold a referendum for the purpose of securing the dissolution of the Popular Assembly.

We would request you to give due consideration to the circumstances outlined in the memorandum and to allow them due weight in judging the petition.

For the Social-Democratic Party:	For the Centre Party:	For the German National People's Party:
(Signed) BRILL.	*(Signed)* STACHNIK.	*(Signed)* GAMM.

Statement of the Difficulties of holding a Referendum for the Dissolution of the Popular Assembly.

On many occasions, influential members of the Senate and of the National-Socialist Party have declared, and quite recently President Greiser repeated at the meeting of the Popular Assembly on November 27th, 1935, that neither the National-Socialist Senate nor the National-Socialist Party was prepared, in accordance with the instructions of the all-powerful leaders of the German National-Socialist Party, to resign from the Government. According to these declarations by the Government and the Party the Government and the Party will undoubtedly leave no stone unturned to obstruct from the outset a referendum calling for the dissolution of the present Popular Assembly or, at all events, to bring about the failure of such a referendum. An examination of the constitutional and legal provisions relating to the referendum and the holding of a referendum shows that this result can be attained by relatively simple means and without violation—or at all events apparent violation—of the Constitution and the law.

I.

The Law for the Relief of the Distress of People and State (Enabling Act) of June 24th, 1933 (*Legal Gazette*, page 273), *formally* empowers the Senate (Article 1, Section 1, No. 2) to amend the Referendum Law of March 6th, 1923 (*Legal Gazette*, page 335), and the Voting Regulations of October 5th, 1925 (*Legal Gazette*, page 335). Consequently the Government is in a position to make arrangements, even at the last minute, to render such a referendum impossible or, at all events, to prevent it from being actually held.

II.

Even without an amendment of the above-mentioned Laws on the Referendum and on the Voting Regulations, these Laws afford in practice numberless opportunities of adjourning the procedure indefinitely and rendering its execution so difficult as to be impracticable.

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(a) Under paragraph 3 of the Referendum Law a procedure of authorisation and registration is required for a petition for the holding of the referendum. The request for authorisation, which must be addressed to the Senate in the form of a draft law prescribing the dissolution of the Popular Assembly must be signed by at least two thousand electors. Under Article 4 of the Law, the signatories' right to vote must be proved by an attestation from the communal authority of their place of domicile. In view of the attitude which the communal authorities may be expected to adopt, this provision in itself constitutes a sufficient means of delaying the procedure for months by means of administrative formalities.

(b) According to Article 6 of the Referendum Law the decision as to the request for authorisation is taken by the Senate. The Law does *not* fix any time-limit within which the Senate's decision must be taken. Consequently the Senate can indefinitely postpone its decision as to the authorisation of the petition and can thus bring about its failure.

(c) The clause of paragraph 7 of the Referendum Law offers yet another opening for delay, as it leaves it to the Senate to fix the beginning and end of the period of registration. The time-limits provided in Article 7 paragraph 2, of the Law afford a very ineffective remedy as this is not an imperative clause, but a clause involving a mere obligation.

(d) It is, however, Article 19 of the Referendum Law which offers the greatest possibilities of delay When the procedures for authorisation and registration have been completed, the draft law on the dissolution of the Popular Assembly has to be laid before that Assembly by the Senate. True, the Senate must do so without delay but, as the law does *not* fix any specific time-limit, opinion might be divided, in practice at all events, on the meaning of the term " without delay " and the point might be debated for a long time.

A still more significant point is that no time-limit is prescribed within which the Popular Assembly must give its decision on the petition submitted to it. Consequently the President of the Popular Assembly has absolute discretion to determine when he will convene the Popular Assembly to give its decision in the matter. As the President is aware that on this point he is in complete agreement with the Government and with the National-Socialist majority of the Popular Assembly he will endeavour by every means to delay the decision and shelve the proposal. In these circumstances, it is in practice impossible to move the President of the Popular Assembly As a striking example, it may be recalled how quite recently the Opposition's request for the dissolution of the Popular Assembly was treated. Although the request was submitted in accordance with Article 12 of the Danzig Constitution, the President of the Popular Assembly adjourned the discussion of the question for many months because Article 12 of the Constitution itself does not prescribe any term for convening the Popular Assembly

Lastly the Popular Assembly itself can *adjourn* its decision on its own initiative as long as and as often as it wishes, without in practice being held accountable for such action. As the majority of the Popular Assembly is National Socialist, the Assembly will undoubtedly make the widest use of this means of hindering the referendum. There is no practical means of effectively countering this course, if the Popular Assembly decides to adopt it.

(e) When the procedure for authorisation and registration has been completed, and even when the Popular Assembly under Article 19 of the Referendum Law has given its decision on the petition and has perhaps rejected it, Article 20 of the Law will still enable the Senate to delay the referendum indefinitely The Law does not prescribe within what period of time the Senate must proclaim the referendum, which would then become necessary The provision in paragraph 2 merely stipulates that a period of three months must elapse *between* the proclamation and the referendum vote. But, as has already been pointed out, the Law does not stipulate within what time-limit the Senate must proclaim the referendum and announce the vote. Consequently without any open violation of the law the Senate can still indefinitely delay the announcement of the referendum and the date on which the vote is to be taken. Further, the provision in Article 20, paragraph 2, of the Law is also no more than a clause involving a mere obligation.

(f) Lastly the Senate can in practice render the referendum wholly illusory by means of the provision of Article 34 of the Referendum Law The Senate can make the execution of the procedure for authorisation and registration subject to the deposit of security so high that the security could not possibly be procurable. Moreover, as regards that possibility it is particularly significant that collections are prohibited by law The Senate would quite certainly make good use of this provision.

The above considerations should in themselves make it clear that the Senate, even without amending the existing legislation, would be quite able to delay the referendum for years and even to prevent it altogether.

III.

Lastly the provision laid down in the third sentence of Article 48, paragraph 2, of the Constitution presents a very serious practical difficulty Since, under Article 19 of the Referendum Law a petition for the dissolution of the Popular Assembly on being submitted to the Assembly for its decision, will certainly be rejected by that body it would be necessary under Article 48 of the Constitution, for the majority of the electors to vote on the referendum, in other words, at least 118,416 electors would have to take part in the vote. That would mean that those

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118,416 electors would have publicly to declare themselves opponents of National Socialism. For, in order to prevent the required majority from being reached, the National Socialists would employ the simplest and surest means—namely to give their partisans orders not to take part in the vote. They could ensure that this was done without difficulty and by resorting to all their well-known methods. Consequently anyone recording his vote would be publicly pronouncing himself *in favour* of the referendum and would be branded as a traitor and a separatist. The other means which would be employed against those exercising their right to vote will be abundantly clear if we bear in mind the appeal lodged against the result of the last Popular Assembly election and if we consult numerous relevant documents. In such circumstances, it is obvious that large sections of the population—and not officials and State and communal employees alone—would abstain from voting under the pressure of more or less illegal constraint.

In conclusion, it should be observed that the political situation is quite different in the case of an election, where there are numbers of lists of candidates, and the fact of voting does not *ipso facto* betray for what list the elector has voted.

4. *Supplementary Petition, dated December 4th, 1935, from the Social-Democratic Party, the Centre Party and the German National People's Party.*

[*Translation from the German.*] Danzig, December 4th, 1935.

To the High Commissioner of the League of Nations.

On November 26th, 1935, the undersigned parties—namely, the Social-Democratic Party the Centre Party and the German National People's Party—submitted to you a petition [1] for the purpose of obtaining the invalidation of the elections to the Danzig Popular Assembly of April 7th, 1935. In order to establish still more clearly the necessity of fresh elections, the abovementioned parties venture to draw your attention to the unconstitutional relation existing between the Danzig Government and the National-Socialist Party at Danzig. The Social-Democratic Party of the Free City of Danzig submitted to you on May 3rd last [2] a petition dealing with this subject. In this connection, we venture to submit the following further considerations:

In the petition of May 3rd, attention had already been drawn to the following facts: the Danzig " Gau " of the National-Socialist Party is a section of the Reich National-Socialist Party and it expressly figures as such in the organic statute of that Party (see, for example, the *National-Socialist Year-Book* of 1934). The headquarters of the National-Socialist Party are at Munich. According to the laws of the German Reich, the National-Socialist Party is a German association under public law, whose sphere of activity stops at the frontiers of the German Reich in virtue of the principles of public and international law. The existence in the territory of the Free City of Danzig of the Danzig " Gau " of the National-Socialist Party as a section of the German association constitutes a breach of public and international law. The existence and activity of a German section of the National-Socialist Party in Danzig territory is, in fact, an infringement of the Free City's sovereignty. The inadmissibility of this situation from the point of view of public and international law is further emphasised by the fact that Gauleiter Forster is not only a German national but also a member of the German Reichstag and a Prussian State Councillor.

According to the " leadership principle " on which the National-Socialist Party is based and which finds its culminating expression in the Führer, who is at the same time the German Reich Chancellor, the Gauleiter of the Danzig " Gau " of the National-Socialist Party like all the Gauleiters of the German Reich, is subordinate to the Führer, receives orders from him and owes him unconditional obedience. The Gauleiter of the Danzig " Gau " of the National-Socialist Party rules all the organs of the Danzig National-Socialist Party and their members in the same dictatorial manner. All the members of the Danzig Senate belong to the National-Socialist Party and nearly all of them occupy important positions in that Party and its sections, of course under the direction and orders of their chief, Gauleiter Forster. It is significant that the President of the Senate is the deputy Gauleiter of the National-Socialist Party in Danzig. Nearly all the senators are bound by a solemn oath to unconditional loyalty to the leader of the National-Socialist Party and to the Party programme. The same applies to the National-Socialist members of the Popular Assembly who form the majority of that body. The " leadership principle " of the National-Socialist Party and its totalitarian programme, which is expressed in the motto " The Party gives orders to the State " completely relegate the functions of the members of the Senate to the background and reduce it practically to nothing, although, in virtue of the Constitution, the Senate has to direct the policy of the Government and is responsible for it to the Popular Assembly In all that concerns the conduct of the affairs of the Free City of Danzig.

[1] See page 182.
[2] Not yet distributed to the Council.

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the political power rests exclusively in Gauleiter Forster's hands. He issues his orders and the Senate simply obeys them.

The following examples further confirm the statements already contained in the Social-Democratic Party's petition.

The letter sent on November 19th, 1934, by Dr. Rauschning, former President of the Senate, to the President of the Danzig Popular Assembly which is attached as an annex,[1] clearly shows that Gauleiter Forster forced Dr. Rauschning in the first place to refrain from all official activity and later to resign his office, although Dr. Rauschning expressly declined to resign voluntarily Under Article 29 of the Danzig Constitution, such pressure to resign may only be brought to bear on a member of the Senate by a vote of withdrawal of confidence by the Danzig Popular Assembly Such pressure exercised by Gauleiter Forster, who has no official standing under the Danzig Constitution, can only be illegal and unconstitutional. Dr. Rauschning, the former President of the Senate, only gave way to this pressure because he was a member of the National-Socialist Party and was therefore bound to obedience under his oath to the leader. The fact that the National-Socialist majority of the Popular Assembly acting on Gauleiter Forster's instructions, withdrew its confidence from Dr. Rauschning behind closed doors and outside the Popular Assembly is of no importance from the point of view of the Danzig Constitution. The questionable methods employed by Gauleiter Forster against Dr. Rauschning and the extent of Gauleiter Forster's powers are shown by Dr. Rauschning's open letter of April 4th, 1935, copy of which is also attached in the annex [2] and which shows that Gauleiter Forster, without incurring any punishment, threatened to have the highest official of the Free City of Danzig shot if he did not resign his office. Dr. Rauschning's letter of November 19th, 1934, also shows quite clearly that Gauleiter Forster has exercised a direct and decisive influence on nearly all questions of Danzig home and foreign politics and particularly on Danzig's currency policy to the great harm of the Free City of Danzig and its German population. The unconstitutional character of this influence exercised by the Gauleiter on State affairs is confirmed by the following sentence in Dr. Rauschning's letter· " The present position, created by constant interference with State organs, has already led to such a weakening of Government authority that the future can only be viewed with the gravest concern " It was also Gauleiter Forster who induced the Bank of Danzig to lend the State and municipality over 20,000,000 gulden contrary to its statutes. The granting of this illegal credit was the decisive cause of the devaluation of the gulden.

The complete dependence of the Senate on the will of the National-Socialist Party was again shown recently in the speech of the President of the Senate at the meeting of the Popular Assembly on November 27th, 1935. According to the *Danziger Vorposten*, of November 28th, 1935, the President of the Senate said. " A National Socialist is recalled or he falls. We take no notice of the decisions of the Opposition. *The orders of our leaders are all that matter* "

Gauleiter Forster has succeeded in obtaining this unconstitutional and direct influence on the conduct of the affairs of the State and communes by filling all the important posts in the State and communes with members of the Party recruited among his immediate following and personally devoted to him. For example, the Staff Department of the Senate is under a student of the Technical High School aged about 25, and the three rural districts are under three members of the Party who have never received proper professional training and whose sole qualification for their posts is the fact that they were lieutenants of the Gauleiter. The mayors of the rural communes, about 300 in number, and of the municipalities of Zoppot, Neuteich and Tiegenhof are tried supporters of the Party They are at the head, not only of the rural councils, but also of the district and local groups of the National-Socialist Party and in this capacity they receive from the Gauleiter instructions which they must obey in performing their functions in the State and communes. This identification of State and Party functions is illustrated by the fact that the name-plates of the Party offices are also put up in the official premises.

The Gauleiter's direct influence on the Danzig schools is ensured by the fact that a " school inspector " who is at the same time an official of the Party is attached to each school. No legal justification for the existence of this school inspector exists. It need hardly be said that the school-children are brought up on the lines of the National-Socialist Party programme, and that every effort is made to induce them to join the National-Socialist youth organisations. Nearly all the Party celebrations are the pretext for school celebrations in which all the children are obliged to take part. This constitutes an obvious breach of the Danzig Constitution, and particularly of Article 107

Gauleiter Forster's direct influence on the conduct of State affairs is further shown by the fact that, in virtue of a senatorial decree, all Senate Departments must regularly submit reports to Gauleiter Forster on their activities. In this way the Gauleiter has every opportunity of exercising supervision over the conduct of State affairs and particularly of the State finances, although the Senate has hitherto refused the Popular Assembly any such right of supervision. The Gauleiter also obtains direct reports from officials regarding State and communal administrative matters. He supervises the national police and the State relief services and inspects their parades.

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[1] See page 193.
[2] See page 197.

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Gauleiter Forster's illegal and unconstitutional powers are particularly clearly brought out by his remarks in connection with the district and communal elections for Danziger Niederung and Gross Werder which were held on November 18th, 1934. Gauleiter Forster stated on this occasion that *he* would order fresh elections to be held if the results of these did not meet with his approval.

The judgment of the Supreme Court on the appeal against the elections to the Popular Assembly of April 7th, 1935, confirms the extraordinary power wielded by the Gauleiter and his inadmissible influence on the decisions of the authorities. The Supreme Court notes that, in a speech made by the Gauleiter during the civil service training-week, he uttered the following threat: " Any person who serves the Social Democrats, who helps the Centre or who supports the German Nationals plays the game of the internationalists and thus forfeits the right to be a civil servant; such civil servants will be dismissed without pension after April 7th " This speech was made in the presence of the President of the Senate. The Supreme Court cannot help finding that this constitutes an official attempt to influence the elections, since Gauleiter Forster is a person " who exercises an influence on the superiors of the officials and public employees " As Gauleiter Forster has no official position in the Free City of Danzig, and as he therefore cannot be regarded as the direct superior of the Danzig officials and public servants, this decision by the Supreme Court is sufficient proof that the relation between the National-Socialist Party and the State is such as to be incompatible with the democratic principles of the Constitution.

Under Article 38 of the Danzig Constitution, the Senate has to direct the policy of the Government and is responsible for it to the Popular Assembly Since the National-Socialist Party came into power, this fundamental clause of the Danzig Constitution has in practice ceased to be applied. It is not the Senate which directs policy, but the National-Socialist Party and particularly its Danzig representative, Gauleiter Forster. Nor is the Senate responsible to the Popular Assembly for the policy pursued in Danzig. The Popular Assembly is in practice completely debarred from exercising the functions assigned to it by the Constitution. It is not to the Danzig Popular Assembly that Gauleiter Forster has to answer for his policy but to the leaders of the National-Socialist Party in the German Reich, whose subordinate he is.

In our opinion, the National-Socialist Party's purpose in giving Gauleiter Forster so great a direct influence over the Senate and over each individual authority is to bring about the unconstitutional identity of Party and State, which is achieved in the German Reich under quite different constitutional conditions, by a method which does not necessitate legislative measures and which therefore does not, *ipso facto*, attract the attention of public opinion in Danzig. This also explains why complaints regarding breaches of the Constitution are constantly being made, since the National-Socialist Party programme which the Gauleiter is continually endeavouring to carry out cannot in most respects be brought into line with the Danzig Constitution.

It therefore seems to us to be clearly established that the conduct of affairs in the Free City of Danzig is in the hands of Gauleiter Forster, who has no authority to exercise it under the Danzig Constitution, and who also has no constitutional responsibility, while the Senate does not possess the influence on the conduct of affairs conferred on it exclusively by the Constitution, and is simply the executive organ of the Gauleiter who has been placed over it by the National-Socialist organisation.

As a change in this unconstitutional position can only be brought about under the laws of Danzig by new elections to the Popular Assembly, we consider it necessary to take these facts into account when judging the elections of April 7th, 1935. In our opinion, these elections are invalidated, not only by the unconstitutional nature of the individual laws under which the elections to the Popular Assembly were conducted, but also by the unconstitutional situation which has been brought about in Danzig by the repeated interference of the Gauleiter in State affairs

For the Social Democratic Party:
(Signed) Artur BRILL.

For the Centre Party:
(Signed) Dr. R. STACHNIK.

For the German National People's Party:
(Signed) GAMM.

Letter from the President of the Senate of the Free City of Danzig to the President of the Popular Assembly.

[*Translation from the German.*] Danzig, November 19th, 1934.

I acknowledge receipt of your letter of October 31st, which was delivered to me on November 8th. I postponed answering it for certain reasons until after the election. I now answer as follows:

Your assumption that I am refraining from the exercise of my official duties on grounds of health is mistaken. My health is such—and, with the exception of a short period of leave after the session of the Council in Geneva, has always been such—as to enable me to deal fully with all

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current business. My abstention from the exercise of my official functions is due, not to my health, but to a wish to that effect expressed by M. Forster, District Leader of Danzig, in connection with which M. Forster stated that I no longer enjoyed his confidence and must from that moment refrain from the exercise of any official functions. I complied with the District Leader's wish on grounds of Party discipline, subject to written confirmation of this wish with a statement of the reason therefor—namely the lack of confidence in my conduct of public affairs. The District Leader was of the opinion—in which I concur—that such a written statement could not under the Danzig Constitution be given by the District Leader himself, but must proceed from the constitutional representatives of the National-Socialist movement; and he was anxious to take steps accordingly If I allowed my health to be publicly represented as very unsatisfactory, that was a personal sacrifice which I made solely in the interest of Danzig and of the Movement.

I gather from your letter, with the contents of which I must assume the District Leader is acquainted, that my previous impression to the effect that confidence in my conduct of public affairs was shattered is quite incorrect. I am compelled therefore to ask whether I am mistaken in this matter, and whether the Senate and Party desire me to resume the exercise of my official functions. I am prepared to do so at any moment. Should this not be the case, and should the leader of the Party now desire to place on my shoulders the responsibility for my retirement without regard to the clear and definite position of fact, I must regretfully state that I am not in a position to comply The responsibility for my retirement and whatever consequences it may have must be assumed clearly and unmistakably by the leaders of the Party in and outside and the members of Party in the Parliament. I must decline to incur the reproach of having left Danzig in the lurch in an hour of the greatest danger. I must, accordingly draw the attention of the Party in and outside Parliament to the fact that I expect a written vote of no confidence, with a statement of the reasons therefor, if my retirement is desired. My attitude in this matter is influenced by the fact that it is now quite out of the question for me to accept the solution formerly desired by the District Leader—*viz.*, the allegation of serious illness as a ground for my retirement, with the object of not compromising the unity of the Party in public. Both the District Leader and the Vice-President and obviously other persons have (as I can prove) made statements which constitute the most serious implication on my honour in the most authoritative circles of the Party both in Danzig and in the Reich, including the highest official and ministerial quarters, to the effect that I had allowed myself to be " bought off " retirement by grants or promises of money The District Leader has, in addition, frequently stated that I am a traitor to my country and deserve to be shot as such. This unfair treatment of a conflict of fact, with which is coupled deliberately the widespread assertion that I must, after all, have something on my conscience which prevents my return to Danzig, makes it quite out of the question for me to lay down my office, except as the result of a formal vote of no confidence.

In the event of the Party desiring, in spite of the statements in your letter of October 31st, to proceed to such a statement of no confidence, I am anxious in the following letter to place on record certain material facts with regard to the differences between the District Leader's Office and myself. I must refrain from giving an account with the necessary fullness of the material conflict in respect of the policy to be pursued in Danzig, which was obviously the ground for the wish expressed by the District Leader for my retirement. I am prepared to give such an account at any time, either at a meeting of the Senate or at a meeting of the Parliamentary National-Socialist group. I desire, however, among other things to say a few words on the most essential and most pressing requirement of the present position—namely the maintenance of Danzig's economic independence—since I cannot but observe with the utmost anxiety that no decision has been reached in the Senate which promises relief of the position in this connection.

1. The central economic problem of Danzig, beside which all other problems take a secondary place, is the problem of dealing with the passive balance of payments of some 3,000,000 florins per month. On the solution of this problem rests the position of the Danzig currency and the maintenance of Danzig's economic independence and, with that, of its German character. Should it prove impossible to find a remedy for the inadequate influx of foreign exchange, the passive balance of payments can only be met out of the cover for the currency which, within a few months —if the present economic policy is continued, within five months—must mean a collapse of the currency Bankruptcy of this kind would place Danzig at the mercy of foreign countries.

The District Leader says that he has a definite promise from the Führer that the Reich will make the necessary provision. I regard it as an irresponsible policy to rely alone on the help of the Reich, for the reason that the inability of the Reich to provide a sufficient quantity of the necessary foreign exchange in time to be of use must be expected to continue. I need only point in this connection to the serious position in which the peasantry already finds itself as a result of the failure to take up or pay for the agreed quotas of their export produce.

I fully realise the difficulties which stand in the way of freeing Danzig from reliance on foreign aid. But the only way to maintain the German character of Danzig is to rely on our own strength. The District Leader maintains that there is no possible relief to be obtained in this connection. Danzig, he argues, has always lived on foreign aid—before the war, on the orders of the shipyards and on the large garrison. He is mistaken. I have only to point to the carefully worked out practical proposals of my colleagues, whose efforts, it is true, have never been appreciated by the District Leader. If these proposals have only been carried out to a very modest extent, that is due to the following circumstances, and here I come to the decisive point of my remarks.

The prerequisite of any possibility of Danzig developing an economic life of her own is the restoration of our ability to compete with the sterling block. The methods of effecting

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such a restoration of our competitive ability have been explained by me to the District Leader at the beginning of the year; and I need not now go into the details. It is a common and inevitable feature of all practicable methods of restoring our competitive ability that they must in one way or another affect incomes—*i.e.*, not the real amounts of income, but the amounts as expressed in figures. We should not, it is true, attempt to compete with depressed countries like Poland: to such countries we should be content to leave those branches of labour which make small claims on individual effort. But in any case we must not, by laying down impossible wage scales, seek to evade the adjustment of our position to the prosperous countries of the sterling block. The District Leader has never, so far as I know, disputed the principle of the above contentions; but he has allowed minor and major office-holders of the Party to take steps and make public utterances which conflict entirely with this standpoint and with this recognition of the facts. And yet the necessities of the position to which I have alluded—namely the fact that incomes will be affected—call in a very special sense for clear and conspicuous co-operation of the Party with the Government, inasmuch as difficulties are implicit in the execution of such measures which can only be mastered by action taken with a full appreciation of the facts of the position.

In this very grave position, which has been clearly indicated by me since February and March of the present year, and has been the subject of discussion, the District Leader's headquarters endeavour to base a wholly unfounded policy of optimism on the prospect of a rapid improvement in the position of the Reich. Such expectations are particularly dangerous, for the reason that the possibilities which still exist to-day of finding a remedy will very shortly be exhausted. Furthermore, the exodus of foreign exchange is powerfully accelerated by the effects of an insufficiently thought out system of providing employment. For a year past, I have drawn attention to the difference between our own position and that of the Reich, and have endeavoured time and again to show that the general methods of providing employment hitherto adopted can only lead to further weakening of our currency. I have protested with all possible emphasis against such projects as the building of the theatre and the like. My representations with a view to placing the provision of employment—in itself, one of the most essential and most urgent problems, on the solution of which I have myself been particularly insistent—on a new and well-defined basis have received no attention. Either, therefore, there will be a marked increase of unemployment in the very near future, or the process which I have described of the exhaustion of our currency cover will continue at a very much more rapid rate.

2. The economic position itself clearly indicates the line to be taken in internal politics. The Government measures which will have to be taken require, in my opinion, a two-thirds majority; and it is hardly possible to defend their enforcement under the Enabling Act. Where measures of a highly unpopular character are in question, the other parties should be given a share in the responsibility; indeed, internal unity of the entire population, based on recognition of the seriousness of the emergency is essential for the execution of such projects. In view of the very serious shocks to be anticipated in the coming year, I accordingly regard it as essential to call a truce to conflict, at any rate in the case of those party members who do not proclaim Marxist doctrines. Instead of this, the District Leader's headquarters called upon me, regardless of the consequences, to employ all the means at the State's disposal to suppress the minority parties, and went so far as to demand that I should arrest a number of Catholic priests. Apart from the fact that, in view of the legal situation obtaining at Danzig, the desired result could never be achieved by methods of oppression, but simply by moral persuasion, even a short struggle would have deprived us of every possibility of introducing the necessary legislative measures. Danzig, however, will not be able to avoid making at least an attempt to obtain foreign loans if she is to maintain her currency. The obtaining of such loans, already sufficiently difficult, would become quite impossible if Danzig were to become subject to the full pressure of an external economic boycott which could not fail to result from drastic measures against ecclesiastics, Jews, etc. For the same reason, I have opposed any election on a platform based on other considerations than those of foreign policy since any such election would merely sharpen the existing differences of opinion instead of consolidating that common front of all right-thinking Danzig Germans which is so necessary to us.

3. The requirements of internal policy would, however, have been bound to have particularly unfavourable effects from the point of view of foreign policy As regards Danzig's foreign situation, it is a fundamental error to believe that the reconciliation with Poland and the new relations existing between Germany and Poland have definitely consolidated Danzig's sovereignty Quite apart from the fact that Danzig's relations with Poland are still a bone of contention in the Party and that I have myself drawn attention to the possibility of a departure on Poland's part from her present attitude towards Germany I must point out that the Danzig-Polish reconciliation, as I have repeatedly emphasised, must involve grave dangers for the maintenance of Danzig's German character. For this reason, attention has continually been drawn to the necessity of internal defensive measures against Polish propaganda in support of official policy It is also necessary however, to enlist the goodwill of foreign Powers, which might support Danzig in the fresh conflicts which are only too likely to arise. For this reason, even before my first governmental declaration, I had a long conversation with the representative of Soviet Russia in order to ensure a continuance of Russia's help which has been so valuable in the past. The passage I had intended to insert in that speech regarding good relations with Russia was, however, struck out by the Party leaders. Subsequent developments in the Reich then made it impossible

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to carry out the policy I had planned in this direction. My efforts to interest the United Kingdom were somewhat more successful. At all events, I succeeded in avoiding definite hostility on the part of that country as I was able to prove that constitutional methods were being maintained in Danzig. It was particularly important to maintain a strictly legal and constitutional attitude in order to prevent the Council of the League of Nations from taking part against Danzig. After Germany's withdrawal from the Council this became an essential condition of Danzig's survival. Danzig's already restricted sovereignty is bound, moreover, to be further undermined by every intervention of the League High Commissioner in Danzig's internal affairs, such as the interventions which have frequently taken place in the past, and, in particular, such as the Press question last year, which led to proceedings before the Council. It should be made quite clear that the Constitution, placed under the protection of the Council and controlled by it, at present constitutes the only guarantee of Danzig's sovereignty and is all that stands between Danzig and absorption into Polish territory which Poland has never ceased to claim. However unpalatable this may appear to us, the Council of the League of Nations is Danzig's natural protector against being abandoned completely to Polish good- or ill-will. Any fundamental opposition to the Council, or any serious breach of the Constitution, must have the consequence of placing Danzig entirely in Poland's power. But the League High Commissioner is obliged, even if he is well disposed towards Danzig, to make any serious breach of the Constitution—such as would be involved, for example, by an insufficiently founded suspension of opposition newspapers, or a further conflict with the Centre Party—the occasion of proceedings before the League Council, the result of which cannot be in doubt and the final consequence of which would be that Danzig's prestige would suffer a severe public setback, or that Danzig would have to take the at present highly dangerous course of an open conflict with the League of Nations, which would tie Danzig for better or worse to Poland.

I must emphasise that all the parts of my policy constitute a carefully thought out system, which can only ensure Danzig's survival if it is applied in its entirety If any essential part of this system is neglected, a collapse must inevitably ensue within a short time.

4. Lastly the loss of confidence and the conflicts I have mentioned are closely connected, to my mind, with a false conception of the relationship between the State and the Party The State cannot gain a firm footing in the consciousness and ideas of National Socialism unless members of the Party of outstanding character and abilities are given as great a share as possible in the administration. These party elements should not, however, be disparaged as soon as they are given responsible position, but should continue to be respected as the mandatories of the Party· otherwise, the Party itself will perish as a result of the continual criticism of the State and its consequent disorganisation. It is a misconception of the essential character of the State to speak of it as a machine and to place the Party above it. If the Party continues to regard the State as opposed to it, it will destroy the last bastion of the independence of Danzig's German character. The present practice of continual interference with the State services has, however, already undermined the authority of the State to such an extent that the future can only be viewed with grave concern. I have already drawn attention to these dangers a year ago, and I obtained from the Führer's representative a clear decision to the effect that the connection between the Party and the State would only be ensured by the President in office, and that direct interference in the subordinate services was inadmissible. In spite of this decision, the process of undermining the State's authority and of destroying the necessary discipline has made further progress. The general fear of a large number of the officials that they might lose favour with the Party has led to time-serving, servility and pusillanimity The courage to work in an impartial spirit, to stand by one's own opinion and to share responsibility is lacking to an alarming extent, and the necessary expert knowledge for the drawing-up of laws and decrees is now practically unobtainable. I need not mention any individual cases in this connection. In order that the President and the Senate as a whole may be able to assume their constitutional responsibilities, policy must be uniform and consistent, and the power of command and the right of giving orders must be clearly established, both in the case of those bearing political responsibility and in the case of the official and administrative authorities. This point must be emphasised with particular force, because the measures which can alone give Danzig a chance of salvation in the future can only be carried out by a Government enjoying great authority If the Party organs continue, as in the past, to interfere on every possible occasion, and often to receive improper support from Party headquarters, the old system of placing Party interests first will simply be perpetuated in a new form and not eliminated.

After thus briefly stating a number of important points, I sum up as follows:

1. I am prepared to resume the exercise of my official functions at any time. If our policy is to be successful, however, an agreement must be reached on the steps to be taken in the course of the next few months. I am prepared at any time to give full explanations in this connection.

2. I refuse to resign office voluntarily and draw attention to the necessity of a declaration of no confidence accompanied by a statement of reasons.

Heil Hitler!

(Signed) Dr. RAUSCHNING.

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Open Letter from Dr Rauschning to Gauleiter Forster

[*Translation from the German.*]

To Gauleiter Forster

In your presence and without any protest from you and hence with your approval if not at your request, Herr Julius Streicher, Gauleiter (District Leader) of Franconia, has publicly accused me of secret treason, treasonous conduct, the intention to sell Danzig to the Jews and other actions which seriously reflect on my honour. Your newspaper, *Der Vorposten*, has especially reiterated these insults and given them wider publicity.

I have hitherto thought it the fair thing to keep entirely in the background in this election campaign, and in any case not *to give public expression to my keen anxiety regarding political developments in Danzig*, though I have in consequence felt serious scruples of conscience and share, as in duty bound, every citizen's concern for the safety of our State and Constitution. I have, even at the sacrifice of my personal honour, restrained myself, resolved to abandon all further political activity I took no further action when I was denied the redress I demanded for the infamous accusations repeatedly uttered by you before a wide public. Yet these accusations were the most serious which could be levelled against any man—namely, treasonable action in the interests of another Power, together with the acceptance of bribes, and so on—and to these accusations you coupled the threat that I deserved to be shot. These insults have not merely been heard by a few people; they have reached the ears of the most influential persons in Germany and have even found some credence there. I said nothing even when you expelled me from the Party though no proceedings of any kind were instituted to give me so much as a hearing. I further kept silent even when no reply at all was vouchsafed to my repeated complaints to the higher Party tribunal. In the interests of the safety of the State, I submitted to all this. I did not want by premature criticism to jeopardise the possibility of your reverting to a reasonable line of policy though it would have been easy for me to prove that I was forced into a conflict with you and with the Party in the discharge of my duty of defending a policy that has been gravely imperilled, and of preserving the Constitution.

By your approval of Herr Streicher's public attacks you have now placed me in such a position that I must cease to consider the Party I left with such reluctance. Consequently I now give voice to the anxiety I feel, and I appeal at the eleventh hour to the sense of reason of the German people of Danzig not to follow you or the policy inspired by you, no matter whether their sentiments are National Socialist or not.

For the issue to be decided on April 7th is not a matter of National Socialist sentiments, or even German sentiments as such. It is whether the people of Danzig want such a person as yourself to be an absolute dictator, whether they will trust themselves to you in your policy of adventure, or whether they want security by the constitutional limitation and control of your absolute power.

It would be disastrous for the future of Danzig and its German population if you succeeded in your object of giving a legal basis to a policy which would necessarily end in serious disturbances in the near future. Instead of taking as your point of departure the serious problems to be solved in the sphere of foreign politics and economics in order to ensure the future and the German character of Danzig, the beginning and end of your policy clearly consists, in matters of internal policy in acquiring sole power. If applied, that power will be contrary to the public and constitutional law of the Free City and consequently you cannot implement or utilise it without coming into serious conflict with the guarantors of the existing position. But, again, the change in the internal legal position which you wish to bring about would necessarily enable the Polish racial group to place itself outside the despotic barriers imposed on the rest of the population.

Complete civil equality of rights for the Polish and for every other national or religious minority—yes. But the grant to the Polish racial group of those civil rights of association, of freedom of intellectual culture, of equality before the law, which you, Herr Forster, wish to restrict for the German Danzigers in favour of an arbitrary system of absolute power—no.

An honest settlement with the Republic of Poland on the lines of an economic policy serving common interests and the mutual observance of the contractual position of Danzig as affording free access to the sea, yet also as a port which must be used to the full—yes. But a sacrifice of the advantages arising out of the position in respect of the Council of the League of Nations, which represents protection for the maintenance of Danzig independence—no. We must never forget that the position of Danzig in respect of the Council of the League of Nations constitutes a right held by Danzig, a right granted to the Free City in order to facilitate acceptance of the onerous terms of peace and the severe stipulations they impose regarding frontiers.

The development of the economic life of the Free City arouses equally serious anxiety Big words, organisation on the part of representatives and leaders of economy, autarchy and limitation of markets—these will not help us; we can be helped only by a revival of private initiative, by the restoration of the competitive capacity of Danzig economy which you prevented me from

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achieving. Nor must we count on foreign support; we must rely solely on our own sterling ability, which most of us have not yet lost.

Are you, Herr Forster, aware of all these grave anxieties ? Have you informed all the orators of the Reich of Danzig's difficult position, so that they can tell us how we can reconcile your political exaltation with stern realities ?

True, I am in favour of strong leadership, supported by the faith and confidence of the population, in whatever form such confidence makes itself felt; but, in addition to an inflexible will, it must possess the maturity of experience and knowledge—a simple knowledge of facts.

Danzig again needs a competent Government, possessing moral standing; a hard-working Government, familiar with the smallest details, not merely carrying out a wide and general policy; a strictly objective Government, and one of clear authority and order. The German people in Danzig may not yet be ready to realise the danger and the indignity of a headlong policy of hysteria, of organised outbidding and overweening pride, which has nothing in common with manly determination and the staunch accomplishment of duty· some day it will be ready for this—and may this election hasten that day !—and it will return to sober reason, to a cheerful and at the same time a serious conception of life, and that sterling integrity which has made it turn from all empty phrases, and caused it to do its duty in factory and study in the field and at the workman's bench, and lead a life of honest effort.

I therefore declare myself opposed to your List 1, and in favour of a clear legal order, based on the inalienable principle of equality before the law· in favour of free, inviolable co-operation, based on the moral responsibility of the individual in social, economic and political duties; in favour of the legal idea of self-government upon which Baron von Stein and Bismarck based the public and constitutional life of the German nation and which has become an integral part of all leading legal institutions of our German past; in favour of freedom of thought and of culture, opposed to any constraint paralysing their creative power and transcending the natural obligation towards one's own people; in favour of a community of the people not based on external uniformity, but which daily won anew in the conflict of ideas and of characters, yet supported by mutual esteem and a respect for the honour even of an adversary and by common effort to attain the same goal, in favour of liberty of conscience unshackled by any claim to blind obedience; in favour of the Christian faith, which lies at the heart of our morality and of our culture, and whose sacred domain we cannot abandon without destroying out true selves and falling into idle sophistry

May the sound and manly spirit of our people help us to fulfil this programme.

(Signed) Dr. RAUSCHNING.

ANNEX 1583 a.

C.38.1936.VII.

FREE CITY OF DANZIG.

SUPPLEMENTARY PETITION, DATED DECEMBER 4TH, 1935, FROM THE SOCIAL-DEMOCRATIC PARTY THE CENTRE PARTY AND THE GERMAN NATIONAL PARTY, CONCERNING THE GENERAL ELECTIONS TO THE POPULAR ASSEMBLY OF THE FREE CITY ON APRIL 7TH, 1935.

LETTER, DATED JANUARY 13TH, 1936, FROM THE HIGH COMMISSIONER OF THE LEAGUE OF NATIONS AT DANZIG TO THE SECRETARY-GENERAL TRANSMITTING THE OBSERVATIONS, DATED JANUARY 11TH, 1936, OF THE SENATE OF THE FREE CITY ON THE ABOVE PETITION.

Danzig, January 13th, 1936.

I have the honour to refer to my letter of December 21st, with which I forwarded a petition relating to the elections [1] (document C.19.1936.VII).

In accordance with the final paragraph of my letter, I now enclose herewith the observations of the Senate on the supplementary documents.[2] I shall be glad if you will circulate this also for consideration by the Council.

(Signed) Sean LESTER.

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[1] See page 182.
[2] See page 191.

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