

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.

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ANNEX 1583 a.

C.38.1936.VII.

FREE CITY OF DANZIG.

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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<sup>1</sup> (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.<sup>2</sup> I shall be glad if you will circulate this also for consideration by the Council.

(Signed) Sean LESTER.

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<sup>1</sup> See page 182.

<sup>2</sup> See page 191.

[Translation from the German.]

To the High Commissioner  
of the League of Nations, Danzig.

January 11th, 1936.

In the so-called election petition affair, I have the honour to confirm the receipt of your letters of December 20th and 23rd, 1935, transmitting two supplementary communications from the petitioners, dated December 4th and 10th, together with a copy of your letter of December 21st, 1935, to the Secretary-General of the League of Nations.

I note with regret that Your Excellency has brought up this very important matter of the election petition before the League, and invited consideration of the same by the latter, before giving me the opportunity of expressing my opinion on the supplementary statements of the petitioners. I believe my observations on the repetition by the petitioners of their arguments would have cleared up the legal position, which is in itself simple enough, to such an extent as to bring home to Your Excellency my own conviction that the petitioners have no case, so that there would have been no occasion to bring the matter before the League at all. Such an attitude on Your Excellency's part would have been entirely in accordance with the spirit of the report of the Rapporteur, Mr. Eden, last September, in which attention was drawn to the desirability of settling such differences on the spot—that is to say here in Danzig. It is obvious that the transmission of the petition will give a severe political shock to Danzig, particularly as the petitioners call in question the judicial authority of the Supreme Court of the Free City. Such action is incomprehensible to the majority of the Danzig population and is inconsistent with any sound sense of law and justice. Your Excellency may rest assured that the Opposition parties, if they were in power, would take the same view as the present Government, and that it is only an unthinkable animosity that leads them to have recourse to the League of Nations in this manner without any regard for the difficult position of Danzig in respect of its foreign political relations, and without any appreciation of the effect their attitude must have in undermining the legal security of the State.

I beg once more to draw attention to the unconstitutional and unpermissible character of the action of the Opposition with the explicit hope that Your Excellency will not find it possible to ignore the observations I have to put forward.

1. The main petition of November 26th, 1935, requested the High Commissioner "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" In other words, the petition asks the League of Nations, in its capacity as guarantor of the Constitution, to intervene in the internal life of the Free City. That demand is not permissible, and the League's capacity as guarantor affords no basis for it.

The relation of the League to the Free City as guarantor and as protector was contemplated in Articles 103 and 102 of the Treaty of Versailles, and is embodied in the decision of the League of November 17th, 1920,<sup>1</sup> which was based on the report of Viscount Ishii. The League's decision, together with the Ishii report, constitute accordingly the sole and exhaustive legal authority in so far as the nature and scope of the guarantee are concerned.

There is a further point into which it is unnecessary for me to go. I am myself of the opinion that the League's relation as guarantor and as protector of the Free City did not come into existence as a result of the decision taken and published by the League on November 17th, 1920. I believe, on the contrary that this decision was a proposal by the League which required the Free City's assent, and that its assent was given, after the High Commissioner had formally notified the decision to the Free City by the Constituent Assembly, the then supreme organ of State of the Free City when it made the amendments for which the decision asked in the Constitution previously adopted.

To revert to the stipulations of the Ishii report, they will be found to embody the principle that "the Free City should form in the international organisation of Europe a community which must be protected against all undue interference on the part of any country and which must have its own regular existence. It is, of course, understood that it would accept in their entirety the terms of the Treaty of Versailles and the rights which this Treaty confers on Poland." The essence of the guarantee, therefore, is the careful maintenance and protection of a regular life of its own for the Free City. Nothing must be allowed to interfere with that. But there is no "regular life of its own" if an international organisation outside the State can claim to scrutinise the constitutional character of every administrative act, judicial decision or legislative enactment of the Free City and, under circumstances, declare them invalid. That would mean that the League of Nations, in its capacity as "guarantor" of the Constitution (Article 103 of the Versailles Treaty), would be making an end of the independence of Danzig which it is itself called upon to maintain as "protector" (Article 102 of the Versailles Treaty). As that cannot be the purpose of its protective functions, it follows that the guarantee of the Constitution only operates to the extent to which it promotes such protection. In other words, the League can only concern itself with the question of guarantee, if "its own regular existence" is endangered. Any interpretation going beyond this would conflict with the political independence of the Free City which the League itself is called upon to respect.

<sup>1</sup> See Minutes of the second meeting of the eleventh session of the Council.

That political independence implies in itself that the League has no power of intervening directly in the internal legal position of Danzig. It is universally admitted that the League cannot exercise any sovereign rights in Danzig; it would obviously be inconsistent with the very nature of the League for it to do so. The representative of the League, the High Commissioner, is of course not qualified to exercise any rights of sovereignty in Danzig.

It follows inevitably from all these circumstances that the League is not in a position either to annul or itself to perform any act of State or administrative act which falls within the functions of the Free City. In particular, it cannot declare a judicial decision unconstitutional, for that would be tantamount to the annulling of the decision, and therefore to the exercise of a function of State reserved under the Constitution to the Free City. It follows with equal cogency from the above statement of the position that it would also be inadmissible at law to exercise any compulsion on the Free City. I may point out in this connection that even the Hague International Court does not regard itself as empowered to place itself in conflict with the legal decisions of any particular country: see its decision in the matter of the Serbian loans (Judgment No. 14, page 46, and, again, Judgment No. 15, pages 123 ff.).

If the contention of the petitioners that the League of Nations should take steps to annul the election and the decisions of the Supreme Court of November 14th, 1935, in respect of its scrutiny of the elections, by a declaration to the effect that the decision is unconstitutional, is reviewed in the light of the above considerations, there can be no question that it will be found both impracticable and unpermissible. It is not even to be supposed—so clear is the legal position—that the petitioners themselves fail to appreciate the legal aspects of the case. Their attitude can only be explained by the unthinking animosity in relation to the present Government which blinds them to every sense of law and justice. Their sole object is to attain their political party aims, and any means to that end is lawful and right for them. As to their ends, there is no question what they are. The results of the elections to the Popular Assembly of April 7th, 1935, which went against them and gave the National Socialists an absolute majority, are irksome to them, and they seek to invalidate them. The first step to be taken with that end in view was to lodge an objection to the election under Article 10 of the Danzig Constitution. That effort failed as a result of the Supreme Court's decision of November 14th, 1935, when the Supreme Court, after carefully scrutinising each separate election incident—it took the evidence of nine hundred witnesses for the purpose!—with an impartiality beyond all question, came to the unimpeachable conclusion embodied in its decision to the effect that the election was valid except in the case of certain districts. The next step for the Opposition should have been to resort to the second remedy available to them under the Constitution—that is to say they should have taken steps with a view to a referendum under Article 9 of the Constitution to set on one side the elections which they regarded as unconstitutional. But this remedy they are not prepared to invoke, realising (as well they may) that it is a sheer impossibility for them under the democratic principles of the Danzig Constitution to obtain a majority for their proposals. This being so, the Opposition parties have turned in despair to the expedient of making use of the League of Nations for their own purposes by alleging that the election and the decision of the Supreme Court are both unconstitutional. They were bound to make this allegation, since that was the only means by which they could be entitled to approach the League as guarantor of the Constitution by way of a petition. The fact of the matter is that they, being a numerical minority in the State, are endeavouring to get the better of the numerical majority—which is inconsistent with every democratic principle laid down in the Constitution. To this end, they have the audacity and the insolence to bring in the League of Nations as a means of putting a stop to the operation of the democratic principle of majority rule. The League, the guarantor of the principles of the Danzig Constitution, is (if they have their way) to co-operate in destroying a principle of that same Constitution!

As has already been explained, the petitioners, in order to achieve their object, were bound to assert the unconstitutionality of the election and of the judgment of the Supreme Court, as otherwise it would not have been open to them to move the League of Nations in the matter. It is therefore clear that the reasons given in support of the theory of unconstitutionality, which they had themselves to discover, must be very sceptically and critically examined. Words need not be wasted in protesting that the charges are unfounded. In the supplementary petition, they make use of one particular argument, the primary purpose of which was to prejudice the League and thus influence it in its attitude and consideration of the complaints. We refer to the passage in the supplementary petition of December 4th, 1935, in which the petitioners "draw attention to the unconstitutional relation existing between the Danzig Government and the National-Socialist Party at Danzig." When carefully weighed, it is difficult to see what is the exact bearing of this statement upon the alleged unconstitutionality of the election and the judgment. So as not to create the impression, however, that it is incontrovertible, this statement too will be briefly examined, though in so doing I shall in effect be obliged to repeat what was said in the introduction to the reply to the Social-Democratic petition of May 3rd, 1935.<sup>1</sup>

The alleged identification of Party and State has already been duly considered and disproved in connection with former petitions. We take this opportunity of once more stating categorically

<sup>1</sup> Note by the High Commissioner — The Senate's observations, dated January 9th, 1936, on the petition of May 3rd, 1935, were received on the 11th instant. Neither of these documents has yet been circulated to the Council.

that the Danzig Government has never attempted and never will attempt such an identification of Party and State in the Free City. The fact that several high public offices are held by officials associated with the National-Socialist movement does not permit of any inference being drawn to the contrary. It follows from the democratic character of the Danzig Constitution that, when appointments are being made to high offices, preference must be given to candidates in sympathy with the political views of the majority of the people. That principle was recognised as a matter of course by all former Danzig Governments and has nothing to do with the identification of Party and State. It may be pointed out that National Socialism has, indeed, been extremely circumspect in its application of this principle: in addition to many other high posts, the two most important offices in the public service, those of President of the Court and Chief of the Danzig Police, are held by men who have no connection with the National-Socialist Party. Examination of the evidence which is held to justify the propagandist slogan of identification of Party and State will show it to consist of nothing more than the allegation that various public officials at the same time occupy an influential position in the Party and the further allegation that on various occasions Danzig has been described as a "National-Socialist State". But neither of these allegations proves anything. The first has already been discussed, and I may further mention that former Presidents, such as President Ziehm and Vice-President Gehl, held influential positions in their respective parties. As regards the second allegation that Danzig has on various occasions been described as a "National-Socialist State" it must be clear to all that this expression was merely intended to convey that the State of Danzig had a National-Socialist Government. The arguments used in the supplementary petition of December 4th, 1935, again make it necessary to point out that, as long as it is permissible under the democratic Constitution for the majority Party to control the Government—that is, to form the Senate and thus, in accordance with Article 38 of the Constitution, to shape Government policy—that Party must also be entitled to conduct the Government in accordance with its own ideas and to make sure, through appropriate appointments to politically important posts, that those ideas are really being carried out.

For this purpose, it is immaterial whether the majority party is peculiar to Danzig itself, or has spiritual connections with the German Motherland. Danzig is so small a political entity that, ever since the creation of the Free City all its political parties have been closely related to the political circles in Germany holding ideas similar to their own. That is just as true of the German-National and Social-Democratic parties as of the Centre Party—to say nothing of the Communist Party whose real roots, as everyone knows, are *not* in Danzig. But, even so, no one has ever regarded the existence of such a connection as an "infringement of the Free City's sovereignty". The fact that, in the Reich, the identification of Party and State is complete makes no difference, for obviously within the territory of Danzig the National-Socialist Party can merely act as an ordinary party and its other aspect does not arise. The special oath which binds the members of the Danzig National-Socialist Party to the Leader—*i.e.*, the *Party* Leader—should therefore be regarded as an oath relating to membership of the Party and nothing more. Any suggestions to the contrary are erroneous and mistaken. As regards the resignation of Dr. Rauschnig, the former President of the Senate, which it would have been better not to mention, as this internal event can be of not the least interest to the League of Nations in connection with the *legal* question which is here alone at issue, all that need be said is that hitherto it has always been regarded as the natural right of every Party to withdraw its confidence from a man whom such confidence had previously placed in public office, and thus bring about his resignation. Any number of examples of such a proceeding may be found in countries with parliamentary Governments—*e.g.*, France and Great Britain.

Finally as regards the quotation from the Supreme Court's judgment of November 14th, 1935, regarding the elections to the Popular Assembly, to the effect that the *Gauleiter*—that is a *Party* official—had an influence on the superiors of the officials and public employees, all that this really amounts to is that the Court recognised that officials were amenable to such influence in a subjective way. The Court could not go further than that, and it is to be regretted that a quotation should be separated from its context in such a way that its true meaning is no longer clear.

Lastly as regards the supplementary petition of December 10th, 1935, the arguments which it contains do not serve to substantiate the charge of unconstitutionality and are not therefore germane to the issue. They merely serve propagandist ends, which are better kept in the background in the discussion of problems of law.

(Signed) GREISER.