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Reform and Resignation

McDonald and Cecil both believed that his resignation should be much more than an apologia for the High Commission's lack of achievements. Rather, they agreed it should be a strong statement that would hold the refugee problem, its causes and the international response to it, before world opinion. The statement they decided upon would therefore address the political context of the refugees from Germany, and make known to the public what few outside Jewish circles fully recognized, that the refugees were the victims of the determined actions of the Nazi regime to rid Germany of its Jewish population. It would also outline the historical context of the problem and provide legal analysis of the Nazi persecutions and the status of the refugees in world affairs.¹

In order to prepare the statement, McDonald contracted two experts on German and Jewish affairs: Oscar I. Janowsky, professor of history at the City College, New York, whose 1933 book *Jews and Minority Rights, 1898-1919* had already discussed the recent historical context of the status of the Jews, and Melvyn M. Fagen, a jurist taken on secondment from the American Jewish Committee to work with McDonald and Janowsky.² McDonald explained the intention of his resignation statement when securing Fagen's release. It would be much broader than a plea on behalf of Jewish rights, and would include other religious groups, asserting, in McDonald's words, the 'fundamental principles involved in the present violations of, or threat to the rights of, racial and religious minorities'. Janowsky would provide the historical research; Fagen would provide technical and legal analysis. The American Jewish Committee gladly released Fagen for this purpose and agreed to pay his expenses. James Rosenberg of the Joint Distribution Committee offered to cover Janowsky's expenses.³ McDonald, in other words, was able to harness American Jewish support for his final act as High Commissioner, and the American Jews continued to support

him as they had done from the moment that they put his name forward for appointment as High Commissioner.

While the statement was being prepared, McDonald continued to garner support for a central refugee agency within the League of Nations. Once the July Governing Body had concluded, he set off on a final tour of European capitals to promote his plan and to seek the support of governments to carry the idea forward to the September 1935 League Assembly. On the whole, governments supported the reopening of discussions on the refugees. The Danish and Swedish governments backed the Norwegian intention to put forward the proposal. The Soviet Union was entirely unsympathetic, however. It would not tolerate an organization that would continue to support the White Russians, as it accused the Nansen Office of doing. The Italian position was more ambiguous. It supported the principle behind a central agency since it would rationalize the League's refugee work, but it worried that Italian anti-Fascists would be brought under its mandate. McDonald also visited Berlin again to ascertain the opinion of the German Foreign Office. He was listened to 'sympathetically', he noted, but had to wait until he arrived in Geneva and a meeting with the German Consul there to receive an official response. The German government expressed, finally, 'no views officially on the matter', but 'it was not opposed to the idea of a central organization'.⁴

The concern was not whether the proposal for a central League refugee agency would pass the plenary Assembly; the steps that followed would be more problematic. The support of the major powers was essential if the proposal were to be carried through the committee stage, where it would be examined in detail before a final resolution was agreed upon.

The Norwegian foreign minister, Halvdan Koht, opened the discussion in the Assembly. He invoked the name of Fridtjof Nansen to illustrate Norway's special interest in the humanitarian work for refugees and asked the Assembly, in Nansen's name, to 'extend and complete his work, because the sorrows of exile have befallen a still larger number of men, women and children who are seeking refuge, a home and an occupation in foreign lands'. Refugees, Koht told the Assembly, were an 'oft-recurring historical fact'; they represented 'individual tragedies'.

The caution of 1933 was still evident none the less. Koht stressed, just as it had been stressed when the original 1933 resolution on the establishment of the High Commission for the Refugees from Germany was put to the Assembly, that no political meaning should be implied from recognizing the tragedies of individual refugees. Nor, Koht added, could any one country be slighted by its

being stated. There was nevertheless an important change in tone and meaning. Whereas the 1933 Assembly addressed the issue as a 'technical problem', Koht argued that, in 1935, the refugees posed a humanitarian problem, which affected all countries, and it had to be addressed in a humanitarian spirit. Koht proposed therefore that a vigorous effort be made to reorganize the international effort for refugee assistance in its entirety. The League of Nations had an essential role to play and it was now its responsibility to create an 'organization and international authority' to ensure that refugees had a definite legal status and opportunities to re-establish their lives. The aim, Koht concluded, should be nothing less than finding a means by which refugees could be 'incorporated in normal society'.⁵

Among the documents before the Assembly was a petition by leading international welfare services including the Red Cross, the International Federation of League of Nations Societies and the Save the Children's Union. The Save the Children's Union stressed the fact that there were more than one million people in the world requiring international legal protection and their lack of protection rendered the work of aid organizations ineffective. No League of Nations agency had thus far proven itself capable of solving the refugee problem and a plan for the reorganization of the League's refugee work was now essential.⁶ McDonald's memorandum to the Secretary General of February 1935 was also circulating around the Assembly.

When McDonald arrived in Geneva the debate was well under way. He was confident that the Norwegian proposal would be adopted but he was surprised to find that Koht seemed inclined to accept a weaker organization than McDonald and his supporters had advocated. Apparently, McDonald could only conclude, the League Secretariat had been trying to 'educate' him.⁷ Indeed, the mood in Geneva was discouraging. The Abyssinian crisis preoccupied everyone.⁸ Indeed, Koht's address began with his reflections on the dispute between Italy and Abyssinia and the prospect of war. The League consequently faced the challenge of maintaining its *raison d'être* as a instrument of harmonious international relations. One way in which it could show its worth was through international cooperation in the fields of 'ethics and intellectual, social and humanitarian work'. This was the 'glory of the League', he declared in conclusion, which was reason alone for its refugee work to continue and to be extended.⁹

The Assembly was used to grand statements of purpose and ideals. The committees, on the other hand, were concerned with precise details and political realities that could easily stifle great ideals. The 1933 proposal for the creation of a High Commission for the German refugees was considered in the Second Committee on technical questions; the 1934 affirmation of the High Commission

and McDonald's work was again voted on in the Second Committee. Now, in 1935, the refugee problem and the proposal for a central refugee agency was taken up in the Sixth Committee, which considered political questions. Sixteen countries participated, reviewing two key questions: What should be the role of the League of Nations in the work for refugees? And would a central agency be better placed to do the work already being done by other organizations?

The Sixth Committee conceded that these questions were too complex for it to decide immediately, and established a subcommittee to study them further. Here the reassuring words of support that McDonald, Cecil and the High Commission's staff had received as they canvassed support among the governments sitting on the subcommittee were tested publicly. The British representative, for example, expressed Britain's concern that a central refugee agency could create a permanent class of refugees dependent on the League of Nations, which would only perpetuate the problem, not solve it. The Swedish representative added that the aim should be the assimilation of refugees in their countries of refuge or their return to their countries of origin, in order to avoid the refugee problem taking on a 'permanent guise'. The Italian and Soviet representatives, as McDonald was already aware, were altogether hostile to any change in the existing arrangements and saw no reason why decisions previously made by the League should be reversed.¹⁰

McDonald was invited to appear before the subcommittee on 17 September to explain his reasons for proposing the establishment of a central agency. He read a statement drawn from his earlier memorandum, adding that the present 'piecemeal treatment of the refugee problem' was unsatisfactory because of the confusion it caused among philanthropists who offered funds and governments who receive representations from many different sources on behalf of distinct groups of refugees. He proposed that the new agency should be headed by a League of Nations High Commissioner for Refugees, who would have access to a special fund for relief and resettlement and who would head an institution with the structures to maintain effective cooperation between the League and private refugee organizations.¹¹

These were not constructive discussions, McDonald reflected afterwards. There was little interest in learning from his experience; rather, the committee members were more intent on blaming him for his High Commission's failures. His submission was received, he noted, with genuine hostility. Henri Bérenger, representing France, was extremely hostile to him personally. Bérenger, the original French delegate to the High Commission's Governing Body who, at its first meeting, insisted that France could do no more for refugees and expected

the United States to accept its share of the burden, asked McDonald bluntly and pointedly, what the US government had done for the refugees. Taken by surprise, McDonald replied feebly, 'nothing financially', before adding a belated retort that, unlike the French government, it had not made work permits a requirement for entry visas. Afterwards, McDonald was told about Béranger's bitter attack on him during a closed session: he had denounced McDonald for insisting on the title of 'High Commissioner' in order to attract large funds from Americans, and for failing completely in this aim. As far as the French were concerned, it made no difference if the High Commission went out of business. Such a personal attack had not been heard before in the League, McDonald's sources told him. The subcommittee's chair, Swiss minister Giuseppe Motta, thought the attack too extreme for it to be translated into English, and it was not recorded in the minutes of the proceedings. That was not the end of it. When McDonald spoke privately with Béranger afterwards about his thoughts on the central refugee agency, Béranger, again with bitterness, replied that it was 'not a matter to be dictated by Americans. There are no American refugees, they are European refugees, and we are big enough to look after ourselves'. Other sources suggested that Béranger's vitriolic attack against McDonald was a sign of France's increasing resentment at the 'Anglo-Saxon' and 'North European' attempts to monopolize the refugee problem, while France was left to cope with by far the largest pool of refugees and were scarcely heard in the organizations charged with their assistance and resettlement.¹²

On the matter of a central refugee agency, Béranger argued the French view that 'superstructures of administrative and professional philanthropy' should be avoided. They would 'swallow up hundreds or thousands, or even millions, of francs that would be more usefully employed in feeding, housing, sheltering and transporting the hapless refugees'. Nor should anything be done that would lead to a proliferation of refugees dependent on international aid. They signified a 'disordered state of affairs which ought not be perpetuated'. Rather, they should be regarded as a 'transient disorder' and dealt with as quickly as possible, 'by the least ostentatious methods'. A permanent bureaucracy, in short, Béranger believed, would instead perpetuate the refugee problem.¹³

The subcommittee was split in its final resolution, that the League should extend its protection to new categories of refugees. The Norwegian delegate could not agree with the majority view, arguing to the contrary that the League should extend its assistance to all categories of refugees 'that had come into being from the time of the world war down to the present day', and that distinctions based on origin, race and political convictions would simply be unfair.¹⁴

The final resolution was in truth mired in obfuscation. It noted that the refugee problem was complex, with political, legal, humanitarian, administrative and financial considerations requiring careful examination. More significantly, the resolution sought to tie the hands of future assemblies. It expressly limited any future reorganization to those categories of refugees already recognized by the League. 'Future decisions', it stated, 'should be limited, for political and financial reasons, to the categories of refugees already under the Nansen Office and the High Commissariat in London'. Furthermore, no new additional expenditure could be outlaid without the explicit permission of the Assembly. The final recommendation, then, was that the Assembly ask the Council to appoint a 'small committee of competent persons' to examine and report on these matters, upon which the Council would decide before the 1936 Assembly.¹⁵ For McDonald, this bore the clear influence of the opponents of reform, whose objective was that the League should not be 'responsible for one single additional franc over and above its present obligations to the Nansen Office'.¹⁶

French vituperation continued. No decision about future arrangements for the refugees from Germany would be made until the committee of experts reported, and certainly not before the Council had considered that report at an unspecified date in 1936. In all likelihood, despite plans to liquidate the High Commission by the end of 1935, it would need to struggle on as best it could until the Council decided future arrangements. The October meeting of the High Commission's Advisory Council therefore considered what interim arrangements would need to be made in order to continue the High Commission's work after McDonald's resignation. This aroused French ire. Helbronner attacked the very proposition that the High Commission continue, even with a reduced staff. The orders he had from his government were to 'work for the complete dissolution of the Commission at the end of the year'. If it were to continue, McDonald should name an acting High Commissioner before he vacated his post. Helbronner then made a 'long, nasty analysis of the High Commission', McDonald recalled, and insisted that, since McDonald was resigning, 'his colleagues must go with him'.¹⁷ Oungre carried on in an even harsher tone. He not only attacked McDonald personally, but also attacked his staff, especially Norman Bentwich, whom the French suspected would be nominated as McDonald's interim replacement, thereby handing the High Commission over to the British Jews and Zionists.¹⁸

It pained McDonald to have to defend himself and the High Commission yet again. Oungre's was an unpleasant intervention, McDonald recalled, and he feared it would be decisive.¹⁹ But he could not leave it unanswered. The High Commission's work into 1936, as Oungre was well aware, was the real problem.

Oungre's organization, the Jewish Colonization Association, had made no commitments, and the contributions of other organizations were assured only until the end of 1935. He refused to accept that the High Commission was beholden to any one agency or reflected the interests of any one government; France was not the only government represented on the Governing Body and its view should not be decisive. His response to Helbronner and Oungre was delivered with such force that they were both offended by what he said and by the tone he had used, so much so that McDonald felt compelled to apologize afterwards. However, the clash between them had cleared the air and a resolution on continuing the High Commission's work on a 'reduced basis' was agreed.²⁰

While the 1935 League Assembly was in session, the Nazi persecution of the Jews in Germany took a radical turn for the worse. The Nazi Party rally in Nuremberg was the scene for the proclamation on 15 September of the Law on Reich Citizenship and the Law for the Protection of German Blood and German Honour, the 'Nuremberg Race Laws'. Preoccupied as they were with domestic concerns, these developments made no immediate impression on the League and its member states. McDonald could only reflect on his early forewarnings about the dangers facing the Jews in Germany and fears for the advance of anti-Semitism in Europe if the world remained silent. With the proclamation on these race laws, Jews no longer had a place among the German people and the urgency of impressing this on European and American consciousness reshaped the tone and intent of his reform proposals and the statement that he would publish upon his resignation.

McDonald's mood also soured in these months. He saw no hope in continuing fundraising efforts and was impatient with misplaced optimism. He had received a copy of a report of a 'Christian Appeal for Non-Jewish Refugees from Germany', which looked ahead positively to what it could achieve. 'It must be a source of joy and encouragement to witness the growing determination within the Christian world ... to come to the [refugees'] rescue', he wrote in reply. This was to be an appeal by Christians to Christians, and 'if the Christian Churches rally in support of the refugees from Germany, it will not be without making a profound impression upon the rulers of modern Germany'.²¹ But his experiences in rallying Christian support had proven these hopes illusory. He could not share the appeal's optimism therefore, and in fact criticized it for confusing plans with accomplishments. He now admitted defeat, as achievements could in no way support optimistic outlooks.²²

His resignation statement therefore became more important because it was the only way left for him to make an impact. It was ambitious and had several

aims; it required careful drafting, reviewing and redrafting to ensure the validity of its case, the accuracy of its details and the power of its arguments. His resignation statement intended first of all to draw the attention of the Great Powers to the plight of the refugees and to provide them with a definitive report on the High Commission's work and the context in which it had worked. It would draw the attention of the League of Nations to the limitations of its mission, and place responsibility for the refugees where it belonged, upon the Nazi government. It would analyse Nazi race policy, its impact, and its violations of international law, and the principles of European justice invested in the League of Nations. It would also analyse the reasons why it had not been possible to find a solution to the refugee problem. Altogether, the statement aimed to provide a basis for League action in response to the moral problem that the refugees posed and against the social and political dangers German policy posed to the countries of Europe. The moral and legal arguments held the international community responsible for the protection of the rights of minority peoples from discrimination and persecution. Finally, the statement would inform public opinion 'in civilized countries ... of the juridical and moral principles which are daily being violated by the Nazi government, and also to warn other states where anti-Semitism was gaining ground to guard against recourse to Germany's example.'²³

Early drafts tested arguments of international law. The first draft tried to develop a case for action against Germany under Article 11 of the Treaty of Versailles because German policies were harming international relations and threatened to disturb the peace. This had been argued without effect when the question of the refugees from Germany had first been brought before the League Assembly in 1933, but it was now felt that a stronger case could be made as the consequence, if not the purpose, of the German anti-Semitic legislation was to destroy the Jewish people of Germany.²⁴ The advice of leading jurists and Jewish leaders was sought and their opinions were sufficient to reframe the main arguments and the presentation. While in Geneva, McDonald sought the opinion of Åke Hammarskjöld, Registrar of the Permanent Court of International Justice, about an argument framed around Jewish denationalization under the Nuremberg Laws. These laws gave no technical basis for legal action, in Hammarskjöld's view, but he suggested scope for political action. He made the telling point that political arguments had greater strength than legal arguments.²⁵ This advice gave the statement a clearer direction.

Others with whom McDonald consulted also believed that arguments on political or moral grounds carried more weight than arguments on legal grounds. Arnold D. McNair, professor of international law at Cambridge University,

Hirsch Lauterpacht, of the London School of Economics and Vladimir Idelson, recognized as 'one of the most distinguished international lawyers' in London, were all asked to comment on the draft statement.²⁶ McNair believed that the moral case was more powerful than arguments about Germany's breach of international law. 'In my view', McNair advised McDonald, 'the whole draft memorandum constitutes a very moving and powerful indictment on general grounds of justice and humanity, and ... I should be very reluctant to hazard its moral appeal by an overstatement of its legal aspect.'²⁷ Lauterpacht was of the opinion that a case for intervention could be made more feasibly on the grounds of the protection of the rights of minorities. Although he recognized that the possibility was small, 'in view of the general political situation', action could be taken with respect to the resolution of the Assembly of 1933 that affirmed the protection of the rights of minority peoples 'as a general principle of international law and morality', even among those states that were not signatories to the minorities treaty. 'The matter could be brought before the Council by the High Commissioner for German refugees', Lauterpacht explained. McDonald's statement could 'draw attention of the Council to the limitations revealed by the experience of his mission, to the continued persecution of the Jews in Germany, and to the daily increasing hardships and tragedy of the sufferers, to the necessity of reaffirmation of the principles laid down in 1933, and to the duty of the League to address once more an appeal to Germany'. Lauterpacht concluded: 'This is very little, but it seems to me the only possibility of political, as distinguished from humanitarian, action in this matter.'²⁸

McDonald also circulated copies of the draft to select Jewish leaders – James Rosenberg of the Joint Distribution Committee, Lionel Cohen of the Central British Fund and Leonard Montefiore of the Anglo-Jewish Association. Every detail of the statement was scrutinized. McDonald, Janowsky and Fagen met with Cohen, Idelson, Lauterpacht, Neville Laski, André Wurbain and Norman Bentwich in Cohen's London chambers on 19 November 1935 to study the first complete draft, chapter by chapter. Their criticisms were noted and were addressed in a revised draft, which was then reviewed in detail at Neville Laski's home.²⁹

With the final draft in preparation, McDonald returned to Geneva to appear before the Committee of Experts to address once more the question of international assistance to refugees. He faced over one hour of questions, during which he made clear his view that it was time to disregard German opinion, as its policies would continue irrespective of what the League did.³⁰ This was McDonald's final visit to Geneva as High Commissioner. He took leave of his contacts and

associates and had a final short meeting with Secretary General Avenol. He left to return to London on 4 December. On the morning of 4 December, Avenol made an unexpected appearance before the Committee of Experts and, so it was reported, 'left them dumbfounded' by his submission. The Secretariat expected the Committee of Experts to respect its position and understand that it would not tolerate any reform of the League's refugee services. There would be no 'mixing of German and Russian Refugees'. The objective in the short term was to settle the juridical status of the German refugees, and for this a new convention would need to be agreed. An 'outstanding international personality', Avenol insisted, should fill the post of High Commissioner until the next Assembly, with the sole task of negotiating the text of this convention. Finally, Avenol declared that it was both 'unnecessary and undesirable' to create a permanent body within the League to care for refugees. Private Jewish organizations had been effective in the work of relief and resettlement, and all that was needed now was for a 'central private clearing house' for both Jewish and non-Jewish refugees, which would 'have the benevolent moral support of the League and of governments, without being in any sense related organizationally to either'.³¹

This was nothing less than a directive. Avenol had changed the expectations of the outcomes of the Committee of Experts' findings and recommendations, forcing it to an unscheduled private session without League officials present to reconsider its views. While McDonald's staff agreed with the suggestion of a convention on the legal status of the German refugees, they had no confidence that Avenol's 'central private clearing house' would have any more success than the High Commission.

The Committee of Expert's final report, submitted on 7 December and made public on 9 December, was sensitive to the human suffering hidden deep within procedural discussions on the refugee problem. It described the 'state of chaos' that then existed as a 'menace to two generations'. There were 'too many cases of suicide', and the states that accommodated the refugees had found themselves host also to a 'painful if not dangerous problem'.³² The Committee, however, defied Avenol's directive, but its recommendations nevertheless fell short of a purposeful response to these tragic observations that the advocates of reform desired. It did not recommend a permanent organization but it did set out temporary arrangements until the liquidation of the Nansen Office in 1938. The majority report, agreed upon by the delegates from Britain, France, Norway and Czechoslovakia, recommended the integration of all refugee work into one office led by an 'eminent personality' under the Council's direction, with one section dedicated to the refugees from Germany. This new organization would

liquidate the Nansen Office in 1938. The Italian delegate's dissenting report recommended no change, and called for the High Commission for the Refugees from Germany to be even further limited in its functions. In summary, the Committee of Experts' recommendations offered no immediate reform. Even these small changes would not be adopted until the September 1936 Assembly. The Council in the meantime could only make provisional arrangements for the High Commission for the Refugees from Germany after McDonald's resignation.³³

Although the outcome was less satisfactory than he had hoped for, the question of the reform of the League's refugee services was now resolved, as far as McDonald, his staff and colleagues were concerned. He could now decide the best way to publicize his resignation. The statement was more or less complete. The High Commission would dissolve quietly as there was no reason to go ahead with the next scheduled meeting of the Governing Body.³⁴

After the final review of the statement was concluded on 12 December 1935, Lionel Cohen offered McDonald his apology for doubting him. He acknowledged that McDonald had been correct in his view of the refugee problem from the beginning and had understood the problem better than others. Cohen also acknowledged that he and his colleagues among the British Jewish organizations were wrong to have questioned McDonald's initial assessment that millions of pounds would have to be raised for refugee assistance. Cohen commended him for all his efforts and, expressing the British Central Fund's gratitude, presented him with a silver salver on behalf of its board of directors. Moved by the simple expression of their gratitude, McDonald was as ever mindful of the work ahead. He encouraged Cohen and his colleagues to continue their efforts, which, he hoped, would show the lead to the United States.³⁵ He received one further honour before he returned to the United States. The Queen of the Netherlands awarded him the decoration of Commander of the Order of Orange Nassau for his work as High Commissioner.³⁶

He left London for New York on 16 December. He signed his letter of resignation on 27 December, with his resignation effective from 31 December 1935. The statement was published on 30 December simultaneously in New York, London and Geneva.³⁷