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Postscript

McDonald's statement of resignation was in two parts. A twelve-page letter of resignation addressed to the Secretary General of the League of Nations preceded an annex in four chapters, which analysed in turn the Nazi racial legislation and the 'Aryan' decrees of September 1935, the administrative measures and Nazi Party actions against the Jews, the application of the racial laws in German courts and the programme to deprive 'non-Aryans' of civil and political rights. The letter of resignation established the moral principles that justified international intervention through the League of Nations in German affairs. The annex set out a legal case for it.¹

The letter itself described the intensification of the persecution of non-Aryans in Germany during the two years of the High Commission's activities. It argued that the conditions in Germany had developed 'so catastrophically' that the League of Nations had to reconsider the situation from a completely fresh perspective. A new wave of persecution had followed the September 1935 Nuremberg Laws. Some 400,000 Jews and tens of thousands of other non-Aryans had lost their citizenship and been disenfranchised. In these circumstances, it would not be enough simply to continue the philanthropic activities for the refugees from Germany; the League also had to consider efforts to 'remove or mitigate the causes which create German refugees'.

The letter continued: '[The] moral authority of the League of Nations and of States Members of the League must be directed towards a determined appeal to the German Government in the name of humanity and of the principles of public law of Europe.' These principles, it argued, were found in the recognition of the rights of racial, linguistic and religious minorities, which had over time become fundamental to European justice and international relations, from the Congress of Vienna in 1815, the Treaty of Berlin in 1878 and the peace settlement of 1919. Although the peace settlement obliged newly independent states of

Europe to protect their racial, religious and linguistic minorities under specific treaties, the principles were valid for all states. The League of Nations Assembly recognized this in 1922 when it adopted a resolution that 'states not bound by specific legal obligations in the matter of minorities will nevertheless observe in the treatment of their own minorities at least as high a standard of justice and toleration as is required by the treaties in question.' This resolution was reaffirmed when the Assembly again discussed minorities protection in 1933, after the Council had adjudicated on the petition of Franz Bernheim against the Nazi violation of the rights of Jews protected under the 1922 Convention on Upper Silesia. The obligation on Germany in this one small corner of Central Europe established the moral principles by which Germany must treat its minorities. Entrusted with the responsibilities of the High Commission for the Refugees from Germany, McDonald claimed that it was his duty to express his opinion on the 'essential elements' of his tasks. The letter concluded: 'When domestic policies threaten the demoralization and exile hundreds of thousands of human beings, considerations of diplomatic correctness must yield to those of common humanity'.²

Reaction to the letter of resignation was striking. It was of tremendous interest to international press and among a public deeply concerned with German affairs and the refugee problem.³ In London, *The Times* reproduced the text of the letter of resignation in full and followed it with a news item on McDonald's resignation and an editorial comment. The news item summarized McDonald's main argument that urged 'friendly but firm intervention with the German Government'. The editorial discussed the increasing gravity of the refugee problem and McDonald's inability to do anything about it but recognized that the sole cause of the problem was Germany's persecution of its Jews.⁴ The *New York Times* also reprinted the letter alongside a feature article discussing its arguments. The *New York Times* also reported what it labelled the 'scathing editorial' in *The Times* of London that called for intervention against Germany. Its own editorial noted McDonald's call for intervention for reasons of international justice and humanity. It put forward the arguments but stopped short of supporting them.⁵

The wider American press highlighted the statement's description of the conditions inside Nazi Germany. The *Boston Transcript* commented that McDonald had shown the world a 'cruelty that appears more in keeping with standards of the Middle Ages than those of the twentieth century'. The *Boston Globe* commended McDonald's 'service to the human conscience', while the *Indianapolis Star* contrasted 'this blunt arraignment' to the 'attitude of the sports

leaders in the United States' who insisted on American representation at the Berlin Olympic Games.⁶ Reports from Geneva were of the 'striking effect' his statement had among the League of Nations' bureaucrats. There was no official comment from the Secretariat, but the *Manchester Guardian* quoted one observer as saying that the 'document reveals conditions far worse than the worst report of slavery ever submitted to the League.'⁷

Various political and religious organizations also publicly supported McDonald's statement. The American Federation of Labour backed McDonald's demand that 'the nations of the world use all the influence and all the legal means they possess to stop the complete annihilation of the Jewish race in the Third Reich'. In a speech to the West London Synagogue Association, the Bishop of Durham described the statement as 'one of the most amazing documents that ever issued from the press. It ... ought to be in the hands of all ... who believe in the unity of civilization and who acknowledge in human intercourse the obligations of the moral law'.⁸

Two leading journals on international law wrote editorial commentaries on the validity of McDonald's arguments for intervention. The January 1936 issue of the *American Journal of International Law* agreed that 'intercession' was 'justified by international law, if we are consistent in making the law include those rules of conduct which are generally observed by States'. Intervention was justified to 'prevent religious persecution and the oppression of minorities when such reprehensible conduct has been especially flagrant'. The impact of McDonald's letter of resignation was such that the journal cited it again in 1938 as an authority on conditions in Germany, commenting that it was 'the most thorough description of the National Socialist legislation and practice which has yet appeared'.⁹ The *British Yearbook of International Law* was more cautious on the question of intervention, however. An editorial note in its 1936 edition commented that McDonald's letter of resignation raised the issue of respect for minorities as a matter of legal as well as of political importance. The editorial restated McDonald's argument that this had hardened over the last three centuries into an obligation of the public law of Europe. However, the *Yearbook* equated 'intervention' with the 'interference of a state in the internal affairs of another state', which could not be undertaken lightly, and could hardly be determined on legal grounds alone.¹⁰

McDonald found the responses to his letter of resignation extraordinary. He did not believe that it was due to the merit of the statement itself, he confessed to Bentwich, but rather to the 'intense desire ... for a frank and authoritative indictment of the Nazi attitude towards the non-Aryans'.¹¹ By the time this wave

of support had waned, however, no government had responded politically to the persecutions in Germany, and McDonald's call for intervention had gone unheard in political circles. The protection of minorities might have become a principle of international law and the rules on the conduct of states since the 1919 peace conference, but McDonald's argument that it justified action against Germany was not based on established practice. The principle was indeed sound, and, as Hirsch Lauterpacht had commented on an early draft of the statement, the League of Nations itself had affirmed the rights of minorities as a general principle of international law. But the League had not established the basis upon which it would intervene for the protection of a persecuted minority. It had the opportunity in 1933 when hearing Franz Bernheim's petition against German racial policy in Upper Silesia. The Council reaffirmed the principles of minorities protection, but intervention was politically unacceptable; it would breach one of the principle doctrines of international relations, the respect for the sovereign rights of nation-states. Lauterpacht recognized that his suggestion offered very little hope of a positive solution. The League had recoiled from the challenge in 1933 to invoke the minorities principle for the protection of the persecuted Jews in Germany as it lacked the will and both the moral and the legal authority to confront Germany. The only course forward, it seemed, was to return to previous statements of principle.

McDonald's resignation was the final act of his two-year struggle to improve the conditions of the refugees from Germany; it was also the first step in the reform of international refugee services. His departure compelled the League Council to contemplate future arrangements, however reluctant it was to change direction. Reform could only be temporary until the Nansen Office was liquidated at the end of 1938, but the nature of international refugee services, the responsibilities of individual states and the international community as a whole were now matters for serious consideration.

There were decisions that had to be taken on the new arrangements for continuing the work of the High Commission for the Refugees from Germany and McDonald's replacement as High Commissioner. Under pressure from Jewish groups, who insisted that McDonald's post be filled without delay, and the British government, which demanded that the new High Commissioner be British, the Council reached a decision on temporary arrangements in January 1936. They incorporated the High Commission for the Refugees from Germany into the League of Nations. Sir Neill Malcolm, a retired general of the Far Eastern divisions of the British Army, who had no background in refugee affairs but with

much experience in military administration, was appointed to the post of High Commissioner in February 1936.¹² He was an official of the League of Nations, reporting to the Council. At its September 1936 session, the League Assembly confirmed his appointment until 1938.¹³ Norman Bentwich, McDonald's deputy, eminently qualified and with great experience, was not considered for the post, and none of McDonald's staff was offered a position in the reformed High Commission. The reformed commission was therefore a break with the past, and, because it was a temporary arrangement, it looked ahead to further reform beyond 1938.

Bentwich was critical of the reforms, not because he had been overlooked for the post of High Commissioner, but because they showed just how anxious Secretary General Avenol was to ensure the 'narrowest and strictest interpretation' of the Council's resolution of January 1936 on the future organization of the High Commission for the Refugees from Germany. It had the 'skimpiest' of funds, Bentwich noted, and there would be 'nobody in the office who will have any knowledge or experience' in refugee matters.¹⁴ It suited the League that Malcolm had no links with Jewish groups; he could therefore avoid the controversies that had dogged McDonald about Jewish influence and his associations with Zionists.¹⁵ Malcolm offered a clean slate and would do the bidding of the League. When asked about his policy on the refugees, he is reported to have replied, 'I have no policy, but the policy of the League is to deal with the political and legal status of the refugees'.¹⁶

Malcolm was charged specifically with negotiating a new Intergovernmental Arrangement for the refugees from Germany. An intergovernmental conference was duly convened in Geneva at the start of July 1936. The outcome was the Provisional Arrangements for the refugees from Germany of 4 July 1936, which gave a definite legal status to the refugees from Germany in the same way as the Arrangements of the 1920s had given a legal status to the 'Nansen refugees'.¹⁷ When applied, it extended legal residence and work entitlements to refugees settled in signatory states at its date of implementation. In this one act, made possible by the incorporation of the High Commission into the League of Nations, Malcolm achieved what McDonald had not been able to achieve but which he had insisted was the best resolution to the problems confronting the refugees – their integration into the communities in which they were already found. The Arrangement, however, was limited in its application, recognizing refugees who had already fled Germany. Refugees who fled after its introduction fell outside its provisions and were subjected to the same restrictions on residence and work that had applied previously. An international convention followed in February 1938 to formalize the Provisional Arrangements. It remained unratified when war broke out.¹⁸

In 1938, with the liquidation of the Nansen Office approaching, the League Assembly resolved to merge its functions with the High Commission for the Refugees from Germany to create a single refugee agency, the League of Nations High Commission for Refugees. It commenced operation in January 1939.¹⁹ Sir Hubert Emerson, a former British official of the Indian civil service, was appointed High Commissioner.²⁰ This was an acknowledgement that the refugee problem was indeed a permanent problem of the international order.²¹ The Nazi annexation of Austria in March 1938 and the immediate implementation there of the Nazi race laws magnified the problem. Frustrated with the caution and timidity of the League of Nations, and the tardiness of its refugee agencies to take effective international action, US President Roosevelt called an Intergovernmental Conference on Refugees at the French spa resort of Evian-les-Bains in July 1938 and invited concerned nations to attend. An American initiative, it bypassed the League of Nations entirely, and set about reaching an agreement on a new intergovernmental refugee organization, which would operate independently, the Intergovernmental Committee for Refugees.²² It remained the main international refugee agency until the United Nations refugee agencies emerged after the Second World War.

Settled back in New York, McDonald took up a position on the editorial staff of the *New York Times*, which he held until 1938. He returned to refugee work when President Roosevelt appointed him chair of his President's Refugee Advisory Committee. He was a special advisor to Myron C. Taylor, Roosevelt's delegate to the Evian Conference. McDonald remained on the President's Refugee Advisory Committee until 1946. In 1949, he was appointed the United States' first ambassador to Israel.

Norman Bentwich returned to his position at the Hebrew University of Jerusalem. In 1936 he published a book on the refugees from Germany to defend the work of McDonald's High Commission and respond to the criticisms made about it.²³ Bentwich claimed that it had done all it could under the circumstances, and that the main impediment it had faced was the fact that countries of asylum had closed their borders to all but a select few refugees and immigrants. Other members of the High Commission's staff returned to their former posts. André Wurfain returned to the League of Nations and Walter Kotschnig to the International Student Services.

Lord Robert Cecil's distinguished career as an advocate for peace through international cooperation was recognized with the award of the Nobel Peace Prize in 1937. Among the commendations of his citation were his campaign for economic and military sanctions against violators of the peace and his leadership

of the International Peace Campaign for disarmament and collective security through the League of Nations.²⁴ His service as chair of the Governing Body of the High Commission for the refugees from Germany was not a happy memory. He described it rather grudgingly in a short passage of his *memoires* as an example of the 'downhill' slide of the League of Nations and world peace in the 1930s. Indeed, he misspelled McDonald's name as 'MacDonald' (perhaps, to be fair, an editorial slip that confused the spelling with that of the name of British prime minister, Ramsay MacDonald). The Governing Body and the governments its members served, Cecil wrote in his *memoirs*, could do nothing: its members were not influential, and they reported back to 'some clerk who earned his salary by making objections.' He contrasted this with the achievements of the League of Nations when people were chosen because of their knowledge and interest in a matter. The mistake of the High Commission, he lamented, was repeated again in the form of the Intergovernmental Committee for Refugees created at the July 1938 Evian Conference.²⁵