

THE 1951 CONVENTION
RELATING TO THE
STATUS OF REFUGEES
AND ITS 1967 PROTOCOL

A COMMENTARY

SECOND EDITION

EDITED BY

ANDREAS ZIMMERMANN

TERJE EINARSEN

WITH

FRANZISKA M. HERRMANN

OXFORD

OXFORD COMMENTARIES ON
INTERNATIONAL LAW

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the Status of Refugees and its 1967 Protocol

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OXFORD
UNIVERSITY PRESS

OXFORD
UNIVERSITY PRESS

Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
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First Edition published in 2011

Second Edition published in 2024

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Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data
Data available

Library of Congress Control Number: 2023948077

ISBN 978-0-19-285511-4

DOI: 10.1093/law/9780192855114.001.0001

Printed and bound by
CPI Group (UK) Ltd, Croydon, CR0 4YY

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Preface

On 14 December 1950, the General Assembly of the United Nations established the Office of the United Nations High Commissioner for Refugees. Only some months later, the 1951 Convention relating to the Status of Refugees was adopted, later to be supplemented by the 1967 New York Protocol, which by now have been ratified by more than 140 States. Ever since their entry into force, the 1951 Convention and the 1967 Protocol have formed the bedrock of refugee law and have, for good reason, frequently been referred to as the magna carta of refugees: not only do both texts provide for fundamental rights of refugees, but have also crucially influenced the development of customary law on the matter. As a consequence, the 1951 Convention and the 1967 Protocol constitute the benchmark for each and every domestic or regional regulation of asylum and refugee law, be it in form of domestic legislation, regional instruments or the jurisprudence of courts and tribunals dealing with refugee cases. In short, contemporary refugee law could hardly be conceived without the 1951 Convention.

As the Preface to the first edition of this Commentary cited above suggests, the 1951 Convention and its 1967 Protocol have been crucial to the development of refugee law. As this second edition demonstrates, the law of refugee status is of no less relevance more than a decade later. Furthermore, since then the number of persons seeking international protection has more than doubled in scope.

In early 2023, more than 100 million people had been forced to leave their homes while more than 30 million were refugees outside their country of origin, according to the UNHCR. Countries with large numbers of refugees fleeing include Eritrea (500,000), the Central African Republic (700,000), Somalia (800,000), Sudan (850,000), the Democratic Republic of Congo (900,000), Myanmar (1.1 million), South Sudan (2.3 million), Afghanistan (2.8 million), Syria (6.8 million), Venezuela (7.1 million), and Ukraine (7.8 million).

While these factual developments might only present a snapshot at a certain point in time, it indicates the importance of an international legal framework, which may however also need to be discussed and presumably strengthened in the future. The latter topic falls essentially outside the scope of this Commentary on the law as it stands, although various chapters may contain useful reflections on the law of refugee protection *de lege ferenda* by authors within the purpose of this book.

Against this background, this Commentary provides basically an in-depth analysis of each and every provision of the 1951 Convention and its 1967 Protocol. Special contributions on topics that provide historical and interpretative background or that cut across various provisions complement these other more specific chapters. Like the first edition, the second edition offers a comprehensive coverage of domestic and international jurisprudence, while also providing an overview of subsequent State practice and relevant jurisprudence of international human rights courts and bodies.

This second edition basically follows the same organizational and methodological ideas as the first edition, though there are some slight changes in the overall structure and some new articles have been added (see below). It builds on, but goes well beyond, earlier commentaries on the 1951 Convention, such as those of Nehemiah Robinson's, '*Convention Relating to the Status of Refugees—Its History, Contents and Interpretation*' from 1955, and Paul Weis', '*The Refugee Convention—the travaux préparatoires analysed with a commentary*' from 1995. This Commentary also complements other highly recognized works on refugee law, including Atle Grahl-Madsen's, '*The Status of Refugees in International Law*' – Volume I and II, from 1966 and 1972, James C. Hathaway's, '*The Law of Refugee Status*' (2nd edition with Michelle Foster, 2014) and '*The Rights of Refugees under International Law*' (2nd edition, 2021), and Guy S. Goodwin-Gill's and Jane McAdam's, '*The Refugee in International Law*' (4th edition, 2021).

The Commentary is now divided into nine parts. Some brief remarks on what is different from the first edition might be warranted here. Part one—*Background and Interpretation*—contains a new chapter on 'Global Developments in Refugee Law'. This chapter provides an overview of the interplay between the 1951 Refugee Convention and other parts of international human rights law with a purported global scope or possible global consequences for basic refugee protection. It accompanies the chapters on regional developments in Asia, Africa, Americas, and Europe. Part two—*General Provisions*—now includes the two chapters on the preambles to the 1951 Convention and the 1967 Protocol, as well as a new chapter on the 'Final Act' of the 1951 Convention. Part three—*Access to Protection*—is new to this edition to give the topic of access to protection a more prominent place in the Commentary. It contains three chapters, on 'Refugee Determination Procedures', 'Refugees at Sea', and 'Diplomatic Asylum'.

The fourth part (*Juridical Status*), part five (*Gainful Employment*), part six (*Welfare*), part seven (*Administrative Measures*), part eight (*Executory and Transitory Provisions*) and part nine (*Final Clauses*) cover mainly the same topics as the first edition of the Commentary. Note that the last chapter of the book has been extended with a new piece on the 'Testimonium' of the 1951 Convention. For a more detailed overview of the different parts, we refer readers to the table of content.

In principle, all chapters have been reviewed and updated by the authors as of 1 January 2022. It means that the ways and means of temporary collective protection of the millions of Ukrainian refugees in Europe after Russia's full-scale illegal invasion of Ukraine since 24 February 2022, could only be considered briefly in the chapter on regional developments in Europe. This refugee crisis in the middle of Europe constitutes new challenges and raises new debates about the usefulness and timeliness of the 1951 Convention. One important thing to note is that the solidarity with the Ukraine refugees in Europe is unprecedented compared to most other groups of refugees arriving from other parts of the world. These asylum-seekers have not experienced the otherwise typical visa requirements, effects of carrier sanctions, pushbacks at sea, fences or closed borders, the application of rules such as the Dublin regulation and other 'first' or 'third' country concepts, the often-systemic scepticism towards applicants during asylum interviews, or the use of the international flight alternative in refugee determination procedures. Instead, they have generally—except in Belarus and Russia—received temporary protection on a collective basis and generally genuine

respect for their rights as refugees, if not formal refugee status under the 1951 Convention. The reception of the Ukrainian asylum-seekers has, at least so far, by and large, been very much in line with the protection ideas underlying the 1951 Convention. It therefore illustrates what is possible to accomplish if a strong common political will to protect refugees from persecution, ill-treatment, international crimes or the effect of armed conflict is present. Simultaneously, the Ukraine situation highlights the often-unequal treatment of asylum seekers around the world as well as in Europe.

With this afterthought, we conclude that it is still important for academics and practitioners to clarify and discuss the content and limits of international refugee law—despite the law being bound to operate within different political and economic contexts that in practice may lead to quite different applications of the law.

Finally, the editors are most grateful to all the contributors for participating in this joint endeavour. This commentary constitutes the collective work of 53 contributors from 18 countries, all of whom are individually responsible for their respective contributions. Our sincere thanks to all of them.

We would like to extend our warmest thanks to *Franziska M. Herrmann*, who, in collaboration with us, has shouldered a lot of responsibilities and has been of invaluable help in preparing this Commentary for publication.

We were also assisted at Potsdam University by an efficient team of student assistants, namely at various stages *Fabian Albeck*, *Alina-Camille Berdefy*, *Alisa Blank*, *Lea Eckert*, *Khaled El Mahmoud*, *Mattea Koch*, *Patricia Kröger*, *Mateusz Lewandowski*, *Martin Nguyen*, *Lea Clara Schindowski*, and *Karla Stegmann*.

It has, once again, been a privilege to collaborate with Oxford University Press and its editorial team who has guaranteed a successful publication process.

Despite the joint efforts of all those involved in the process of writing and preparing this Commentary for publication, readers are still likely to spot errors or find issues to disagree with in the texts. Any criticism is most welcome and should be addressed to *andreas.zimmermann@uni-potsdam.de* and/or *terje.einarsen@uib.no*

We hope that this work will prove useful to lawyers, academics, and others concerned with the fate of refugees, not least those who make difficult decisions in individual refugee and asylum cases, and those who decide in matters of refugee policy.

Potsdam/Bergen, September 2023
Andreas Zimmermann & Terje Einarsen

Foreword

The 1951 Convention relating to the Status of Refugees and its 1967 Protocol have stood the test of time. Among the most widely ratified international legal instruments—with 149 states party to the Convention, the Protocol, or both—they are as relevant now as when first adopted. They are the modern embodiment of the age-old institution of asylum, which in turn is grounded in the universal principles of humanity and solidarity. Over the decades, the Refugee Convention has saved millions of lives, and given safety and dignity to millions more.

Today, the Convention still serves as the foundation of the global refugee protection regime, providing a widely accepted code for the treatment of people uprooted from their countries by conflict, violence, and serious human rights violations. Its definition of a refugee recognizes the diverse reasons for which people flee across borders—and many of those reasons are existential threats. Refugees are compelled to seek safety abroad because of what they think, say or believe, or because of who they are, including their sexual orientation or gender identity. They flee conflict that may be rooted in race, ethnicity, religion, politics, gender, or other social factors. Some are forced to flee because of violence perpetrated by gangs, traffickers, and other non-state actors, against which the state is unable or unwilling to provide protection. More recently, people fleeing the devastating effects of climate change or environmental degradation may also be refugees under the Convention, notably when such effects exacerbate existing tensions or inequalities and lead to persecution or conflict.

Over the decades, we have seen landmark regional legal instruments emerge¹ that build upon the Convention, broadening the criteria for refugee status under international law and reinforcing the Convention's relevance. Together with complementary mechanisms developed under human rights law and temporary protection or stay arrangements developed by states, these instruments can and must be applied in ways that ensure that international protection is available to those who need it, not only in law but also in practice.

Across the world, states are responding in differing ways to those fleeing war, violence, and persecution. Yes, we have seen acts of solidarity and inclusion reflecting humanitarian principles. But a small number of states have introduced measures resulting in the denial of access to territory and policy obstacles to the means of claiming asylum. In some countries, xenophobia and discrimination towards those seeking protection has unquestionably risen. A growing and sometimes obsessive focus on border control, coupled with misleading narratives around people on the move, has undermined commitments to asylum and curbed the enjoyment of rights by asylum-seekers and refugees in many parts of the world.

Such trends run counter to international legal standards, and to the object and purpose of refugee protection instruments. The Convention recognizes civil rights and core

¹ Such as the 1969 OAU Convention governing Specific Aspects of Refugee Problems in Africa, the 1984 Cartagena Declaration on Refugees and the laws forming part of the Common European Asylum System.

entitlements related to the entry of refugees and their protection from expulsion. It also includes crucial safeguards for their welfare and wellbeing, recognizing their vulnerability, affording them access to social and economic rights and enabling their inclusion in the host society.

With that in mind, two pivotal texts have restated and reinforced the centrality of the Convention and Protocol to refugee protection: the 2016 New York Declaration for Refugees and Migrants, and the Global Compact on Refugees, affirmed by the United Nations General Assembly in 2018. These offer a meaningful set of common undertakings that have the potential to make a real difference in the lives of refugees and in their host communities facing an array of challenges, some familiar, others new.

The Global Compact builds on and complements the Convention and relevant regional instruments through the establishment of more predictable and equitable responsibility-sharing arrangements for the benefit of countries hosting refugees in large numbers or for lengthy periods. Today, 74 percent of the world's refugees live in low- and middle-income countries. Creating an architecture of support for the countries most affected is fundamental to improving refugee protection and assistance, and to advancing solutions for them from the outset of displacement.

Over the past 70 years, the Convention has proven to be a living and dynamic instrument. Its interpretation and application continue to evolve positively through state practice, Executive Committee conclusions, UNHCR's legal interpretative positions, judicial decisions at national, regional and international levels, and academic literature. Building on its first edition, this comprehensive Commentary captures this evolution.

While it is an independent publication that does not necessarily reflect the views of UNHCR, this Commentary will undoubtedly once again prove to be an important contribution to promoting consistency in the interpretation and application of the 1951 Convention and its 1967 Protocol.

Geneva, October 2022

Filippo Grandi, United Nations High Commissioner for Refugees

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Abbreviations

AALCO	Asian-African Legal Consultative Organisation
AC	Appeals Cases (Reporter UK)
ACe	Advisory Committee
ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACJ	Amended Consent Judgment
ACmHPR	African Commission on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ACWS	All-Canada Weekly Summaries
AFDI	<i>Annuaire Français de Droit International</i>
AfrYIL	<i>African Yearbook of International Law</i>
AHRLJ	<i>African Human Rights Law Journal</i>
AHRLR	<i>African Human Rights Law Review</i>
AIDI	<i>Annuaire de l'Institut de Droit International</i>
AJICL	<i>Arizona Journal of International and Comparative Law</i>
AJIL	<i>American Journal of International Law</i>
ALJR	Australian Law Journal Reports (Reporter, Australia)
All ER	All England Law Reports (Reporter, UK)
All SA	All South African Law Reports
ALR	American Law Reports (Reporter, US) or Australian Law Reports (Reporter, Australia)
AltLJ	<i>Alternative Law Journal</i>
Am. U. L. Rev.	<i>American University Law Review</i>
ANA-ZAR	<i>Anwaltsnachrichten Ausländer- und Asylrecht</i>
Appl. No.	Application Number
ASIL Proc.	<i>The American Society of International Law Proceedings</i>
ASILS ILJ	<i>Association of Student International Law Societies International Law Journal</i>
ASYL	<i>Schweizerische Zeitschrift für Asylrecht und -praxis/Revue Suisse pour la Pratique et le Droit d'Asile</i>
AsylVfG	<i>Asylverfahrensgesetz</i> (Asylum Procedure Act, Germany)
AU	African Union
AustJHR	<i>Australian Journal of Human Rights</i>
AustLJ	<i>Australian Law Journal</i>
AustYIL	<i>Australian Yearbook of International Law</i>
AVR	<i>Archiv des Völkerrechts</i>
BAFIA	Bureau for Aliens and Foreign Immigrants Affairs (Iran)
BAMF	Bundesamt für Migration und Flüchtlinge (German Federal Office for Migration and Refugees)
BayObLG	Bayerisches Oberstes Landesgericht (Bavarian Highest Regional Court)
BBl	Bundesblatt (Federal Gazette Switzerland)
BC Third World LJ	<i>Boston College Third World Law Journal</i>

BGBL	Bundesgesetzblatt (Federal Law Gazette Germany)
BGE	Entscheidungen des Schweizerischen Bundesgerichts (Reporter, Switzerland)
BHRLR	<i>Buffalo Human Rights Law Review</i>
BIA	US Board of Immigration Appeals
BLAST	Bangladesh Legal Aid and Services Trust
<i>Brooklyn JIL</i>	<i>Brooklyn Journal of International Law</i>
BT-Drs.	Bundestagdrucksache (Bundestag printed papers)
<i>BU ILJ</i>	<i>Boston University International Law Journal</i>
BVerfGE	Entscheidungen des Bundesverfassungsgerichts (Report of Decisions of the German Federal Constitutional Court)
BVerwGE	Entscheidungen des Bundesverwaltungsgerichts (Report of the Decisions of the German Federal Administrative Court)
<i>BYIL</i>	<i>British Year Book of International Law</i>
CAHAR	Committee of Experts on Legal Aspects of Asylum, Refugees and Stateless Persons
<i>CanYIL</i>	<i>Canadian Yearbook of International Law</i>
Carswell Nat	Carswell National Law Reports (Canada)
Carswell Que	Carswell Quebec Cases (Reporter Canada)
<i>Case Western Reserve JIL</i>	<i>Case Western Reserve Journal of International Law</i>
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCPR	Human Rights Committee
CD	Conference on Disarmament
CEAS	Common European Asylum System
CeAT	Committee Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CeEDAW	Committee on the Elimination of Discrimination Against Women
CeMW	Committee on Migrant Workers
CeRC	Committee on the Rights of the Child
CERD	Committee on the Elimination of Racial Discrimination
CeRPD	Committee on the Rights of Persons with Disabilities
CESCR	Committee on Economic, Social and Cultural Rights
CETS	Council of Europe Treaty Series
<i>Chicago-Kent JICL</i>	<i>Chicago-Kent Journal of International and Comparative Law</i>
CIREFCA	International Conference on Central American Refugees
CIS	Commonwealth of Independent States
CJ	Chief Justice
<i>CJEL</i>	<i>Columbia Journal of European Law</i>
<i>CJTL</i>	<i>Columbia Journal of Transnational Law</i>
CLR	Commonwealth Law Reports (Reporter, Australia)
CMLR	<i>Common Market Law Review</i>
CoE	Council of Europe
<i>ColHRLR</i>	<i>Columbia Human Rights Law Review</i>
<i>ColJEL</i>	<i>Columbia Journal of European Law</i>
<i>Cornell ILJ</i>	<i>Cornell International Law Journal</i>

CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
CRDD	<i>Convention Refugee Determination Division</i> (Reporter, Canada)
CRIA	<i>Cambridge Review of International Affairs</i>
CRPD	Convention on the Rights of Persons with Disabilities
CWILJ	<i>California Western International Law Journal</i>
CYIL	<i>Canadian Yearbook of International Law</i>
DC	Divisional Court
DIAC	Department of Immigration and Citizenship (Australia)
DLR	Dominion Law Reports (Reporter, Canada)
DSC	Dispute Settlement Committee (Iran)
DVBl	<i>Deutsches Verwaltungsblatt</i>
EATR	European Agreement on Transfer of Responsibility for Refugees
EC	European Community
ECJ	European Court of Justice
ECmHR	European Commission on Human Rights
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
ECRE	European Council on Refugees and Exiles
ECRI	European Commission against Racism and Intolerance
ECsMA	European Convention on Social and Medical Assistance
ECSR	European Committee of Social Rights
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EHRLR	<i>European Human Rights Law Review</i>
EHRR	<i>European Human Rights Reports</i> or <i>Essex Human Rights Review</i>
EJIL	<i>European Journal of International Law</i>
EJML	<i>European Journal of Migration and Law</i>
ELJ	<i>European Law Journal</i>
ELR	<i>European Law Review</i>
Emory ILR	<i>Emory International Law Review</i>
EPIL	<i>Encyclopedia of Public International Law</i>
ERA Forum	<i>ERA Forum - Journal of the Academy of European Law</i>
ESVGH	<i>Entscheidungssammlung des Hessischen Verwaltungsgerichtshofs und des Verwaltungsgerichtshofs Baden-Württemberg mit Entscheidungen der Staatsgerichtshöfe beider Länder</i>
ETS	European Treaty Series
EU	European Union
EuR	<i>Europarecht (Journal)</i>
EURODAC	European Dactyloscope
EWCA Civ	England and Wales Court of Appeal (Civil Division) (Reporter, UK)
EWCA Crim	England and Wales Court of Appeal (Criminal Division) (Reporter, UK)
ExCom	Executive Committee—UNHCR ExCom
F.2d	Federal Reporter Second Series (Reporter, US)
FamRZ	<i>Zeitschrift für das gesamte Familienrecht</i>
FAO	Food and Agriculture Organization

FC	Canada Federal Court Reports
FCA	Federal Court of Australia (Reporter, Australia)
FCAFC	Federal Court of Australia—Full Court (Appeals bench) (Reporter, Australia)
FCJ	Federal Court Judgments (Reporter, Canada)
FCR	Federal Court Reports (Reporter, Canada or Australia)
FCTD	Federal Court Trial Division (Canada)
FIS	Algerian Islamic Salvation Front
<i>FLJIL</i>	<i>Florida Journal of International Law</i>
<i>FMR</i>	<i>Forced Migration Review</i>
fn.	footnote
<i>Fordham ILJ</i>	<i>Fordham International Law Journal</i>
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
FTR	Federal Trial Reports (Canada)
<i>FYIL</i>	<i>Finnish Yearbook of International Law</i>
FYR Macedonia	Former Yugoslav Republic of Macedonia
GA	General Assembly
<i>GILJ</i>	<i>Georgetown Immigration Law Journal</i>
<i>GJICL</i>	<i>Georgia Journal of International and Comparative Law</i>
<i>GJIL</i>	<i>Georgetown Journal of International Law</i>
<i>GLJ</i>	<i>German Law Journal</i>
<i>GV NRW</i>	<i>Gesetz- und Verordnungsblatt Nordrhein- Westfalen</i> (Law and Ordinance Gazette of North Rhine- Westphalia)
<i>GWILR</i>	<i>George Washington Law Review</i>
<i>GWLR</i>	<i>George Washington Law Review</i>
<i>GYIL</i>	<i>German Yearbook of International Law</i>
<i>Harvard CR-CLLR</i>	<i>Harvard Civil Rights—Civil Liberties Law Review</i>
<i>Harvard HRJ</i>	<i>Harvard Human Rights Journal</i>
<i>Harvard ILJ</i>	<i>Harvard International Law Journal</i>
<i>Harvard LR</i>	<i>Harvard Law Review</i>
HCA	High Court of Australia (Reporter, Australia)
<i>HICLR</i>	<i>Hastings International and Comparative Law Review</i>
<i>Hong Kong LJ</i>	<i>Hong Kong Law Journal</i>
<i>Houston JIL</i>	<i>Houston Journal of International Law</i>
<i>HRLJ</i>	<i>Human Rights Law Journal</i>
<i>HRLR</i>	<i>Human Rights Law Review</i>
<i>HRQ</i>	<i>Human Rights Quarterly</i>
IA	<i>International Affairs</i>
IACmHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IARLJ	International Association of Refugee Law Judges
ICC	International Criminal Court
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearances
ICCPR	International Covenant on Civil and Political Rights

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
<i>ICJ Yearbook</i>	<i>Yearbook of the International Court of Justice</i>
ICLQ	<i>International and Comparative Law Quarterly</i>
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Tribunal for the Former Yugoslavia
IDP	internally displaced person
IEHC	High Court of Ireland Decisions (Reporter, Ireland)
IFA/IPA	Internal Flight Alternative/ Internal Protection Alternative
IGCR	Inter-Governmental Committee on Refugees
IHT	Iraqi High Tribunal
<i>IJHR</i>	<i>International Journal of Human Rights</i>
<i>ICLR</i>	<i>International Community Law Review</i>
<i>IICLR</i>	<i>Indiana International Comparative Law Review</i>
<i>IJMR</i>	<i>International Journal of Minority and Group Rights</i>
<i>IJRL</i>	<i>International Journal of Refugee Law</i>
<i>IJSL</i>	<i>International Journal of the Sociology of Law</i>
ILA	International Law Association
ILC	International Law Commission
<i>ILC Yearbook</i>	<i>Yearbook of the International Law Commission</i>
<i>ILM</i>	<i>International Legal Materials</i>
ILO	International Labour Organization
<i>ILabRev</i>	<i>International Labour Review</i>
<i>ILR</i>	<i>International Law Reports</i>
<i>ILRev</i>	<i>International Law Review</i>
<i>ILRM</i>	<i>Irish Law Reporter Monthly</i>
<i>ILSA</i>	<i>International Law Student's Association of Washington, D. C.</i>
Imm AR	Immigration Appeals Reports (Reporter, UK)
IMO	International Maritime Organization
<i>IMR</i>	<i>International Migration Review</i>
<i>InfAuslR</i>	<i>Informationsbrief Ausländerrecht</i>
<i>INLR</i>	<i>Immigration and Nationality Law Reports</i>
<i>INS</i>	<i>Immigration and Naturalization Service (US)</i>
<i>Intercultural HRLR</i>	<i>Intercultural Human Rights Law Review</i>
<i>INZ</i>	<i>Immigration New Zealand</i>
<i>IPU</i>	<i>Inter-Parliamentary Union</i>
<i>IRL</i>	<i>International Refugee Law</i>
<i>IRO</i>	<i>International Refugee Organization</i>
<i>IRRC</i>	<i>International Review of the Red Cross</i>
<i>ItalYIL</i>	<i>Italian Yearbook of International Law</i>
<i>IYHR</i>	<i>Israel Yearbook on Human Rights</i>
<i>JAAH</i>	<i>Journal of Austrian-American History</i>
<i>JAL</i>	<i>Journal of African Law</i>

XX ABBREVIATIONS

<i>JBl.</i>	<i>Juristische Blätter</i> (Austrian Law Reporter)
JCRR	Jurisprudence de la Commission de Recours des Réfugiés
JCSL	<i>Journal of Conflict and Security Law</i>
JDI	<i>Journal du Droit International</i>
JHRW	<i>Journal of Human Rights and Social Work</i>
JICJ	<i>Journal of International Criminal Justice</i>
JMHS	<i>Journal on Migration and Human Security</i>
JORF	Journal Officiel de la République Française (Official Journal of the French Republic)
JPR	<i>Journal of Peace Research</i>
JRS	<i>Journal of Refugee Studies</i>
KJ	<i>Kritische Justiz</i>
KLR	<i>Kansas Law Review</i>
<i>Le&P</i>	<i>The Law and Practice of International Courts and Tribunals</i>
LJIL	<i>Leiden Journal of International Law</i>
LNTS	League of Nations Treaty Series
LNOJ	League of Nations Official Journal
LoN	League of Nations
London Charter	London Charter of the International Military Tribunal
<i>Loyola LAICLR</i>	<i>Loyola of Los Angeles International and Comparative Law Review</i>
LQR	<i>Law Quarterly Review</i>
<i>MelJIL</i>	<i>Melbourne Journal of International Law</i>
MERCOSUL	Mercado Comum do Sul (Southern Common Market)
MERCOSUR	Mercado Común del Sur (Southern Common Market)
MFN	Most-Favoured-Nation Treatment
<i>MichJIL</i>	<i>Michigan Journal of International Law</i>
<i>MinnJIL</i>	<i>Minnesota Journal of International Law</i>
MJ	<i>Modern Judaism</i>
MJA	<i>Medical Journal of Australia</i>
MJIL	<i>Michigan Journal of International Law</i>
MLJ	<i>Manitoba Law Journal</i>
MLR	<i>Modern Law Review</i>
MNF	Multi-National Force
MOU	memorandum of understanding
MPA	Mexico Plan of Action
<i>MPEPIL</i>	<i>Max Planck Encyclopedia of Public International Law</i>
MSC	Maritime Safety Committee of the International Maritime Organization
MWC	International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families
NARA	National Alien Registration Authority (Pakistan)
<i>Nds. GVBl.</i>	<i>Niedersächsisches Gesetz- und Verordnungsblatt</i> (Law and Ordinance Gazette of Lower Saxony)
NGO	non-governmental organization
<i>NILR</i>	<i>Netherlands International Law Review</i>
NIO	Nansen International Office
<i>NJW</i>	<i>Neue juristische Wochenschrift</i>
<i>NJW-RR</i>	<i>Neue juristische Wochenschrift—Rechtsprechungs-Report</i>

<i>Nordic JIL/Nordisk TIR</i>	<i>Nordic Journal of International Law/Nordisk Tidsskrift for International Ret</i>
NQHR	<i>Netherlands Quarterly of Human Rights</i>
NVwZ	<i>Neue Zeitschrift für Verwaltungsrecht</i>
NVwZ-RR	<i>Neue Zeitschrift für Verwaltungsrecht: Rechtsprechungs-Report Verwaltungsrecht</i>
NWULR	<i>Northwestern University Law Review</i>
NYIL	<i>Netherlands Yearbook of International Law</i>
NYLSJHR	<i>New York Law School Journal of Human Rights</i>
NZAR	New Zealand Administrative Reports (Reporter, New Zealand)
NZCA	New Zealand Court of Appeal (Reporter, New Zealand)
NZLR	New Zealand Law Reports (Reporter, New Zealand)
OAS	Organization of American States
OASTS	Organization of American States Treaty Series
OAU	Organization of African Unity
<i>Ohio State JDR</i>	<i>Ohio State Journal on Dispute Resolution</i>
OJ	Official Journal of the European Union
ÖJZ	<i>Österreichische Juristen Zeitschrift</i>
OLA	Office of Legal Affairs
OLGZ	Entscheidungssammlung der Oberlandesgerichte in Zivilsachen
OSCE	Organization for Security and Cooperation in Europe
ÖZöR	<i>Österreichische Zeitschrift für öffentliches Recht</i>
PAB	Provincial Admission Board (Thailand)
<i>Pac. Rim L. & Pol'y J.</i>	<i>Pacific Rim Law & Policy Journal</i>
PACE	Committee of Ministers and the Parliamentary Assembly (Council of Europe)
PCIJ	Permanent Court of International Justice
<i>Philippine LJ</i>	<i>Philippine Law Journal</i>
PLR	<i>Public Law Review</i> (Australia)
PM	Plenary Meeting (Official Record)
PPV	Permanent Protection Visa
PRP	Permissive Resident Permits (Papua New Guinea)
PYIL	<i>Palestine Yearbook of International Law (also Palestine YIL)</i>
QBD	Queen's Bench Division (Reporter, UK)
RADDHO	Rencontre Africaine pour la Défense des Droits de l'Homme
RCADI	<i>Recueil des Cours de l'Académie de Droit International</i>
RCCs	Rescue Co-ordination Centers
RCDIP	<i>Revue Critique de Droit International Privé</i>
RDI	<i>Rivista di Diritto Internazionale</i>
RefLex	Digests of decisions of the Immigration and Refugee Board of Canada's (IRB) Refugee Protection Division (formerly known as the Convention Refugee Determination Division), Immigration Appeal Division, and Immigration Division (formerly known as the Adjudication Division)
RELA	People's Volunteer Corps (Malaysia)
RFDC	<i>Revue Française de Droit Constitutionnel</i>
RGDIP	<i>Revue Générale de Droit International Public</i>

RJD	Reports of Judgments and Decisions
RQDI	<i>Revue Québécoise de Droit International</i>
RRTA	Refugee Review Tribunal of Australia
RSA	Refugee Status Assessment Procedures (Australia)
RSAA	Refugee Status Appeals Authority (New Zealand)
RSD	Refugee Status Determination
RSQ	<i>Refugee Survey Quarterly</i>
SADC	Southern African Development Community
SAIS Review	<i>School of Advanced International Studies Review of International Affairs</i>
SALJ	<i>South African Law Journal</i>
SAYIL	<i>South African Yearbook of International Law</i>
SC	Security Council
SchwJBIR	<i>Schweizerisches Jahrbuch für Internationales Recht/Annuaire Suisse de Droit International</i>
SCIP	Sub-Committee of the Whole on International Protection
SCLR	<i>South Carolina Law Review</i>
SCR	Supreme Court Reports (Reporter, Canada)
SFRY	Socialist Federal Republic of Yugoslavia
SGSSI	South Georgia and the South Sandwich Islands
SHAEF	Supreme Headquarters Allied Expeditionary Force
SIAC	United Kingdom Special Immigration Appeals Commission
SID	Special Identity Card
SNC	Supreme National Council (Cambodia)
SR	Summary Record
<i>Sri Lanka JIL</i>	<i>Sri Lanka Journal of International Law</i>
<i>StJIL</i>	<i>Stanford Journal of International Law</i>
<i>StJohn'sJLComm</i>	<i>St. John's Journal of Legal Commentary</i>
<i>StLR</i>	<i>Stanford Law Review</i>
<i>Sydney LR</i>	<i>Sydney Law Review</i>
TEC	Treaty Establishing the European Community
TFEU	Treaty on the Functioning of the European Union
TIL	<i>Theoretical Inquiries in Law</i>
TLCP	<i>Transnational Law and Comparative Problems</i>
TPV	Temporary Protection Visa
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
UKAIT	United Kingdom Asylum and Immigration Tribunal (Reporter, UK)
UKHL	United Kingdom House of Lords (Reporter, UK)
UN	United Nations
UNCCP	United Nations Conciliation Commission for Palestine
UNCIO	The United Nations Conference on International Organization
UNCLOS	United Nations Convention on the Law of the Seas
UNCmHR	United Nations Commission on Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNHCR ExCom	United Nations High Commissioner for Refugees Executive Committee
UNICEF	United Nations International Children's Emergency Fund
UNKRA	United Nations Korean Reconstruction Agency

UNO	United Nations Organization
UN-OHRLS	United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States
UNRIAA	United Nations Reports of International Arbitral Awards
UNRPR	United Nations Relief for Palestine Refugees
UNRRA	United Nations Relief and Rehabilitation Administration
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
<i>UNSW Law Journal</i>	<i>The University of New South Wales Law Journal</i>
UNTS	United Nations Treaty Series
US	United States Supreme Court Reports (official series) (Reporter, US)
USC	United States Code (compilation and codification of the general and permanent federal law of the United States)
USCRI	United States Committee for Refugees and Immigrants
USSR	Union of Soviet Socialist Republics
<i>UTSLR</i>	<i>University of Technology Sydney Law Review</i>
<i>VaJIL</i>	<i>Virginia Journal of International Law</i>
<i>Vanderbilt JTL</i>	<i>Vanderbilt Journal of Transnational Law</i>
VCCR	Vienna Convention on Consular Relations
VCDR	Vienna Convention on Diplomatic Relations
VCLT	Vienna Convention on the Law of Treaties
VCSSRT	Vienna Convention on Succession of States in Respect of Treaties
<i>VLR</i>	<i>Vermont Law Review</i>
<i>VUWLR</i>	<i>Victoria University of Wellington Law Review</i>
WARIPNET	West Africa Refugees and Internally Displaced Persons Network
WHO	World Health Organization
WLR	Weekly Law Reports (Reporter, UK)
WTO	World Trade Organization
<i>YIHL</i>	<i>Yearbook of International Humanitarian Law</i>
<i>YLJ</i>	<i>Yale Law Journal</i>
<i>ZaöRV</i>	<i>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</i>
<i>ZAR</i>	<i>Zeitschrift für Ausländerrecht und Ausländerpolitik</i>
<i>ZPR</i>	<i>Zeitschrift für Rechtspolitik</i>

List of Authors

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	Preamble 1967 Protocol
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Travaux Préparatoires

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Secretary-General	Study on the Position of Stateless Persons	UN Doc. E/1112 (1949)	1 February 1949
Secretary-General	Study on the Position of Stateless Persons	UN Doc. E/1112/Add.1 (1949)	16 May 1949
ECOSOC	Communication from the International Refugee Organization	UN Doc. E/1392 (1949)	11 July 1949
Ad Hoc Committee on Statelessness and Related Problems	Memorandum by the Secretary-General	UN Doc. E/AC.32/2 (1950)	03 January 1950
Ad Hoc Committee on Statelessness and Related Problems	Preliminary Draft Convention Relating to the Status of Refugees (and Stateless Persons)	UN Doc. E/AC.32/2 Annex (1950)	03 January 1950
Ad Hoc Committee on Statelessness and Related Problems	United Kingdom: Draft Proposal for Article 1 (E/AC.32/2)	UN Doc. E/AC.32/L.2 (1950)	17 January 1950
Ad Hoc Committee on Statelessness and Related Problems	France: Proposal for a Draft Convention	UN Doc. E/AC.32/L.3 (1950)	17 January 1950
Ad Hoc Committee on Statelessness and Related Problems	Corrigendum to France: Proposal for a Draft Convention	UN Doc. E/AC.32/L.3/Corr.1 (1950)	18 January 1950
Comité Spécial de l'Apatrié et des Problèmes Connexes	Texte Provisoire Pour Certaines Parties de l'Article de l'Avant-Projet de Convention Relative au Statut des Réfugiés Portant Définition du Terme 'Refugie'	UN Doc. E/AC.32/L.6 (1950)	23 January 1950
Ad Hoc Committee on Statelessness and Related Problems	Corrigendum to the Provisional Draft of Article I (Definition Article) of the Preliminary Draft Convention Relating to the Status of Refugees	UN Doc. E/AC.32/L.6/Corr.1 (1950)	23 January 1950
Ad Hoc Committee on Statelessness and Related Problems	2nd Meeting	UN Doc. E/AC.32/SR.2 (1950)	26 January 1950
Ad Hoc Committee on Statelessness and Related Problems	3rd Meeting	UN Doc. E/AC.32/SR.3 (1950)	26 January 1950
Ad Hoc Committee on Statelessness and Related Problems	4th Meeting	UN Doc. E/AC.32/SR.4 (1950)	26 January 1950

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Ad Hoc Committee on Statelessness and Related Problems	6th Meeting	UN Doc. E/AC.32/SR.6 (1950)	26 January 1950
Ad Hoc Committee on Statelessness and Related Problems	Communication from the International Labour Organisation	UN Doc. E/AC.32/L.9 (1950)	26 January 1950
Ad Hoc Committee on Statelessness and Related Problems	Decisions of the Committee on Statelessness and Related Problems Taken at the Afternoon Meeting of 26 January 1950	UN Doc. E/AC.32/L.13	26 January 1950
Ad Hoc Committee on Statelessness and Related Problems	Decisions of the Committee on Statelessness and Related Problems Taken on 27 January 1950	UN Doc. E/AC.32/L.14 (1950)	27 January 1950
Ad Hoc Committee on Statelessness and Related Problems	Memorandum From the Secretariat of the International Refugee Organization	UN Doc. E/AC.32/L.16 (1950)	30 January 1950
Ad Hoc Committee on Statelessness and Related Problems	United Kingdom: Draft Proposal for Article 22	UN Doc. E/AC.32/L.17 (1950)	30 January 1950
Ad Hoc Committee on Statelessness and Related Problems	5th Meeting	UN Doc. E/AC.32/SR.5 (1950)	30 January 1950
Ad Hoc Committee on Statelessness and Related Problems	8th Meeting	UN Doc. E/AC.32/SR.8 (1950)	30 January 1950
Ad Hoc Committee on Statelessness and Related Problems	10th Meeting	UN Doc. E/AC.32/SR.10 (1950)	1 February 1950
Ad Hoc Committee on Statelessness and Related Problems	United States of America: Draft Proposal for Article 24	UN Doc. E/AC.32/L.23 (1950)	1 February 1950
Ad Hoc Committee on Statelessness and Related Problems	7th Meeting	UN Doc. E/AC.32/SR.7 (1950)	2 February 1950
Ad Hoc Committee on Statelessness and Related Problems	Belgium: Proposed New Article	UN Doc. E/AC.32/L.24 (1950)	2 February 1950
Ad Hoc Committee on Statelessness and Related Problems	United Kingdom: Proposed Draft of Article 8	UN Doc. E/AC.32/L.27 (1950)	2 February 1950
Ad Hoc Committee on Statelessness and Related Problems	Decisions of the Committee on Statelessness and Related Problems Taken at the Meetings of 3 February 1950	UN Doc. E/AC.32/L.28 (1950)	3 February 1950

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Ad Hoc Committee on Statelessness and Related Problems	9th Meeting	UN Doc. E/AC.32/SR.9 (1950)	3 February 1950
Ad Hoc Committee on Statelessness and Related Problems	11th Meeting	UN Doc. E/AC.32/SR.11 (1950)	3 February 1950
Ad Hoc Committee on Statelessness and Related Problems	12th Meeting	UN Doc. E/AC.32/SR.12 (1950)	1 February 1950
Ad Hoc Committee on Statelessness and Related Problems	14th Meeting	UN Doc. E/AC.32/SR.14 (1950)	3 February 1950
Ad Hoc Committee on Statelessness and Related Problems	13th Meeting	UN Doc. E/AC.32/SR.13 (1950)	6 February 1950
Ad Hoc Committee on Statelessness and Related Problems	15th Meeting	UN Doc. E/AC.32/SR.15 (1950)	6 February 1950
Ad Hoc Committee on Statelessness and Related Problems	16th Meeting	UN Doc. E/AC.32/SR.16 (1950)	8 February 1950
Ad Hoc Committee on Statelessness and Related Problems	17th Meeting	UN Doc. E/AC.32/SR.17 (1950)	6 February 1950
Ad Hoc Committee on Statelessness and Related Problems	18th Meeting	UN Doc. E/AC.32/SR.18 (1950)	8 February 1950
Ad Hoc Committee on Statelessness and Related Problems	19th Meeting	UN Doc. E/AC.32/SR.19 (1950)	8 February 1950
Ad Hoc Committee on Statelessness and Related Problems	Israel: Proposals for a Federal Clause	UN Doc. E/AC.32/L.31 (1950)	8 February 1950
Ad Hoc Committee on Statelessness and Related Problems	Decisions of the Working Group Taken on 9 February 1950	UN Doc. E/AC.32/L.32 (1950)	9 February 1950
Ad Hoc Committee on Statelessness and Related Problems	21st Meeting	UN Doc. E/AC.32/SR.21 (1950)	9 February 1950
Ad Hoc Committee on Statelessness and Related Problems	20th Meeting	UN Doc. E/AC.32/SR.20 (1950)	10 February 1950
Ad Hoc Committee on Statelessness and Related Problems	Comments of the Committee on the Draft Convention	UN Doc. E/AC.32/L.32/Add.1 (1950)	10 February 1950
Ad Hoc Committee on Statelessness and Related Problems	23rd Meeting	UN Doc. E/AC.32/SR.23 (1950)	10 February 1950
Ad Hoc Committee on Statelessness and Related Problems	24th Meeting	UN Doc. E/AC.32/SR.24 (1950)	13 February 1950

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Ad Hoc Committee on Statelessness and Related Problems	22nd Meeting	UN Doc. E/AC.32/SR.22 (1950)	14 February 1950
Ad Hoc Committee on Statelessness and Related Problems	31st Meeting	UN Doc. E/AC.32/SR.31 (1950)	16 February 1950
Ad Hoc Committee on Statelessness and Related Problems	25th Meeting	UN Doc. E/AC.32/SR.25 (1950)	17 February 1950
Ad Hoc Committee on Statelessness and Related Problems	Report	UN Docs. E/1618 and E/AC.32/5 (1950)	17 February 1950
Ad Hoc Committee on Statelessness and Related Problems	26th Meeting	UN Doc. E/AC.32/SR.26 (1950)	23 February 1950
Ad Hoc Committee on Statelessness and Related Problems	Report: Corrigendum	UN Docs. E/1618/Corr.1 and E/AC.32/5/Corr.1 (1950)	2 March 1950
ECOSOC	France: Amendment to the Draft Convention Relating to the Status of Refugees	UN Doc. E/L.81 (1950)	29 July 1950
ECOSOC	United Kingdom: Proposed Text to be Substituted for Article I of the Draft Convention in E/1618	UN Doc. E/AC.7/L.63 (1950)	1 August 1950
ECOSOC	First Report of the Social Committee	UN Doc. E/1806 (1950)	1 August 1950
ECOSOC	Second Report of the Social Committee	UN Doc. E/1814 (1950)	10 August 1950
Ad Hoc Committee on Refugees and Stateless Persons	Compilation of the Comments of Governments and Specialized Agencies on the Report of the Ad Hoc Committee on Statelessness and Related Problems (E/1618)	UN Doc. E/AC.32/L.40 (1950)	10 August 1950
ECOSOC	Resolutions Adopted by the Economic and Social Council on 11 August 1950	UN Doc. E/1818 (1950)	12 August 1950
ECOSOC	Comments of Governments on the Report of the Ad Hoc Committee on Statelessness and Related Problems: Australia	UN Doc. E/1703 Add. 7 (1950)	14 August 1950
Ad Hoc Committee on Refugees and Stateless Persons	United Kingdom: Amendments to Draft Convention Relating to the Status of Refugees (E/1618)	UN Doc. E/AC.32/L.41 (1950)	15 August 1950

Source	Title	Document No.	Date
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ECOSOC Social Committee	160th Meeting	UN Doc. E/AC.7/SR.160 (1950)	18. August 1950
ECOSOC Social Committee	166th Meeting	UN Doc. E/AC.7/SR.166 (1950)	22. August 1950
Ad Hoc Committee on Refugees and Stateless Persons	Report of the Drafting Committee on Articles of the Draft Convention Relating to the Status of Refugees (E/AC.32/L.40 and E/1703/Add.7)	UN Doc. E/AC.32/L.42 (1950)	21 August 1950
Ad Hoc Committee on Refugees and Stateless Persons	Second Report of the Drafting Committee on Articles of the Draft Convention Relating to the Status of Refugees (E/AC.32/L.40 and E/1703/Add.7)	UN Doc. E/AC.32/L.42/Add.1 (1950)	22 August 1950
Ad Hoc Committee on Refugees and Stateless Persons	Third Report of the Drafting Committee on Articles of the Draft Convention Relating to the Status of Refugees (E/AC.32/L.40 and E/1703/Add.7)	UN Doc. E/AC.32/L.42/Add.2 (1950)	23 August 1950
Ad Hoc Committee on Refugees and Stateless Persons	Fourth Report of the Drafting Committee on Articles of the Draft Convention Relating to the Status of Refugees (E/AC.32/L.40 and E/1703/Add.7)	UN Doc. E/AC.32/L.42/Add.3 (1950)	24 August 1950
Ad Hoc Committee on Refugees and Stateless Persons	Report	UN Docs. E/1850 and E/AC.32/8 (1950)	25 August 1950
Ad Hoc Committee on Refugees and Stateless Persons	Report, Annex to the Schedule	UN Docs. E/1850/Annex and E/AC.32/8/Annex (1950)	25 August 1950
Ad Hoc Committee on Refugees and Stateless Persons	33th Meeting	UN Doc. E/AC.32/SR.33 (1950)	20 September 1950
Ad Hoc Committee on Refugees and Stateless Persons	34th Meeting	UN Doc. E/AC.32/SR.34 (1950)	22 September 1950
Ad Hoc Committee on Refugees and Stateless Persons	35th Meeting	UN Doc. E/AC.32/SR.35 (1950)	25 September 1950

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Ad Hoc Committee on Refugees and Stateless Persons	36th Meeting	UN Doc. E/AC.32/SR.36 (1950)	25 September 1950
Ad Hoc Committee on Refugees and Stateless Persons	37th Meeting	UN Doc. E/AC.32/SR.37 (1950)	26 September 1950
Ad Hoc Committee on Refugees and Stateless Persons	38th Meeting	UN Doc. E/AC.32/SR.38 (1950)	26 September 1950
Ad Hoc Committee on Refugees and Stateless Persons	39th Meeting	UN Doc. E/AC.32/SR.39 (1950)	27 September 1950
Ad Hoc Committee on Refugees and Stateless Persons	40th Meeting	UN Doc. E/AC.32/SR.40 (1950)	27 September 1950
Ad Hoc Committee on Refugees and Stateless Persons	41st Meeting	UN Doc. E/AC.32/SR.41 (1950)	28 September 1950
Ad Hoc Committee on Refugees and Stateless Persons	42nd Meeting	UN Doc. E/AC.32/SR.42 (1950)	28 September 1950
Conference of Plenipotentiaries	Texts of the Draft Convention and the Draft Protocol to Be Considered by the Conference	UN Doc. A/CONF.2/1 (1951)	12 March 1951
Conference of Plenipotentiaries	Concordance of the English and French Texts and Linguistic Comments	UN Doc. A/CONF.2/5 (1951)	23 May 1951
Conference of Plenipotentiaries	Sweden: Amendments to Article 1	UN Doc. A/CONF.2/9 (1951)	2 July 1951
Conference of Plenipotentiaries	Belgium: Amendment to Article 4	UN Doc. A/CONF.2/11 (1951)	2 July 1951
Conference of Plenipotentiaries	Egypt: Amendment to Article 1	UN Doc. A/CONF.2/13 (1951)	3 July 1951
Conference of Plenipotentiaries	Australia: Amendment to Article 5	UN Doc. A/CONF.2/15 (1951)	3 July 1951
Conference of Plenipotentiaries	Australia: Proposal for an Additional Article 3 (c)	UN Doc. A/CONF.2/19 (1951)	3 July 1951
Conference of Plenipotentiaries	Australia: Amendment to Article 3	UN Doc. A/CONF.2/20 (1951)	3 July 1951
Conference of Plenipotentiaries	Memorandum Prepared by the Legal Department	UN Doc. A/CONF.2/21 (1951)	3 July 1951
Conference of Plenipotentiaries	Yugoslavia: Amendment to Article 6 (2)	UN Doc. A/CONF.2/24 (1951)	3 July 1951
Conference of Plenipotentiaries	United Kingdom: Amendment to Article 5	UN Doc. A/CONF.2/26 (1951)	3 July 1951
Conference of Plenipotentiaries	United Kingdom: Amendment to Article 1	UN Doc. A/CONF.2/27 (1951)	3 July 1951
Conference of Plenipotentiaries	Egypt: Amendment to Article 3	UN Doc. A/CONF.2/28 (1951)	3 July 1951

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Conference of Plenipotentiaries	Austria: Amendment to Article 7	UN Doc. A/CONF.2/30 (1951)	4 July 1951
Conference of Plenipotentiaries	Federal People's Republic of Yugoslavia: Amendments to the Draft Convention	UN Doc. A/CONF.2/31 (1951)	4 July 1951
Conference of Plenipotentiaries	Belgium-France: Amendment to Article 4	UN Doc. A/CONF.2/32 (1951)	4 July 1951
Conference of Plenipotentiaries	Netherlands: Amendment to Article 7	UN Doc. A/CONF.2/33 (1951)	4 July 1951
Conference of Plenipotentiaries	Switzerland: Amendment to Article 7, paragraph 2	UN Doc. A/CONF.2/34 (1951)	4 July 1951
Conference of Plenipotentiaries	Switzerland: Amendment to Article 10	UN Doc. A/CONF.2/35 (1951)	4 July 1951
Conference of Plenipotentiaries	Sweden: Amendment to Article 5 (1)	UN Doc. A/CONF.2/37 (1951)	5 July 1951
Conference of Plenipotentiaries	Austria: Amendment to Article 9	UN Doc. A/CONF.2/38 (1951)	5 July 1951
Conference of Plenipotentiaries	Sweden: Amendment to Article 9	UN Doc. A/CONF.2/39 (1951)	5 July 1951
Conference of Plenipotentiaries	Decision on the Status of Refugees and Stateless Persons by the Council of the Inter-Parliamentary Union	UN Doc. A/CONF.2/NGO.8	6 July 1951
Conference of Plenipotentiaries	Egypt: Draft Amendment to Article 27	UN Doc. A/CONF.2/44 (1951)	6 July 1951
Conference of Plenipotentiaries	Austria: Amendment to Article 20, Paras. 2 and 3	UN Doc. A/CONF.2/46 (1951)	6 July 1951
Conference of Plenipotentiaries	Netherlands: Amendment to Article 20	UN Doc. A/CONF.2/48 (1951)	6 July 1951
Conference of Plenipotentiaries	Netherlands: Amendment to Article 23	UN Doc. A/CONF.2/49 (1951)	6 July 1951
Conference of Plenipotentiaries	Belgium: Amendment to Article 32	UN Doc. A/CONF.2/53 (1951)	9 July 1951
Conference of Plenipotentiaries	Italy: Amendment to Article 23	UN Doc. A/CONF.2/56 (1951)	9 July 1951
Conference of Plenipotentiaries	Italy: Amendment to Article 27	UN Doc. A/CONF.2/57 (1951)	9 July 1951
Conference of Plenipotentiaries	France: Amendment to the Annex Concerning Travel Documents	UN Doc. A/CONF.2/59 (1951)	9 July 1951
Conference of Plenipotentiaries	United Kingdom: Amendment to Article 27	UN Doc. A/CONF.2/60 (1951)	9 July 1951
Conference of Plenipotentiaries	Belgium: Amendment to Article 23	UN Doc. A/CONF.2/61 (1951)	9 July 1951
Conference of Plenipotentiaries	France: Amendment to Article 27	UN Doc. A/CONF.2/63 (1951)	10 July 1951

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Conference of Plenipotentiaries	Italy: Amendment to the Text of the Travel Document Shown in the Annex to Document A/CONF.2/1	UN Doc. A/CONF.2/64 (1951)	10 July 1951
Conference of Plenipotentiaries	Australia-Canada: Amendment to Article 23	UN Doc. A/CONF.2/66 (1951)	10 July 1951
Conference of Plenipotentiaries	Belgium: Amendments to Article 27	UN Doc. A/CONF.2/68 (1951)	10 July 1951
Conference of Plenipotentiaries	France/United Kingdom: Amendment to Article 28	UN Doc. A/CONF.2/69 (1951)	11 July 1951
Conference of Plenipotentiaries	Sweden: Amendment to Article 28	UN Doc. A/CONF.2/70 (1951)	11 July 1951
Conference of Plenipotentiaries	Report of the Committee Appointed to Study Article 3 (Non-Discrimination)	UN Doc. A/CONF.2/72 (1951)	11 July 1951
Conference of Plenipotentiaries	Text of Articles adopted by the Conference on 11 July 1951	UN Doc. A/CONF.2/L.1/Add.4 (1951)	12 July 1951
Conference of Plenipotentiaries	Text of an Article adopted by the Conference on 12 July 1951	UN Doc. A/CONF.2/L.1/Add.5 (1951)	12 July 1951
Conference of Plenipotentiaries	United Kingdom: Alternative amendments to Section E of Article 1	UN Doc. A/CONF.2/74 (1951)	13 July 1951
Conference of Plenipotentiaries	France: Amendment to Article 1	UN Doc. A/CONF.2/75 (1951)	13 July 1951
Conference of Plenipotentiaries	Federal Republic of Germany: Amendment to Article 1	UN Doc. A/CONF.2/76 (1951)	13 July 1951
Conference of Plenipotentiaries	Belgium: Amendments to Article 1	UN Doc. A/CONF.2/78 (1951)	16 July 1951
Conference of Plenipotentiaries	Israel: Amendment to Article 1	UN Doc. A/CONF.2/81 (1951)	17 July 1951
Conference of Plenipotentiaries	Israel: Amendment to Article 1	UN Doc. A/CONF.2/82/Rev.1 (1951)	17 July 1951
Conference of Plenipotentiaries	United Kingdom: Amendment to Article 5	UN Doc. A/CONF.2/83 (1951)	17 July 1951
Conference of Plenipotentiaries	Israel: UK: Note on Article 3 (B)	UN Doc. A/CONF.2/84 (1951)	17 July 1951
Conference of Plenipotentiaries	UK: Amendment to Article 31	UN Doc. A/CONF.2/85 (1951)	17 July 1951
Conference of Plenipotentiaries	Netherlands: Amendment to Article 31	UN Doc. A/CONF.2/86 (1951)	17 July 1951
Conference of Plenipotentiaries	France: Proposal for the Inclusion of a New Article 6 (a)	UN Doc. A/Conf.2/89 (1951)	19 July 1951

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Conference of Plenipotentiaries	Luxembourg: Suggested New Article 17 (a)	UN Doc. A/CONF.2/94 (1951)	19 July 1951
Conference of Plenipotentiaries	Report of the Working Group	UN Doc. A/CONF.2/95 (1951)	19 July 1951
Conference of Plenipotentiaries	2nd Meeting	UN Doc. A/CONF.2/SR.2 (1951)	20 July 1951
Conference of Plenipotentiaries	Belgium: Draft Recommendation for Inclusion in the Final Act of the Conference	UN Doc. A/CONF.2/101 (1951)	21 July 1951
Conference of Plenipotentiaries	Matters to be Drawn to the Attention of the Style Committee	UN Doc. A/CONF.2/AC.1/R.1/Add.2 (1951)	21 July 1951
Conference of Plenipotentiaries	Report of the Style Committee	UN Doc. A/CONF.2/102 (1951)	24 July 1951
Conference of Plenipotentiaries	Report of the Style Committee	UN Doc. A/CONF.2/102/Add.1 (1951)	24 July 1951
Conference of Plenipotentiaries	Report of the Style Committee	UN Doc. A/CONF.2/102/Add.2 (1951)	24 July 1951
Conference of Plenipotentiaries	UK: Amendment to Article 6	UN Doc. A/CONF.2/104 (1951)	24 July 1951
Conference of Plenipotentiaries	Text of Article 1 Proposed by the Drafting Group (Belgium, Canada, Holy See, United Kingdom)	UN Doc. A/CONF.2/105 (1951)	24 July 1951
Conference of Plenipotentiaries	Israel-Netherlands: Amendment to Article 7 (Formerly Art. 4)	UN Doc. A/CONF.2/106 (1951)	25 July 1951
Conference of Plenipotentiaries	Final Act and Convention Relating to the Status of Refugees	UN Doc. A/CONF.2/108 (1951)	August 1951
Conference of Plenipotentiaries	3rd Meeting	UN Doc. A/CONF.2/SR.3 (1951)	19 November 1951
Conference of Plenipotentiaries	4th Meeting	UN Doc. A/CONF.2/SR.4 (1951)	19 November 1951
Conference of Plenipotentiaries	5th Meeting	UN Doc. A/CONF.2/SR.5 (1951)	19 November 1951
Conference of Plenipotentiaries	6th Meeting	UN Doc. A/CONF.2/SR.6 (1951)	20 November 1951
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Conference of Plenipotentiaries	9th Meeting	UN Doc. A/CONF.2/SR.9 (1951)	21 November 1951
Conference of Plenipotentiaries	10th Meeting	UN Doc. A/CONF.2/SR.10 (1951)	21 November 1951
Conference of Plenipotentiaries	11th Meeting	UN Doc. A/CONF.2/SR.11 (1951)	22 November 1951

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Conference of Plenipotentiaries	12th Meeting	UN Doc. A/CONF.2/SR.12 (1951)	22 November 1951
Conference of Plenipotentiaries	13th Meeting	UN Doc. A/CONF.2/SR.13 (1951)	22 November 1951
Conference of Plenipotentiaries	14th Meeting	UN Doc. A/CONF.2/SR.14 (1951)	22 November 1951
Conference of Plenipotentiaries	15th Meeting	UN Doc. A/CONF.2/SR.15 (1951)	23 November 1951
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Conference of Plenipotentiaries	19th Meeting	UN Doc. A/CONF.2/SR.19 (1951)	26 November 1951
Conference of Plenipotentiaries	20th Meeting	UN Doc. A/CONF.2/SR.20 (1951)	26 November 1951
Conference of Plenipotentiaries	21st Meeting	UN Doc. A/CONF.2/SR.21 (1951)	26 November 1951
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A. Introduction

When the drafters of the 1951 Convention first considered the rights and status of refugees, they were able to draw on a legal tradition that had developed in the interwar years, beginning with the 1922 ‘Nansen passport’ for Russian refugees and including the 1933 Convention. This legal foundation was not the result of a comprehensive approach to refugee issues but rather represented an *ad hoc* method of defining key principles; these principles, namely that refugees were a distinct category of migrants deserving special attention and help, and that refugees should not be sent back to a country of persecution, would later be incorporated into the 1951 Convention. In addition, the experience of refugees in the interwar years evidenced how their right to work, and thus their ability to achieve self-reliance, was in many cases premised on their right to travel internationally. Moreover, institutional arrangements forged a link between refugee law and international organizations, a connection that would be solidified by the drafting of the 1951 Convention and the creation of the UNHCR.

Modern refugee law first developed in a European context, largely in response to the creation of mass refugee movements during and after the First World War, and the imposition of immigration restrictions by the United States and other countries in the 1920s.¹ In the 19th and early 20th centuries, displaced, persecuted, and poor populations in Europe simply moved to new jobs and opportunities in other regions.² After the First World War, however, many countries adopted passport controls and immigration restrictions that made

¹ For the earlier developments of refugee law *cf.* Einarsen, Drafting History, MN 4 *et seq.*

² Marrus, *The Unwanted: European Refugees in the Twentieth Century* (1985), *passim*.

international migration much more difficult.³ The United States, *e.g.*, imposed a quota on the total number of immigrants that it would accept, and it specified their ethnic origin: in doing so, it severely limited arrivals from eastern and southern Europe.⁴ Immigration restrictions made movement more difficult for those looking to improve their lives for economic reasons, but they created great hardship for refugees, those forced to flee their home countries because of war or persecution. In interwar Europe, these refugees included the millions uprooted during and shortly after the First World War, including over one million Russians, 300,000 Magyars, over one million Greeks, and in the 1930s, 500,000 fleeing Nazi Germany and 400,000 Spanish Republicans.⁵

- 3 Two main forces influenced the development of refugee law in the interwar years. First, this law was a product of the idealist beliefs that legal norms could shape politics and ultimately eliminate war. The Preamble to the Covenant of the League of Nations called for ‘the firm establishment of the understandings of international law’ and helped to inspire the organization to set legal standards on the treatment of refugees. In addition, pragmatic beliefs that international legal agreements could assist governments to solve pressing problems played a role. In first extending assistance to Russian refugees displaced by revolution and civil war, the member states of the League of Nations hoped to alleviate a humanitarian crisis with both financial and social consequences for concerned states.
- 4 The League of Nations, whose membership was largely composed of states in Europe and Latin America, provided a wider forum for international action.⁶ Although key states did not belong to the League at all, *e.g.*, the United States, or only intermittently, *e.g.*, Germany and the USSR, its institutions facilitated coordination on refugee issues. In particular, the League Council brought the Great Powers of the day into the discussions; the Assembly reflected popular sentiments, while the Secretariat and various refugee agencies, discussed below, provided both leadership and administrative expertise. In addition, humanitarian organizations, *e.g.*, the International Committee of the Red Cross (ICRC) and the Save the Children Fund, played an important role in advocating for the rights and well-being of refugees.⁷ For instance, Gustave Ador, then president of the ICRC, first proposed refugee assistance for Russian refugees to the League of Nations.⁸ Thus, the development of refugee law was shaped by both State and non-State actors in the interwar years.

B. Nansen Passport System

I. Origins and Parameters of the System: The 1922 Arrangement

- 5 In 1921, the League of Nations appointed Fridtjof Nansen as High Commissioner for Russian Refugees and gave him the task of securing the assistance and legal protection of the over one million Russian refugees then spread out along the border of the former

³ For further details *cf.* Einarsen, *Drafting History*, MN 8.

⁴ Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (2000), pp. 117–121.

⁵ Skran, *Interwar Refugees*, pp. 31–61; Simpson, *Refugee Problem*, *passim*.

⁶ Walters, *A History of the League of Nations* (1960).

⁷ Bernard, ‘Migration and Displacement: Humanity with Its Back to the Wall’, *IRRC* 904 (2017), pp. 1–11 (p. 3).

⁸ Skran, *Gustave Ador, the ICRC, and leadership on refugee and migration policy*, <<https://blogs.icrc.org/law-and-policy/2018/01/30/gustave-ador-the-icrc-and-leadership-on-refugee-and-migration-policy/>>, accessed on 13 July 2021.

Russian Empire.⁹ These refugees faced numerous legal problems, most importantly the lack of a secure identity and the ability to travel freely. After a decree by the Soviet Union of 15 December 1921, most were made stateless as well.¹⁰ Some host countries had issued identity certificates to the refugees within their borders, but these were not generally accepted by other countries. This made movement between countries, even when employment or family might be waiting in another country, very difficult.¹¹

In July 1922, High Commissioner Nansen convened an intergovernmental conference in Geneva to discuss the legal status of Russian refugees. Representatives from a total of 16 countries, including all the major host countries, attended: Austria, Bulgaria, Czechoslovakia, Finland, France, Germany, Greece, Hungary, Japan, Poland, Romania, Spain, Sweden, Switzerland, the United Kingdom, and Yugoslavia. Nansen prepared a sample certificate, modelled on one then being used in Germany and Czechoslovakia, for the delegates to consider. The certificate stated that the bearer was a 'person of Russian origin not having acquired another nationality' and furthermore that it would cease 'to be valid if the bearer enters Russian territory'.¹² Here the term 'Russian' refers to political boundaries rather than ethnicity as all former members of the Russian Empire, whether ethnically Russian, Ukrainian, Cossack, Jewish, or part of another group fell into this category.¹³ Governments unanimously accepted the certificate and agreed to an Arrangement with Respect to the Issue of Certificates of Identity to Russian Refugees, commonly known as the 1922 Arrangement.¹⁴

Under the terms of the 1922 Arrangement, governments would issue and renew identity documents to refugees living within their territories. The purpose of the documents was twofold. On the one hand, their existence would help governments to count and monitor their refugee populations. On the other hand, the certificate would provide refugees with a more secure legal status. Governments could issue visas on these documents as they would on the documents of foreign nationals. Having an identity certificate would not guarantee that a visa would be granted, nor provide funds for that visa, but it would give the refugee a better opportunity to receive one. Recognition of the 'Nansen Passports' for Russian refugees was widespread. By the end of the 1920s, a total of 52 governments accepted the 1922 Arrangement for Russian refugees, including 29 in Europe, 11 in the Americas, 2 in Africa, and 10 in Asia, the Middle East, and Oceania.¹⁵

⁹ Skran, 'Profiles of the First Two High Commissioners', *JRS* 1 (1988), pp. 277–296, *passim*; for further details cf. Schmahl on Art. 1 A, para. 1, MN 34 *et seq.*

¹⁰ Williams, 'Denationalization', *BYIL* 8 (1927), pp. 45–61, *passim*.

¹¹ League of Nations, Russian Refugees: Report by Dr. Nansen, High Commissioner of the League of Nations, Submitted to the Council on July 20th, 1922, LNOJ 1922, p. 926.

¹² *Ibid.*

¹³ For further details cf. Schmahl on Art. 1 A, para. 1, MN 36.

¹⁴ League of Nations, Russian Refugees: Report by Dr. Nansen, High Commissioner of the League of Nations, Submitted to the Council on July 20th, 1922, LNOJ 1922, p. 927. Other information to appear on the certificate included the names, occupation, former residence in Russia, present residence, and age of the bearer. Space for a photograph was provided, and a physical description of the bearer's hair, eyes, face, and nose was also to be included.

¹⁵ The 1922 Arrangement was accepted by Albania, Austria, Belgium, Bulgaria, Czechoslovakia, Denmark, Danzig, Estonia, Finland, France, Germany, the UK, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Saar, Spain, Sweden, Switzerland, and Yugoslavia within Europe. In addition, 11 countries in the Americas accepted the 1922 Arrangement, namely Argentina, Bolivia, Brazil, Canada, Chile, Cuba, Guatemala, Mexico, Paraguay, the US, and Uruguay. In Africa, South Africa, and Liberia signed the 1922 Arrangement, and in Asia and the Middle East, Australia, China, Egypt, India, Iraq, Japan, New Zealand, Palestine, Siam, and Turkiye signed. League of Nations, Russian, Armenian, Assyrian, Assyro-Chaldean, and Turkish Refugees: Report to the Tenth Assembly, 15 August 1929, LN Doc. A.23.1929.VII (1929), p. 13.

II. The 1924 Plan and Armenian Refugees

- 8 In September 1923, the so-called 1924 Plan was initiated when the Council of the League of Nations asked Dr. Nansen to consider the creation of identity certificates for Armenian refugees and examine possibilities for their settlement.¹⁶ In doing so, they were concerned about the plight of thousands of Armenian refugees displaced from the former Ottoman Empire, including 40,000 in France, 45,000 in Greece, and 65,000 in Syria and Lebanon.¹⁷ By the Plan for the Issue of a Certificate of Identity to Armenian Refugees (1924 Plan) governments agreed to extend the Nansen passport system to another group. This represented the first such designation for a group with a significant membership physically located outside a European state. The provisions of the 1924 Plan resembled those of the 1922 Arrangement and allowed for the creation of identity and travel documents for Armenian refugees.¹⁸ Although the acceptance of the 1924 Plan was not as broad as for the 1922 Arrangement, it had 39 adherents, including 24 in Europe, five in the Americas, two in Africa, and eight in Asia, the Middle East, and Oceania.¹⁹

III. Refugee Labour and the ILO

- 9 The issue of refugee labour has been present in discussions on refugees almost since the inception of the international refugee regime. This is particularly evident through the early involvement of the International Labour Organization (ILO) in refugee affairs. On 12 June 1924 the Council of the League of Nations adopted a recommendation of the High Commissioner to transfer the High Commission for Refugees (HCR) to the International Labour Office, the permanent secretariat of the ILO. The ILO was asked by the League to take over support for the Russian and Armenian refugees as they were recognized as 'permanent refugees' in need of work because repatriation was untenable.²⁰ A Refugee Service was set up in the International Labour Office, which held technical and administrative responsibilities for refugee work while the HCR continued to focus on the legal, political, and financial aspects. ILO Director General Albert Thomas and Nansen were known to deeply respect each other and their cooperation has been posited as a strong foundation for the international refugee assistance of the 1920s.²¹
- 10 While it became more overt through the engagement of the ILO after 1924, labour and employment had been used as important strategies for addressing the issue of refugees since

¹⁶ League of Nations, *Projet d'installation de 50.000 Arméniens dans le Caucase*, LNOJ 1923, p. 1349.

¹⁷ Simpson, *Refugee Problem*, p. 558.

¹⁸ League of Nations, *Russian, Armenian, Assyrian, Assyro-Chaldean, and Turkish Refugees: Report to the Tenth Assembly*, 15 August 1929, LN Doc. A.23.1929.VII (1929), p. 13; for further details cf. Schmahl on Art. 1 A, para. 1, MN 38 *et seq.*

¹⁹ Albania, Austria, Belgium, Bulgaria, Czechoslovakia, Denmark, Estonia, France, Germany, the UK, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Saar, Sweden, Switzerland, and Yugoslavia in Europe; Brazil, Canada, Cuba, the US, and Uruguay in the Americas; South Africa and Liberia in Africa; and Australia, Egypt, India, Iraq, Japan, New Zealand, Palestine, Siam, and Turkiye in Asia and the Middle East. League of Nations, *Russian, Armenian, Assyrian, Assyro-Chaldean, and Turkish Refugees: Report to the Tenth Assembly*, 15 August 1929, LN Doc. A.23.1929.XII (1929), p. 13.

²⁰ League of Nations, 1933 Human Welfare and the League, January, No. 155, O.LNU/1933(8), p. 67.

²¹ Thompson, *Refugees: Anarchy or Organization?* (1938), pp. 30–33; Simpson, *Refugee Problem*, *passim*, pp. 194–207.

the HCR was established. For instance, once many Russians became de facto stateless in 1921, the HCR sought, along with repatriation, to help male refugees leave Constantinople and enter other states such as France on work contracts. Five thousand refugees were transferred to Bulgaria in 1922, *e.g.*, to construct railroads.²² In this way, the right to work and the right to move have been inextricably connected since the emergence of the first international refugee regime.

This focus expanded through the so-called ILO employment-matching scheme, which was part of the ILO's wider work to address 'the employment, emigration and settlement of refugees'²³ and was premised on refugees as labour migrants. Through censuses and political negotiations, the ILO 'matched' refugees with jobs in other countries, thereby securing work for them before they travelled while also facilitating their travel itself. Over the next four years (1925–1929) the ILO found work for approximately 50,000 refugees in over 30 countries.²⁴ The ILO also explored resettlement possibilities in South America and the Middle East, although most Russian refugees were reluctant to participate in these schemes.²⁵ While few schemes were ultimately implemented, Brazil, Venezuela, and Chile were identified as possible locations and a colony named after Nansen was created in Paraguay.²⁶

As such, mobility was key to the ILO's activities with refugees, which in turn were premised on the refugees' legal status and passports.²⁷ The Nansen passport became a necessity for many as it facilitated the ability to move on from one's first country of asylum to seek employment elsewhere. However, refugees were not guaranteed the right to return to the State where their passport had been issued, meaning that States did not retain the right to deport them. This led some States such as Canada to refuse refugees, even those with Nansen passports, regardless of their labour potential.²⁸

IV. 1926 Arrangement and the First Definition of a Refugee

1. Right to Return

The 1922 Arrangement and 1924 Plan provided a semblance of legal identity for Russian and Armenian refugees, but they were not without limitations. In particular, having a certificate did not guarantee a refugee the right to return to the host country issuing it, nor, as mentioned above, that all countries would accept those holding a Nansen passport. The legal status for Russian refugees became even more important after the failure of efforts by High Commissioner Nansen to negotiate their return to the Soviet Union²⁹ and the desire to have a firmer legal status grew in importance. In order to correct this and other problems, governments signed the Arrangement Relating to the Issue of Identity Certificates to Russian

²² White, *Comparativ* 27 (2017), pp. 18–38.

²³ International Labour Organization, *ILRev.* 17 (1928), pp. 68–85.

²⁴ *Ibid.*, p. 68.

²⁵ *Ibid.*, p. 73.

²⁶ Hansson, *The Refugee Problem and the League of Nations: Conference Given at the Nobel Institute Oslo on January 7th, 1938* (1938).

²⁷ International Labour Organization, *ILRev.* 17 (1928), p. 71.

²⁸ White, *Comparativ* 27 (2017), pp. 18–38.

²⁹ *Ibid.*, pp. 19–21.

and Armenian Refugees, Supplementing and Amending the Previous Arrangements Dated July 5th, 1922, and May 31st, 1924 (1926 Arrangement).³⁰

- 14 The 1926 Arrangement includes several improvements on the earlier arrangements, and its language emphasized the importance of refugee travel: 'in order to facilitate freedom of movement of the refugees', Prov. 3 of the 1926 Arrangement approves the provision that a return visa should be placed on an identity certificate, making it easier for a refugee to depart and return to the same country. Prov. 4 of the 1926 Arrangement specifies that children under 15 years of age be included on the certificates of their parents, making an implicit assumption clearer and facilitating family travel. The 1926 Arrangement further recommends that a fee of five gold francs be assessed for the identity certificate (Prov. 9). Together these moneys would be put into a revolving fund which, in turn, would help to finance the refugee work of the League of Nations.

2. Definition of a Refugee

- 15 Neither the 1922 Arrangement for Russian Refugees nor the 1924 Plan contained an explicit definition of a refugee.³¹ No definition or explanation was, in fact, absolutely necessary as the arrangements referred to groups which had already been given, *en masse*, the protection of the League of Nations through a political process. Neither arrangement specified that the refugees be outside their country of origin. However, as the arrangements dealt with the creation of travel documents, this was certainly implicit in them.

- 16 It was not until the 1926 Arrangement that an explicit definition of a refugee occurs in an interwar legal document.³² Prov. 2 of the 1926 Arrangement defines a refugee as:³³

Russian: Any person of Russian origin [*sic*] who does not enjoy or who no longer enjoys the protection of the Government of the Union of Socialist Soviet Republics and who has not acquired another nationality.

Armenian: Any person of Armenian origin formerly a subject of the Ottoman Empire who does not enjoy or who no longer enjoys the protection of the Government of the Turkish Republic and who has not acquired another nationality.

- 17 According to the above definition, the crucial element that conferred refugee status was that a person did not have the diplomatic protection of his or her home government and had not yet acquired another nationality.³⁴ By focusing on a lack of diplomatic protection, this definition reflected the belief that each person should be a national of a particular State. Refugees posed a 'problem' precisely because the link between themselves and their national home was lacking. Overall, the definitions reflected the largely juridical approach to refugees taken by the League and its members from 1920 to 1935.³⁵

- 18 Under the terms of the 1926 Arrangement, the term 'Russian origin' refers to 'any person whose origin could be traced to the territory which belonged to the former Russian Empire',

³⁰ For further details *cf.* Schmahl on Art. 1 A, para. 1, MN 19 and 33 *et seq.*

³¹ *Ibid.*, MN 19.

³² *Ibid.*

³³ Arrangement of 1926, L of N Treaty Series (1929), pp. 48–49. The French text reads '*Toute personne d'origine russe*'.

³⁴ For further details *cf.* Schmahl on Art. 1 A, para. 1, MN 36 and 39; *cf.* further Einarsen, Drafting History, MN 9.

³⁵ Hathaway, *ICLQ* 33 (1984), pp. 348, 359.

including the USSR or another successor State. This definition matched the views of most States surveyed by the High Commissioner; Germany, an exception, wanted refugees from the 'Russian border States' to be excluded. It was to be further applied without racial or religious qualifications, as specifically advocated by the Latvian government.³⁶ Using this logic, Armenians whose origin could be found in the former Russian Empire were 'Russian refugees' according to the 1926 Arrangement.³⁷ The specific definition for Armenian refugees, however, referred to those of Armenian 'ethnic descent' or ethnic origin. For refugees of both Russian and Armenian origin, the Arrangement indicates that their children, and possibly even grandchildren, would be able to qualify for refugee status under the terms of the 1926 Arrangement.³⁸

The definition given in the 1926 Arrangement did not require that a refugee be officially stateless, although many refugees of the period had been rendered stateless. Legal scholars of the interwar period were divided about the linkage between statelessness and refugeehood.³⁹ Jennings, *e.g.*, saw the two concepts as separate and argues that 'a refugee may, or may not, be a stateless person.'⁴⁰ Sir John Hope Simpson concurs: 'not all stateless people are refugees, nor are all refugees technically stateless (*apatride, staaatenlos*)'.⁴¹ Rubinstein, in contrast, believed that 'all refugees are stateless, whether it be *de jure* or *de facto*'.⁴² As a practical matter, most Russian refugees were stateless, as were many Armenians. In addition, the category of stateless people included those without nationality who had never moved, especially Jews from the former Russian Empire who lived in the new national States of Eastern Europe and were denied citizenship rights. A further indication of the separation between refugees and stateless people in general can be found in the recommendations adopted by the Conference for Communications and Transit in September 1927; they specifically excluded Armenian and Russian refugees from measures aimed to provide passports to those without nationality.⁴³

The definition given in the 1926 Arrangement does not specify how refugee status would be determined. This is because the definition assumes that refugee status has already been granted, either by a government or by the League of Nations. Both of the above definitions confirmed political decisions already made by the League of Nations and member countries to assist a particular group of migrants. They were not meant to be used to actually determine if a particular group or individual should be given refugee status; this was an entirely political matter left to host governments or to the League of Nations. Though not as widely accepted as the 1922 Arrangement, the 1926 Arrangement was recognized by 22 entities, 19 in Europe, two in the Americas, and one in Asia.⁴⁴

³⁶ Schmahl on Art. 1 A, para. 1, MN 36 and League of Nations, LN Doc. A.44.1926 (1926), p. 12.

³⁷ Grahl-Madsen, *Status*, vol. I, p. 123.

³⁸ *Ibid.*, for further details *cf.* Schmahl on Art. 1 A, para. 1, MN 36 and 40.

³⁹ *Cf.* also Schmahl on Art. 1 A, para. 1, MN 37 and 41.

⁴⁰ Jennings, 'Some International Law Aspects of the Refugee Question', *BYIL* 20 (1939), pp. 98–114 (pp. 98, 99).

⁴¹ Simpson, *Refugee Problem*, p. 232.

⁴² Rubinstein, *International Affairs* 15 (1936), pp. 716, 721.

⁴³ League of Nations, Extension to Other Categories of Refugees of the Measures Taken to Assist Russian and Armenian Refugees, Report of the High Commission for Refugees, Submitted to the Council on June 7th, 1928, LN Doc. C.252.1928.VIII, p. 1002.

⁴⁴ Austria, Belgium, Bulgaria, Czechoslovakia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Luxembourg, Norway, Poland, Romania, Sweden, Switzerland, and Yugoslavia in Europe; Canada and Cuba, in the Americas; and India in Asia. League of Nations, Russian, Armenian, Assyrian, Assyro-Chaldean, and Turkish Refugees: Report to the Tenth Assembly, 15 August 1929, LN Doc. A.23.1929.XII (1929), p. 13.

V. Scope and Functions of the Nansen Passport System: The Arrangements of 1928

1. Scope

- 21** In part because of the success of the Nansen passport system, pressures mounted on the Council of the League of Nations to expand its scope still further. By its resolution of December 1926, the Council asked the High Commissioner to consider new groups of refugees, subject to the proviso that only refugees be considered who 'as a consequence of the war and of events directly connected with the war, are living under analogous conditions.'⁴⁵ Based on a review of needy refugee populations, Nansen recommended consideration of refugees who (1) were outside their country of origin and (2) lost the protection of their home government.⁴⁶ According to Nansen's report, these groups included 150 Assyrians in France, 19,000 Assyro-Chaldeans in Caucasus and Greece, 6,000 Ruthenians in Austria and 3,000 Ruthenians in Czechoslovakia, 100,000 Central European refugees, especially Hungarians, in Austria, France, and Romania, 16,000 stateless Jews from the Russian Empire unable to attain Romanian nationality, 150 Turks in Greece who had previously supported the British.⁴⁷
- 22** Although the High Commissioner's investigation found that all these groups had a similar status to Russian and Armenian refugees, governments were not as liberal.⁴⁸ Nonetheless, the Austrian government, *e.g.*, made a formal statement that it would not extend the identity system to Ruthenian and Hungarian refugees currently in Austria,⁴⁹ and no government championed the cause of stateless Jews. The delegate from Italy particularly objected to the costs, but the Council was swayed by the argument of Albert Thomas that the ILO could add 19,000 refugees with little additional expenditure.⁵⁰ At an international conference held in June 1928, governments extended the system to include Assyrians and other Christian minorities from the Ottoman Empire and to a small number of Turkish political refugees.⁵¹
- 23** Provision 2 of the Arrangement Concerning the Extension to Other Categories of Refugees of Certain Measures Taken in Favour of Russian and Armenian Refugees, defines Assyrian, Assyro-Chaldean, and assimilated refugees as:

Any person of Assyrian or Assyro-Chaldean origin, and also by assimilation, any person of Syrian or Kurdish origin, who does not enjoy, or who no longer enjoys, the protection of the State to which he previously belonged and who has not acquired, or does not possess, another nationality.

⁴⁵ League of Nations, Extension à groupes analogues de réfugiés des mesures prises en faveur des réfugiés arméniens et russes: Résolution adoptée par l'Assemblée au cours de sa septième session ordinaire, LNOJ 1927, p. 155.

⁴⁶ League of Nations, Memorandum by the High Commissioner for Refugees, LNOJ Special Suppl. No. 59, Appendix V, pp. 13–14.

⁴⁷ *Ibid.*, pp. 71–72. Note: Estimates and locations of the refugees vary in Nansen's reports.

⁴⁸ Hathaway, *ICLQ* 33 (1984), pp. 348, 355.

⁴⁹ League of Nations, Statement of the Government of Austria, LNOJ 1928, p. 749. On Austria's policy towards refugees, see Kuzmany, 'Changes and Continuities in Austria's Coping with Refugees Over Three Centuries', *JAAH* 2 (2018), pp. 122–123.

⁵⁰ League of Nations, *supra*, fn. 44, p. 1139.

⁵¹ For further details *cf.* Schmahl on Art. 1 A, para. 1, MN 42 *et seq.*

Under this definition, the terms 'Assyrian or Assyro-Chaldean origin' refer to ethnic identity rather than territorial origin, with the term 'assimilated refugees' meant to include Kurdish and Syrian refugees. This definition, unlike the one for Armenian refugees of the 1926 Arrangement, does not specify that the subject be from the Ottoman Empire. This phrase was dropped in drafting because it was pointed out that not all the refugees concerned came from the former Ottoman Empire. The additional clause for persons of 'Syrian or Kurdish origin' was added at the 1928 intergovernmental conference by delegates who found these refugees to be in similar situations to Assyrian and Assyro-Chaldeans.⁵²

Provision 2 further defines a Turkish refugee as:

Any person of Turkish origin, previously a subject of the Ottoman Empire, who, under the terms of the Protocol of Lausanne of July 24th, 1923, does not enjoy, or no longer enjoys, the protection of the Turkish Republic and who has not acquired another nationality.

This latter definition was meant to apply only to a small number of Turkish refugees who had supported the Allies and were denied passports by Turkish authorities, rather than to the several thousands of ethnic Turks expelled from Greece under the terms of the Treaty of Lausanne.⁵³ As in the former definition, 'Turkish origin' applies to ethnic background rather than to territorial origin, although the additional limitations placed on the definition by the mention of the Treaty of Peace, signed at Lausanne, adds a political restriction as well.⁵⁴ In Council discussions of this Treaty provision, the Turkish government made it clear that those who had been expelled from Turkiye could not come back under any circumstances.⁵⁵

One further extension of the Nansen passport system took place in the 1930s. At the request of the French government, identity certificates were extended to refugees from the Saarland following its return to Germany in 1935. These refugees were defined as 'all persons who, having previously had the status of inhabitants of the Saar, had left the Territory on the occasion of the plebiscite and were not in possession of national passports.'⁵⁶ Unlike those covered under the 1926 Arrangement and the Arrangements of 1928, however, Saar refugees, were not specifically mentioned under the provisions of Art. 1 A, para. 1 of the 1951 Convention.⁵⁷

24

2. Functions

A second result of the June 1928 intergovernmental conference on refugees was an enhanced arrangement on the legal status of Russian and Armenian refugees. Although accepted by only 13 governments, this arrangement was important for its innovation provisions on consular services for refugees.⁵⁸ Provision 1, Arrangement Relating to the Legal

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⁵² Grahl-Madsen, *Status*, vol. I, p. 128; cf. also Schmahl on Art. 1 A, para. 1, MN 46.

⁵³ League of Nations, Letter from Erik Colban, Administrative Commissions and Minorities Questions Section, to Major Johnson, Refugee Section of the International Labour Office, Geneva, concerning an appeal from one General Hamdy Pacha, 25 March 1926, LN Doc. C1412/R.409.04.j.1 (1926); for further details cf. Schmahl on Art. 1 A, para. 1, MN 48.

⁵⁴ Grahl-Madsen, *Status*, vol. I, p. 129.

⁵⁵ League of Nations, Statement of the Government of Turkey, LNOJ 1928, p. 359.

⁵⁶ League of Nations NIO, Report of the Governing Body, 29 August 1935, LN Doc. A.22.1935.XII (1935), p. 2.

⁵⁷ However, for further details cf. Schmahl on Art. 1 A, para. 1, MN 19 and 51 *et seq.*

⁵⁸ Austria, Belgium, Bulgaria, Czechoslovakia, Estonia, France, Germany, Greece, Latvia, Poland, Romania, Switzerland, and Yugoslavia all accepted the Arrangement Relating to the Legal Status of Russian and Armenian Refugees of 30 June 1928. Cf. League of Nations, Report by the Secretary-General on the Future Organization of Refugee Work, 30 August 1930, LN Doc. A.28.1930.XIII (1930), p. 26.

Status of Russian and Armenian Refugees, specified for the first time the functions of the representatives of the High Commissioner of the League of Nations. Although Nansen had utilized special deputies in major host countries previously, their role was not sanctioned under international law. Provision 1 (a) describes their functions, most importantly ‘certifying the identity and the position of refugees’. Other functions include certifying family position and signature, and testifying to competent authorities about the character of the individual refugees.⁵⁹

- 26 The Arrangement Relating to the Legal Status of Russian and Armenian Refugees also dealt with the personal status of Russian and Armenian refugees, making recommendations in regard to divorce and marriage laws, which impacted both men and women. It further recommended favourable treatment for these refugees as regards labour restrictions, national taxation, and expulsion. These provisions, however, were merely recommendations and did not have the status of treaty law.
- 27 The main provisions of this document recommended that the High Commissioner, through his representatives, provide a variety of consular services to refugees, including being able to certify the identity and civil status of refugees, to assure the legality of their documents, to legalize their signatures, to attest to the character and good conduct of refugees, and to recommend the refugees to competent authorities, such as schools and libraries. At the time of creation, delegates of the High Commissioner already conducted the above functions in six countries, including Austria, Bulgaria, Estonia, Germany, Switzerland, and Yugoslavia.⁶⁰ Provision 1 was ratified by relatively few countries—France and Belgium. Nevertheless, these delegates, many of whom were refugees themselves, would serve as the institutional foundation of the representatives of the UNHCR.

VI. Impact and Application of the Nansen Passport System

- 28 One important measure of the impact of the Nansen passport system was the number of acceptances of the various arrangements. The 1922 Arrangement for Russian refugees had the largest number of adherents with over 50 governments signing on to its terms. Although the number of acceptances declined with each subsequent arrangement, a core group of European countries signed all five of the arrangements: Austria, Belgium, Bulgaria, Czechoslovakia, Estonia, France, Germany, Poland, Romania, Switzerland, and Yugoslavia. Together, these countries hosted the greater majority of Russian and Armenian refugees. The United Kingdom showed less support, endorsing the 1922 Arrangement and 1924 Plan but not the others.
- 29 Even though the arrangements of the 1920s lacked the status of treaty law they did provide certain categories of refugees with a modicum of legal status. The identity certificates allowed refugees to travel across international borders, and the modifications in the 1926 Arrangement made it possible for the refugees to leave and legally return. Former Deputy

⁵⁹ Agreement Concerning the Functions of the Representatives of the League of Nations High Commissioner for Refugees.

⁶⁰ League of Nations, Report of the Secretary-General on the Future Organization of Refugee Work, 30 August 1930, LN Doc. A.28.1930.XIII (1930), p. 4.

High Commissioner at the UNHCR, T. Alexander Aleinikoff, notes the innovative aspects of the Nansen passport in facilitating refugee migration, as ‘the movement of refugees was generally understood as important to attaining self-reliance—refugees would travel to other States in search of employment.’⁶¹ Though governments maintained responsibility for issuing passports, officials of the High Commissioner, located in the important host countries, could offer assistance. The actual usage of the certificates varied by country, but several, including Latvia, Czechoslovakia, Yugoslavia, and Estonia, issued certificates to over 90 per cent of the Russian refugees they hosted,⁶² while 40 per cent of Russian refugees in Austria held Nansen passports.⁶³ Overall, the Nansen passport system provided some semblance of legal identity and protection for the refugees, and organizations of Russian and Armenian refugees strongly supported its existence and continuation.

By the late 1920s, however, the *ad hoc* and piecemeal nature of the Nansen passport system became increasingly unacceptable. In particular, there was a greater recognition that refugee problems would not disappear quickly as radical solutions could not be implemented. It seemed highly unlikely, *e.g.*, that refugees would repatriate to Russia, and moreover, a study by the Advisory Commission for Refugees found that mass naturalizations were not desired either by the refugees themselves or by their host countries.⁶⁴ Hence, a movement emerged to give the system a conventional foundation in treaty law. This was first proposed at the conference drawing up the Arrangement Relating to the Legal Status of Russian and Armenian Refugees, but there was insufficient government support at that time. This proposal did, nonetheless, plant the seed that would eventually germinate into a full legal convention. **30**

C. The 1933 Convention

I. Origins of the 1933 Convention

The 1933 Convention, the first comprehensive refugee convention, both formalized and expanded the rights of refugees. It ‘represented the first binding multilateral instrument to afford refugees legal protection; it was, as well, the first international agreement to articulate the principle that refugees should not be returned involuntarily to their country of origin.’⁶⁵ Although earlier arrangements made steps towards refugee protection, they were essentially recommendations to governments.⁶⁶ Unlike the 1933 Convention, they were not formal, binding treaties that generated legal obligations. The 1933 Convention is also of **31**

⁶¹ Aleinikoff, ‘Taking Mobility Seriously in the Model International Mobility Convention’, *CJTL* 56 (2019), pp. 296–302 (p. 297).

⁶² Czechoslovakia hosted 30,000 Russian refugees and issued certificates to 100 per cent; Latvia hosted 33,544 and issued to 100 per cent; Yugoslavia hosted 38,000 and issued to 99 per cent; Estonia hosted 19,000 and issued to 90 per cent. League of Nations, Armenian and Russian Refugees, 3 September 1926, LN Doc. A.44.1926, pp. 9–10.

⁶³ Kuzmany, *supra*, fn. 54, p. 129.

⁶⁴ League of Nations, Report of the Advisory Commission to the High Commissioner for Russian, Armenian, Assyrian, Assyro-Chaldean and Turkish Refugees, submitted to the Council on June 12, 1929, LN Doc. C.210.1929. VII (1929); reprinted in League of Nations, Russian, Armenian, Assyrian, Assyro-Chaldean, and Turkish Refugees: Report to the Tenth Assembly, August 15, 1929, LN Doc. A.23.1929.VII (1929), p. 1.

⁶⁵ Beck, in *International Law*, pp. 83, 87.

⁶⁶ For further details *cf.* Schmahl on Art. 1 A, para. 1, MN 49.

crucial importance because this document, more than any other of the interwar era, served as the basis for the 1951 Convention.

- 32 The idea of drafting a treaty was first introduced in 1927, when Rubinstein, a Russian refugee and noted legal scholar, submitted the idea to the Advisory Committee of Private Organisations on behalf of a group of Russian organizations. The Advisory Committee subsequently adopted a resolution to this effect, and Dr. Nansen transmitted it to the League of Nations' Assembly. Although Nansen endorsed the proposal, governments did not.⁶⁷ Their meeting from 28 to 30 June 1928 resulted in the Arrangement Relating to the Legal Status of Russian and Armenian Refugees, discussed above, but not in a formal convention.
- 33 Political and administrative changes within the League of Nations in the late 1920s hindered the process of creating a refugee convention. A report of the Inter-Governmental Advisory Commission for Refugees, a special body created by the Council in December 1928 to consider the reorganization of refugee work, reveals the frustrations of those seeking a radical and simple solution to refugee problems. The report calls mass naturalization of refugees an impossibility owing to fundamental contradictions:

On the one hand, naturalization is a privilege which cannot be granted without distinction to every person who requests it and, on the other hand, respect for individual liberty excludes the exertion of pressure on foreigners, even on those without nationality, in order to oblige them to apply for naturalization.⁶⁸

Although the Inter-Governmental Advisory Commission strongly endorsed the need to continue the League of Nations' refugee work for a 10-year period, it fell short of endorsing the need for a convention.⁶⁹ The unexpected death of High Commissioner Nansen in May 1930 brought further uncertainty to the refugee work of the League of Nations, calling into question both the humanitarian and consular nature of its work. The British government, *e.g.*, conceptualized the humanitarian work as being finished within 10 years, but understood that the need for political and juridical protection could continue much longer.⁷⁰ Unable to fully resolve this duality, the League of Nations created the Nansen International Office (NIO) to continue its humanitarian work for refugees, but with the idea that this agency would be liquidated within about 10 years. In addition to its humanitarian work, the NIO had responsibilities for legal protection as well. Under the terms of Art. 3 (d) of the Constitution of the Nansen International Office for Refugees (NIO Constitution), the NIO would 'facilitate, within the limited of its competence, the application... of the arrangements that have been made for the benefit of refugees'.

⁶⁷ Rubinstein, *International Affairs* 15 (1936), pp. 716, 727.

⁶⁸ League of Nations, Report of the Advisory Commission to the High Commissioner for Russian, Armenian, Assyrian, Assyro-Chaldean and Turkish Refugees, Submitted to the Council on June 12, 1929, LN Doc. C.210.1929.VII (1929); reprinted in League of Nations, Russian, Armenian, Assyrian, Assyro-Chaldean, and Turkish Refugees: Report to the Tenth Assembly, August 15, 1929, LN Doc. A.23.1929.VII (1929), p. 1; also found in League of Nations, Réfugiés Russes, Arméniens, Assyriens, Assyro-Chaldéens et Turcs, LNOJ, 1929, Annex 1131, pp. 1077–1080.

⁶⁹ League of Nations, Report of the Advisory Commission to the High Commissioner for Russian, Armenian, Assyrian, Assyro-Chaldean and Turkish Refugees, Submitted to the Council on June 12, 1929, LN Doc. C.210.1929.VII (1929), *cf.* especially paras. 2 and 7.

⁷⁰ League of Nations, Comments of Mrs. Hamilton (BE) of 18 September 1930, LNOJ Special Suppl. No. 90, p. 10.

The successful creation of the NIO did not diminish the belief that refugees would need protection even after the office terminated its work. In August 1931, at its fourth session, the Inter-Governmental Advisory Commission presented the idea of a convention as 'the best means of securing the stability...of refugees on the liquidation of the Office'.⁷¹ In March 1931, this view was further endorsed by the Advisory Committee of Private Organisations, a network that actively promoted greater legal protections for refugees.⁷² The endorsements of these two independent organizations proved to be crucial, in part because of the unique nature of the NIO; representatives of both the Inter-Governmental Advisory Commission and the Advisory Committee of Private Organisations served on the Governing Body of the NIO, giving non-State actors more influence in this forum than in many others.⁷³ Government representatives at the 12th (1931) and 13th (1932) assemblies further requested that the NIO consider preparing a convention.⁷⁴ This joint interest led the Governing Body of the NIO to set up a committee of experts to examine the utility of a convention, and on 22 May 1933, the Council of the League of Nations formally called for the drafting of a refugee convention.⁷⁵ 34

With the Council's endorsement, a drafting conference was held in Geneva on 26 October 1933, and attended by representatives from 15 countries: Austria, Belgium, Bulgaria, China, Czechoslovakia, Egypt, Estonia, Finland, France, Greece, Latvia, Poland, Romania, Switzerland, and Yugoslavia.⁷⁶ Notably absent from the drafting convention was a representative from the United Kingdom as its government felt there were not sufficient numbers of 'Nansen refugees' in the country to justify its participation.⁷⁷ Germany, now under Nazi control, ended what had been active participation in conferences relating to Russian and Armenian refugees. The drafting conference followed a simplified procedure whereby a draft previously prepared by the committee of experts served as the basis for discussion. Using this method, the conference quickly reached agreement on the text within the course of a three-day meeting. At the drafting conference, representatives of States, the League of Nations, and NGOs all exercised leadership roles. Especially important were the three members of the expert committee: Navailles, who became the President of the Conference, and Baron Nolde and Rubinstein, both Russian refugees.⁷⁸ 35

The efforts to create a formal treaty on refugee issues reflected a consensus that political and legal protection needed to continue for an indefinite time, while the humanitarian work, 36

⁷¹ League of Nations NIO, Report of the Governing Body, 16 August 1932, LN Doc A.24.1932 (1932), p. 3.

⁷² *Ibid.*

⁷³ Art. 6 NIO Constitution. The Governing Body included: (1) a President, (2) Chairman, (3) three representatives of the Inter-Governmental Advisory Commission, (4) a member appointed by the Secretary-General of the League of Nations, (5) a member appointed by the Director of the ILO, (6) three members appointed by the Advisory Committee of Private Organisations, (7) two members belonging to private, relief agencies; Chamovitz, 'Two Centuries of Participation: NGOs and International Governance', *MichJIL* 18 (1997), pp. 227–228.

⁷⁴ League of Nations NIO, Report of the Governing Body, 16 August 1932, LN Doc. A.24.1932 (1932), p. 4 and League of Nations NIO, Report of the Governing Body, 30 August 1933, LN Doc. A.19.1933 (1933), p. 3.

⁷⁵ League of Nations NIO, Report of the Governing Body, 20 August 1934, LN Doc. A.12.1934 (1934), p. 3.

⁷⁶ *Ibid.*

⁷⁷ Beck, in *International Law*, pp. 83, 94.

⁷⁸ The committee of experts had three members: M. de Navailles, Deputy Director of Chancelleries and of the Litigation Department, French Ministry of Foreign Affairs and Vice-President of the Governing Body of the NIO and President of the IGAC; Baron Boris Nolde, Technical Advisor to the IGAC and a member of the Council of Former Russian Ambassadors, and Jacques L. Rubinstein, deputy member of the Governing Body of the NIO and a member of prominent Russian organizations. Cf. Beck, in *International Law*, pp. 83, 90–91.

thought of as relief and charity, could be terminated. Renewed emphasis on a convention also sought to compensate for increasing economic and social problems faced by refugees, including unemployment, prohibitions on foreign labourers, and increasing numbers of expulsions. Given the timing of the drafting convention, one might conclude that concerns about refugees from Nazi Germany influenced the treaty provisions but the emerging refugee crisis caused by Germany was not a dominant factor in the formulation of the 1933 Convention, as the treaty strictly applied only to refugees under the protection of the NIO.

II. Analysis of the 1933 Convention

1. Preamble

- 37** The Preamble to the 1933 Convention places the treaty within the broad mission of the League of Nations to ‘promote international co-operation by the maintenance of justice.’⁷⁹ Unlike the 1951 Convention, there is no mention of ‘human rights’⁸⁰ but there is an emphasis on labour rights. The Preamble⁸¹ makes an explicit reference to Art. 23 (a) of the Covenant of the League of Nations, which states that its members:

...will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend,

As the ILO had assumed responsibility for the League of Nations’ refugee work between 1924 and 1929, this reference to Art. 23 was especially appropriate.

- 38** The Preamble to the 1933 Convention also recalls the intergovernmental arrangements of 5 July 1922, 31 May 1924, 12 May 1926, and 30 June 1928.⁸² This places the terms of the 1933 Convention as an extension and fulfilment of these earlier, non-binding legal agreements. It is unclear from the text whether both Arrangements of 30 June 1928 are recalled, but the wording would clearly eliminate the Agreement Concerning the Functions of the Representatives of the League of Nations’ High Commissioner for Refugees of 30 June 1928, signed only by France and Belgium. Another feature of the Preamble to the Covenant of the League of Nations is its explicit acknowledgement of the opinions of the Inter-Governmental Advisory Commission for Refugees and of the Assembly of the League of Nations, especially in regard to its decision to establish a temporary refugee agency, the NIO, under the terms of Art. 24 of the Covenant of the League of Nations. By explicitly mentioning the temporary nature of the NIO, the Preamble to the Covenant of the League of Nations implicitly indicates the need for legal protection beyond that point.

⁷⁹ The Preamble to the Covenant of the League of Nations reads: ‘In order to *promote international co-operation* and to achieve international peace and security, by the acceptance of obligations not to resort to war, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the *maintenance of justice* and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another ...’ (emphasis added).

⁸⁰ Alleweldt, Preamble 1951 Convention, MN 7.

⁸¹ LNTS (1935–36), p. 201, No. 3663, Convention relating to the International Status of Refugees (translation).

⁸² For further details cf. Schmahl on Art. 1 A, para. 1, MN 19. Note: only the French text of the 1933 Convention is authentic, Kálin/Caroni/Heim on Art. 33, para. 1, MN 7.

The Preamble to the 1933 Convention is also noteworthy in that it very clearly states aspirations for refugees, that they 'shall be ensured the enjoyment of civil rights, free and ready access to the courts, security and stability as regards establishment and work, facilities in the exercise of the professions, of industry and of commerce, and in regard to the movement of persons, admission to schools and universities.' This hopeful statement emphasizes the broad applicability of the 1933 Convention to the multiple dimensions of the refugee experience, including their mobility. 39

2. Definition of a Refugee

Article 1 of the 1933 Convention states that it is applicable to 'Russian, Armenian and assimilated refugees, as defined by the Arrangements of 12 May 1926, and 30 June 1928'. Article 1 of the 1933 Convention does not give a new definition of its own, but instead accepts the parameters given in early arrangements, namely that a refugee must belong to a specified group and be one who lacked the diplomatic protection of his home government and had not acquired another nationality.⁸³ Although the delegates from both Czechoslovakia and Poland found existing definitions to be inadequate, the majority of those assembled at the drafting conference disagreed and supported continuation of existing definitions.⁸⁴ The acceptance of these earlier definitions⁸⁵ also reflects the understanding that the 1933 Convention was designed to deal with refugees already under the assistance of the League of Nations, not to aid all refugees, including the thousands of refugees then fleeing Nazi Germany. 40

3. Identity and Travel Provisions

Article 2 of the 1933 Convention summarizes and improves the system of identity and travel certificates undertaken in the earlier arrangements, stating that 'Nansen certificates' should be valid for not less than one year, and that the text on the certificates should authorize both exit and return. Article 2 of the 1933 Convention further stipulates that 'bearers of Nansen certificates which have not expired' should not require additional authorization by consuls on their return. If fully implemented, these clauses would help to promote freedom of movement for refugees. The article also includes a proviso that would assist indigent or economically strained refugees, as the 'Nansen certificates shall, subject to their issue free of charge to indigent persons, be established according to the lowest tariff applied to the visas of foreign passports' in recognition of the economic difficulties faced by many refugees.⁸⁶ 41

4. *Expulsion and Non-Refoulement*

Article 3 of the 1933 Convention gives the first provisions on *non-refoulement* placed in a legally binding treaty on refugees.⁸⁷ It reads: 42

Each of the Contracting Parties undertakes not to remove or keep from its territory by application of police measures, such as expulsions or non-admittance at the frontier

⁸³ Cf. Schmahl on Art. 1 A, para. 1, MN 49 and Einarsen, Drafting History, MN 10, and Zimmermann/Herrmann on Art. 1 A, para. 2, MN 20.

⁸⁴ Hathaway, *ICLQ* 33 (1984), pp. 348, 357.

⁸⁵ Cf. *supra*, MN 15–20 and 19–24.

⁸⁶ Cf. also Vedsted-Hansen on Art. 27, MN 3 and on Art. 28, MN 3.

⁸⁷ Cf. further Kälin/Caroni/Heim on Art. 33, para. 1, MN 6–7. Note: only the French text of the 1933 Convention is authentic.

(refoulement), refugees who have been authorised to reside there regularly, unless the said measures are dictated by reasons of national security or public order.

It undertakes in any case not to refuse entry to refugees at the frontiers of their countries of origin.

It reserves the right to apply such internal measures as it may deem necessary to refugees who, having been expelled for reasons of national security or public order, are unable to leave its territory because they have not received, at their request or through the intervention of institutions dealing with them, the necessary authorisations and visas permitting them to proceed to another country.

- 43** Article 3, sentence 1 of the 1933 Convention limits ‘the causes for expulsion or non-admittance at the frontier (*refoulement*)’ to reasons of ‘national security or public order’ only. This language distinguishes expulsion, usually a formally ordered legal procedure, from *non-refoulement*, or the refusal to admit someone at the frontier. According to Paul Weis, ‘[t]he expulsion of aliens is ... a sovereign right of States,’ but one which has been restricted in multilateral treaties relating to refugees.⁸⁸ While both of the provisions in Art. 3 of the 1933 Convention put some restrictions on the rights of States, they do not go so far as to guarantee an individual’s right to asylum; this remains the prerogative of States.
- 44** Article 3 of the 1933 Convention makes an explicit reference to *refoulement*, but its provisions built on earlier activities of the League of Nations. According to Goodwin-Gill and McAdam, Nansen ‘intervened multiple times to prevent the return of refugees.’⁸⁹ Although the Arrangement Relating to the Legal Status of Russian and Armenian Refugees contained a similar provision, that document was not legally binding. Moreover, it specifically excluded refugees who entered a State in violation of national law. The provision in the 1933 Convention, in contrast, would seem to apply even to those who entered a State without legal documentation.
- 45** Article 3 of the 1933 Convention, however, was not accepted without controversy. Of the eight States that ratified the 1933 Convention, Italy,⁹⁰ Czechoslovakia,⁹¹ and the United Kingdom⁹² made reservations to the article. The United Kingdom, in particular, refused to accept para. 2⁹³ and ‘expressly objected to the principle of non-rejection at the frontier.’⁹⁴

⁸⁸ Weis, *AJIL* 48 (1954), pp. 193, 196–197.

⁸⁹ Goodwin-Gill/McAdam, *Refugee*, p. 242.

⁹⁰ Italy made the reservation that: ‘Art. 3 of the Convention cannot limit the right of the Italian authorities to apply measures of expulsion to refugees for reasons of national security and public order.’ LNTS CLIX, p. 203.

⁹¹ *Ibid.*, p. 201. Czechoslovakia made a reservation on Art. 3, para. 3 that in ‘so far as it limits the power of the national authorities to expel persons who constitute a danger to the safety of the State and public order; nor, of course, do the provisions of Article 3 in any way affect expulsions by order of the courts, or obligations deriving from extradition treaties or from the Czechoslovak laws regarding the extraditions of aliens.’ LNTS CLIX, p. 201.

⁹² On Art. 3, para. 1, the UK made the reservation that its provisions would not apply ‘to refugees who have been admitted to the United Kingdom for a temporary visit or purpose. The term “public order” is deemed to include matters relating to crime and morals.’ Cf. Simpson, *Preliminary Report*, p. 208.

⁹³ *Ibid.*, p. 208.

⁹⁴ Goodwin-Gill/McAdam, *Refugee*, p. 242; Beck suggests that the British might have rejected this clause because they misunderstood the English translation of the 1933 Convention, which was originally drafted in French, to mean that they must not refuse entry to refugees at the frontiers of their country of origin. In its original French version, Art. 3, para. 2 reads: ‘Elle s’engage, dans tous les cas, à ne pas refouler les réfugiés sur les frontières de leur pays d’origine.’ According to Beck: ‘In fact, the word “refouler” does not mean to “refuse entry”, but to return or reconduct, in other words: to send back,’ cf. Beck, in *International Law*, pp. 100–101.

The prominent location of Art. 3 in the 1933 Convention would seem to indicate the importance of preventing expulsion and *refoulement*. In the years immediately prior to the drafting of the 1933 Convention, the topic of *non-refoulement* and protecting refugees from expulsion came up repeatedly in various organs of the League of Nations. In October 1932, e.g., the then president of the NIO, Max Huber, noted that the number of expulsions had increased alarmingly.⁹⁵ Also at the League of Nations' Assembly in 1932, Lord Robert Cecil of the United Kingdom presented a resolution that urged governments not to expel refugees unless they had received permission to enter another country.⁹⁶ The following year, at the 1933 Assembly, the report of the Sixth Committee noted that the practice of expulsion had 'caused great hardship to the refugees concerned, who have, in consequence, often been forced to serve protracted terms of imprisonment' for which they were not responsible.⁹⁷ Curtailing expulsions was also a very high priority for the refugee scholars who drafted the 1933 Convention. For Rubinstein, preventing expulsion was the key to preserving personal security for refugees; he also argued that a general convention 'is indispensable because of the fear felt by certain States' that the abandonment of expulsion practices would make them the 'dumping-ground for the expelled refugees of the entire world'.⁹⁸

5. Juridical Issues

This section of the 1933 Convention includes Art. 4, on the personal status of refugees, Art. 5, on the dissolution of marriages,⁹⁹ and Art. 6, on access to courts of laws.¹⁰⁰ Of these, Arts. 4 and 5 set the standard that personal status of refugees and dissolution of marriages should be 'governed by the law of the country of domicile or, failing such, by the law of their country of residence'.

Articles 4 and 5 both sought to address the problems encountered by refugees, especially those that were stateless. In countries with a common law tradition, the personal status of an individual was governed by his or her country of domicile, meaning 'ordinary and habitual residence'. Some countries in Europe and Latin America, however, applied the law of a person's nationality, and often had no special provisions for stateless people. Articles 4 and 5 seek to correct this, although no definition of domicile and residence is given in the 1933 Convention.¹⁰¹

Neither of these articles solves all of the problems posed by marriage of refugees and non-refugees. Under the legal systems of many European countries in the interwar years, a woman would adopt the nationality of her husband. Consequently, a non-refugee national might become officially stateless upon marriage to a stateless refugee; in some States, however, such as the United Kingdom, the woman was allowed to keep her own nationality.¹⁰²

⁹⁵ League of Nations NIO, Discussion du rapport du Conseil d'administration, LNOJ Special Suppl. No. 109, pp. 16, 17.

⁹⁶ League of Nations, Réfugiés, Arméniens, Assyriens, Assyro-Chaldéens et Turcs: Rapport de la Sixième Commission: Résolution, LNOJ Special Suppl. No. 104, pp. 58–59.

⁹⁷ League of Nations, Russian, Armenian, Assyrian, Assyro-Chaldean and Turkish Refugees: Report of the Sixth Committee to the Assembly, LNOJ Special Suppl. No. 120, Annex 2, pp. 62, 63.

⁹⁸ Rubinstein, *International Affairs* 15 (1936), pp. 716, 723.

⁹⁹ Cf. also Metzger on Art. 12, *passim*.

¹⁰⁰ Cf. also Elberling/Thorburn Stern on Art. 16, *passim*.

¹⁰¹ Weis, *AJIL* 48 (1954), pp. 193, 202–203.

¹⁰² Simpson, *Refugee Problem*, p. 232 and Simpson, *Preliminary Report*, p. 103.

Under the terms of Arts. 4 and 5, only the relevant law to be considered is clarified, not the gender inequality inherent in such laws.

- 50 Article 6 of the 1933 Convention, which provides the important provision that refugees should have ‘free and ready access to the courts of law’ sets the standard that refugees would enjoy ‘the same rights and privileges as nationals’, and also legal assistance and shall be exempt from *cautio judicatum solvi*.¹⁰³ This article addresses one of the most important civil rights for refugees, the right to have access to courts, and tries to ensure that refugees and nationals will be treated by the same standards.

6. Labour Rights, Gender, and Social Welfare Provisions

- 51 Article 7 of the 1933 Convention deals with the very important area of labour rights and sets the standard that ‘restrictions ensuing from the application of laws and regulations for the protection of the national labour market shall not be applied in all their severity to refugees domiciled or regularly resident in the country’. The article does not apply the same standard for refugees and nationals, but it does ask that employment restrictions be ‘automatically suspended’ in special circumstances, including residency of three years or more, marriage to a national of the country of residence, parent to a national of the country of residence, and status as an ‘ex-combatant of the great war’.¹⁰³
- 52 The provisions in Art. 7 of the 1933 Convention further emphasize the linkage between labour rights and refugee rights, foreshadowed in the Preamble to the 1933 Convention. Its drafters also sought to address unemployment among refugees, one of the most significant problems facing refugees in the economic depression of the 1930s when many countries, especially France, enacted labour market discriminations and set percentages on the number of foreign workers allowed in a particular industry.¹⁰⁴ This resulted in job losses for previously employed refugees, and set many onto a cycle of unemployment, followed by possible vagrancy, imprisonment, and even expulsion.
- 53 Of governments ratifying the 1933 Convention, only Czechoslovakia rejected Art. 7 outright¹⁰⁵ but several more governments placed reservations on their acceptance. France, e.g., said that the article would ‘not preclude the application of laws and regulations fixing the proportion of wage-earning foreigners that employers are authorised to employ in France’.¹⁰⁶ Bulgaria did not accept that labour restrictions should be suspended for refugees resident three years or more and for ex-combatants.¹⁰⁷ The United Kingdom stated the article was not ‘applicable to refugees who have been admitted for a temporary visit or purpose’,¹⁰⁸ and Denmark made an unspecified reservation.¹⁰⁹
- 54 Both chapters V and VI are concerned with the social rights of refugees and set the standard that a government should give refugees ‘the most favourable treatment that it accords to the nationals of a foreign country’.¹¹⁰ Under Art. 8 of the 1933 Convention, ‘refugees who may

¹⁰³ For a criticism of this, see White, *Comparativ* 27 (2017), p. 31.

¹⁰⁴ Simpson, *Refugee Problem*, p. 116.

¹⁰⁵ LNTS CLIX, p. 201.

¹⁰⁶ *Ibid.*, p. 217.

¹⁰⁷ *Ibid.*, p. 215.

¹⁰⁸ Simpson, *Preliminary Report*, p. 212 and Beck, in *International Law*, pp. 83, 100.

¹⁰⁹ LNTS CLIX, p. 203.

¹¹⁰ Cf. for this standard of treatment, Teichmann on Art. 15, MN 51–55.

be victims of industrial accidents' would benefit from this standard.¹¹¹ The terms of Art. 9 of the 1933 Convention apply the standard to matters of 'relief and assistance', including 'medical attendance and hospital treatment' for needy refugees, including the 'unemployed, persons suffering from physical or mental disease, aged persons or infirm persons incapable of earning a livelihood, children for whose upkeep no adequate provision is made, ... pregnant women, women in childbed or nursing mothers'.¹¹² By Art. 10 governments would apply 'social insurance laws' on this same basis¹¹³ and under Art. 11 allow 'the setting up of associations for mutual relief and assistance'.¹¹⁴

The content of Arts. 9 and 10 of the 1933 Convention demonstrates the concerns of the drafters with the social welfare needs of refugees, both male and female. Specific references to unemployed, ill, infirm, or aged refugees reflect a pattern of sustained interest about these issues in discussions of the League of Nations' Assembly and in the official reports of the refugee agencies of the League of Nations.¹¹⁵ The specific mention of 'mental disease' also recognizes the intense psychological pressures on refugees generating from their experiences of flight and exile. Article 9 of the 1933 Convention also shows an awareness of gender that is lacking in other parts of the document, and it categorizes women refugees as a vulnerable group, in the role they exercise as mothers.

The social welfare provisions of the 1933 Convention had widespread acceptance among governments. Only Belgium, which refused to accept Art. 10 on social insurance laws, rejected any of the articles outright.¹¹⁶ Although Bulgaria¹¹⁷ and Czechoslovakia¹¹⁸ did place reservations, other countries fully accepted the articles.

Article 12 of the 1933 Convention states that:

Refugees shall enjoy in the schools, courses, faculties and universities of each of the Contracting Parties treatment as favourable as other foreigners in general. They shall benefit in particular to the same extent as the latter by the total or partial remission of fees and charges and the award of scholarships.

¹¹¹ Art. 8: 'Each of the Contracting Parties undertakes to accord to refugees who may be victims of industrial accidents in its territory, or to their beneficiaries, the most favourable treatment that it accords to the nationals of a foreign country.'

¹¹² Art. 9: 'Refugees residing in the territory of one of the Contracting Parties: unemployed, persons suffering from physical or mental disease, aged persons or infirm persons incapable of earning a livelihood, children for whose upkeep no adequate provision is made either by their families or by third parties, pregnant women, women in childbed or nursing mothers, shall receive therein the most favourable treatment accorded to nationals of a foreign country, in respect of such relief and assistance as they may require, including medical attendance and hospital treatment.'

¹¹³ Art. 10: 'The Contracting Parties undertake to apply to refugees, as regards the social insurance laws at present in force or which may subsequently be established, the most favourable treatment accorded to the nationals of a foreign country.'

¹¹⁴ Art. 11: 'Refugees shall enjoy in the territory of each of the Contracting Parties, as regards the setting up of associations for mutual relief and assistance and admission to the said associations, the most favourable treatment accorded to the nationals of a foreign country.'

¹¹⁵ Cf. e.g. the comments of the Bulgarian delegate on the case of *crippled women and children*. League of Nations, Rapport sur la question de l'établissement des réfugiés arméniens dans la République Arménienne, LNOJ Special Suppl. No. 38, pp. 16, 18.

¹¹⁶ Belgium also exempted 'unemployment insurance' from Art. 9. LNTS CLIX, p. 213.

¹¹⁷ Bulgaria made the stipulation that refugees had to be resident in the country to be paid disability and old-age pensions. LNTS CLIX, p. 215.

¹¹⁸ Czechoslovakia stipulated that its acceptance of Arts. 8, 9, 10, and 11 would be applied 'only so far as the laws of the country permit'. LNTS CLIX, p. 203.

While the text of this article does not specifically exclude the admission process, its language would seem to apply only to refugees who had already been admitted to schools or universities. Its specific provisions regarding remission of fees and scholarships call attention to the difficult financial position faced by many refugees seeking to gain an education. This article was accepted without reservation by all parties to the 1933 Convention except one; the United Kingdom maintained that 'owing to the special position of schools and universities in the U.K.' the article could not be accepted.¹¹⁹

7. Taxation and Reciprocity

- 58** Article 13 of the 1933 Convention concerns the imposition of duties, charges, and taxes—excepting the dues for the Nansen stamp system—on refugees and stipulates that these not be 'other or higher than those which are or may be levied on their nationals in similar situations'.¹²⁰ With the exception of Bulgaria, states accepted this provision, which shares with Art. 6 of the 1933 Convention, the standard of equality between refugees and nationals.¹²¹

- 59** Article 14 of the 1933 Convention states that 'the enjoyment of certain rights and the benefit of certain favours accorded to foreigners subject to reciprocity shall not be refused to refugees in the absence of reciprocity'. Although relatively brief, this article was of key importance to the drafters of the 1933 Convention because it sought to address one of the most important disabilities faced by refugees. In countries following the Napoleonic code, including France and Poland, typically foreign nationals would be treated on the basis of reciprocity. This requirement meant that refugees without nationality could be deprived of important rights, including the right to inherit, to appear in court, to be a trustee, to acquire a patent, and to receive employment accident compensation.¹²²

- 60** Although France accepted Art. 14 of the 1933 Convention without reservation, Belgium, Czechoslovakia, Egypt, and the United Kingdom rejected it completely and Norway and Denmark made reservations.¹²³

8. Committees for Refugees

- 61** Article 15 of the 1933 Convention gives each contracting party the right to 'organise in its territory a central committee for refugees' which could play a role finding employment and arranging assistance for refugees. Moreover, they could collect the Nansen stamp duty and 'be entrusted with the powers enumerated in Article I of the Arrangement and Agreements of 30 June 1928' if these powers were not already excised by representatives of the Secretary-General. France made a reservation on the article relating to the authority of such committees concerning employment,¹²⁴ while Bulgaria and Czechoslovakia¹²⁵ both refused to accept its provisions, probably because they duplicated existing systems. In Czechoslovakia,

¹¹⁹ Simpson, *Preliminary Report*, p. 216 and Beck, in *International Law*, pp. 83, 100.

¹²⁰ Art. 13 further states that: 'Nothing in the foregoing provisions shall affect the application of the Nansen stamp system or the stipulations of the laws and regulations concerning charges in respect of the issue to foreigners of administrative documents and the extension of the validity of such documents.'

¹²¹ LNTS CLIX, p. 215.

¹²² Rubinstein, *International Affairs* 15 (1936), pp. 716, 726; cf. further Skordas/Ineli-Ciger on Art. 7, *passim*.

¹²³ LNTS CLIX, pp. 201, 203, 213, 215, 217 and Simpson, *Preliminary Report*, p. 218.

¹²⁴ LNTS CLIX, p. 217. The French reservation stipulated that: 'The organisation, in France, of committees such as are provided for in Article 15 shall not, if it takes place, confer on them powers incompatible with the existing laws in the matter of finding employment.'

¹²⁵ LNTS CLIX, pp. 201, 215.

e.g., the Red Cross, headed by Dr. Alice Masaryk, collected and distributed funds from Nansen stamps and a private, voluntary organization, The Union of Russian Organisations for Social Aid, dealt with matters of charity and relief.¹²⁶

9. General Provisions and Entry into Force

Articles 16 to 23 concern the application and entry into force of the 1933 Convention, stipulating earlier arrangements would remain in force (Art. 16), that the treaty would come into force 30 days after ratification or accession of at least two members or non-members of the League of Nations (Art. 20), terms by which it could be denounced (Art. 21).

The scope of the 1933 Convention was further limited by Art. 22 which allowed the parties to exclude their colonies, mandates, or overseas territories. In accepting the 1933 Convention, Belgium,¹²⁷ Denmark,¹²⁸ France,¹²⁹ and Italy¹³⁰ all refused to assume any obligations with respect to their colonies.

The 1933 Convention concludes with Art. 23, which allows the contracting parties a wide scope to limit their commitments to refugees. Under its terms, governments could declare that their signature or accession did not apply to certain chapters, articles, or paragraphs, and to submit any reservations. Only Chapter XI, General Provisions, was to be accepted without qualifications.

III. Ratifications and Impact of the 1933 Convention

Following the rules set forth in Art. 20, the 1933 Convention, signed at Geneva on 28 October 1933, came fully into force on 13 June 1935, following the ratification of Bulgaria¹³¹ and the accession of Czechoslovakia.¹³² By the beginning of the Second World War, a total of eight countries had accepted the 1933 Convention, including Norway,¹³³ Denmark,¹³⁴ Italy,¹³⁵ the United Kingdom,¹³⁶ France,¹³⁷ and Belgium.¹³⁸ One additional country, Egypt, signed but never ratified the 1933 Convention. In addition to the formal acceptances, eight further States—Estonia, Finland, Greece, Iraq, Latvia, Sweden, Switzerland, and the United States—reported that they applied its provisions in practice.¹³⁹

Governments limited their acceptances of the 1933 Convention with many reservations, in part because of the liberal provisions of Art. 23. Some of the most important articles of

¹²⁶ Simpson, *Preliminary Report*, pp. 132–133.

¹²⁷ LNTS CLIX, p. 213. Belgium refused to accept any obligation to the colony of the Congo or the mandated territories of Ruanda-Urundi.

¹²⁸ LNTS CLIX, p. 203. Denmark excluded Greenland.

¹²⁹ LNTS CLIX, p. 217. France excluded the whole of its imperial holdings.

¹³⁰ LNTS CLIX, p. 203. Italy excluded all its colonies and possessions.

¹³¹ Bulgaria, ratification of 19 December 1934.

¹³² Czechoslovakia, accession of 14 May 1935.

¹³³ Norway, ratification of 26 June 1935.

¹³⁴ Denmark, accession of 21 December 1935.

¹³⁵ Italy, accession of 16 January 1936.

¹³⁶ UK, accession of 28 October 1936.

¹³⁷ France, ratification of 3 November 1936; on 2 December 1942, Vichy France denounced the 1933 Convention.

¹³⁸ Belgium, ratification of 4 August 1937.

¹³⁹ League of Nations NIO, Report of the Governing Body, 20 August 1937, LN Doc. A.21.1937.XII (1937), p. 5.

the 1933 Convention, including Art. 3 on expulsion and *non-refoulement*, Art. 7 on labour rights, and Art. 14 on reciprocity, received the most reservations. While it is true that the acceptance of the 1933 Convention was not as high as it might have been and the number of reservations not as low, the 1933 Convention still had considerable impact.

- 67 The 1933 Convention set important standards on the treatment of refugees *vis-à-vis* other foreign nationals and nationals. In all cases, the standard set was either that refugees should be treated the same as nationals, as in the case of access to courts, or given the most favourable treatment afforded to foreign nationals. Writing in 1938, Louise Holborn argues that the 1933 Convention represented a 'new stage in the efforts to achieve an international legal status for refugees by putting forward a set of rules governing important aspects of the refugee problem'. She notes that 'although provisions in regard to expulsion, employment, and education did not go far enough to solve the problem of the legal status of refugees, the Convention provided a great improvement'.¹⁴⁰
- 68 The provisions of the 1933 Convention provided more than a normative framework for State behaviour. Particularly in the area of social welfare, governments moved to improve their services to refugees. In France, *e.g.*, after Leon Blum's Popular Front government accepted the 1933 Convention, a major effort was made to implement Arts. 8 to 12, so that refugees might enjoy better medical assistance, unemployment insurance, and old-age pensions.¹⁴¹ In Belgium, the United Kingdom, Bulgaria, Italy, Norway, and Denmark, acceptance of the 1933 Convention put social services already being provided to refugees on firmer ground.¹⁴² The 1933 Convention's influence on labour laws and practices was more limited, although some governments did adopt more lenient policies. Bulgaria, *e.g.*, exempted Russian refugees from its Law on the Encouragement of National Industries.¹⁴³
- 69 On the important issue of expulsion, the treaty helped to create a norm of *non-refoulement*. Although police practices did not change dramatically as a result of the 1933 Convention, a number of countries, including France, Belgium, and Sweden did change their laws to make them more favourable to refugees.¹⁴⁴ In Belgium, *e.g.*, a Royal Decree of 20 February 1936, gave refugees under expulsion orders the right to appear before a commission in order to explain their case.¹⁴⁵ Also of importance, the very existence of the 1933 Convention strengthened the NIO's ability to intervene on behalf of refugees. In 1936, *e.g.*, Michael Hansson, then head of the NIO, reported that the NIO had intervened in 1,779 cases of unwarranted expulsion.¹⁴⁶ Thus, while the 1933 Convention itself does not assign an international body the role of enforcing Art. 3, it did provide the refugee agencies of the League of Nations with an enhanced legal basis for their actions.

¹⁴⁰ Holborn, *AJIL* 32 (1938), pp. 680, 690.

¹⁴¹ Skran, *Interwar Refugees*, p. 129.

¹⁴² Simpson, *Refugee Problem*, pp. 285–288.

¹⁴³ League of Nations NIO, Report of the Governing Body, 29 August 1935, LN Doc. A.22.1935.XII (1935), pp. 16–17.

¹⁴⁴ A French circular of 10 November 1935 modified an 1849 law and a decree of 30 October 1935; a Swedish law of 11 June 1937 gave refugees under expulsion orders the right to appear before an impartial tribunal. *Cf.* Simpson, *Preliminary Report*, pp. 106–107.

¹⁴⁵ League of Nations NIO, Special Report, submitted to the Seventeenth Assembly of the League of Nations by M. Michael Hansson, Acting President of the Governing Body, 7 September 1936, LN Doc. A.27.1936.XII (1936), p. 10.

¹⁴⁶ *Ibid.*

The biggest shortcoming of the 1933 Convention concerns not its provisions and impact but rather its limited scope. Although an action of the League of Nations' Council later allowed for refugees from the Saar to be considered Nansen refugees, and France unilaterally extended the provisions of the 1933 Convention to Spanish Republicans,¹⁴⁷ other refugee groups of the interwar period remained outside its bounds, most notably the thousands of Jewish refugees in flight from Nazi Germany after 1933. 70

D. The 1938 Convention

I. Legal Treatment of German Refugees

From 1933 until the outbreak of war in 1939, about 400,000 refugees fled the Third Reich; over 80 per cent of them were Jews.¹⁴⁸ Rather than being brought under the umbrella that covered Nansen refugees, these refugees were given a separate legal regime, largely because of the unwillingness of governments to fully extend protection to them. When the issue of Nazi refugees first came up at the Assembly of the League of Nations in October 1933, members refused to officially help them. Even though the Dutch delegation proposed to treat assistance as a 'purely technical matter', a plan to aid the refugees failed.¹⁴⁹ The League of Nations did eventually endorse the creation of a High Commissioner for Refugees (Jewish and Other) coming from Germany, but it declined to give this office financial support or combine its work with that of the NIO.¹⁵⁰ 71

In October 1933, the Council appointed James G. McDonald, a distinguished American foreign policy expert, as the first High Commissioner for Refugees coming from Germany. Through his activities as High Commissioner, McDonald helped to organize the work of private organizations and facilitated the emigration of about two-thirds of the 80,000 refugees who fled between 1933 and 1935. Without official government backing, however, very little progress was made in the area of improving the legal standing of refugees or protecting their rights via representatives.¹⁵¹ In December 1935, McDonald resigned his position publicly, in the hope of highlighting the persecution of Jews as a result of the application of the Nuremberg Laws. McDonald's plea, that the League of Nations and other actors move to prevent what he called 'the current and impending tragedies',¹⁵² produced little in what has been called an 'honorable failure'.¹⁵³ The League of Nations' Council did, however, accept the more modest recommendation of a special committee on refugee assistance that steps 72

¹⁴⁷ Weis, *AJIL* 48 (1954), pp. 193, 202; for further details *cf.* Schmahl on Art. 1 A, para. 1, MN 50.

¹⁴⁸ League of Nations, Supplementary Report, Submitted to the Twentieth Ordinary Session of the Assembly of the League of Nations by Sir Herbert Emerson, High Commissioner for Refugees, 20 October 1939, LN Doc. A.18(a).1939.XII (1939), p. 2.

¹⁴⁹ League of Nations, Aide aux réfugiés venant de l'Allemagne: Examen de la proposition de la délégation des Pays-Bas: Constitution d'un Sous-Comité, LNOJ Special Suppl. No. 117, pp. 22–25.

¹⁵⁰ For further details *cf.* Schmahl on Art. 1 A, para. 1, MN 51.

¹⁵¹ Skran, *supra*, fn. 8, pp. 277, 289–294; Bentwich, *The Refugees from Germany, April 1933 to Dec. 1935* (1936), *passim*.

¹⁵² McDonald, Letter of Resignation... Addressed to the Secretary-General of the League of Nations with an Annex, December 1935, LN Doc. C.13.M.12 (1936).

¹⁵³ Penkower, 'Honorable Failures Against Nazi Germany: McDonald's Letter of Resignation and the Petition in its Support', *MJ* 30 (2010), pp. 247–298.

be taken to provide refugees from Germany with juridical status, possibly by appointing a High Commissioner.¹⁵⁴

- 73** In February 1936, the Council appointed Sir Neill Malcolm, a retired British civil servant, as the High Commissioner for Refugees coming from Germany and gave him the primary task of ‘arranging a system of legal protection for refugees coming from Germany’. The Council declined to expand his mandate further and stipulated that the action of the High Commissioner ‘should be confined to persons having left their country of origin’, thus avoiding any direct challenge to German sovereignty.¹⁵⁵ Although Malcolm officially took up his post in February 1936, he did not immediately move to improve the legal position of refugees under his mandate. In his first report to the Assembly of the League of Nations, he estimated that 115,000 refugees had left Germany, including 100,000 Jews and 15,000 Catholics and Protestants, but that of these only about 15,000 were left in a ‘precarious situation’ and in need of assistance. Malcolm expected new refugees, but only about 200 per month or just over 2,400 a year, and he anticipated that the combined efforts of private organizations and his office would be able to place all refugees in new situations.¹⁵⁶ Thus, in the summer of 1936 when the Provisional Arrangement Concerning the Status of Refugees Coming from Germany (1936 Provisional Arrangement) was drafted, the German exodus was considered to be a serious yet manageable problem.

II. Provisional Arrangement Concerning the Status of Refugees Coming from Germany of 4 July 1936

- 74** On 2 July 1936, High Commissioner Malcolm convened an international conference to discuss the legal status of refugees from Germany. Fifteen countries, namely Belgium, the United Kingdom, Czechoslovakia, Denmark, Ecuador, France, Ireland, Latvia, the Netherlands, Norway, Poland, Romania, Sweden, Switzerland, and Uruguay, sent representatives and the United States and Finland sent observers.¹⁵⁷ Though more limited in scope and application, key elements of the Nansen passport system and the 1933 Convention were incorporated into the 1936 Provisional Arrangement.

1. Definitions

- 75** Article 1 of the 1936 Provisional Arrangement offers the following definition of a ‘refugee coming from Germany’:

...the term ‘refugee coming from Germany’ shall be deemed to apply to any person who was settled in that country, who does not possess any nationality other than German nationality, and in respect of whom it is established in law or in fact he or she does not enjoy the protection of the Government of the Reich.

¹⁵⁴ League of Nations Committee on International Assistance to Refugees, Report by the Committee Submitted to the Council of the League of Nations, 3 January 1936, LN Doc. C.2.M.2.1936.XII (1936).

¹⁵⁵ League of Nations, Report Submitted to the Seventeenth Ordinary Session of the Assembly of the League of Nations by the High Commissioner, Sir Neill Malcolm, 1 September 1936, LN Doc. A.19.1936.XII (1936), p. 2.

¹⁵⁶ *Ibid.*, p. 3.

¹⁵⁷ *Ibid.*, p. 4.

The above definition adopts the requirement found in other legal documents of the interwar years that a refugee is someone who lacks the protection of his or her home government. In this case, the definition did not apply to denationalized or stateless refugees, as the definition requires that the refugees do 'not possess any nationality other than German nationality'.¹⁵⁸ The somewhat awkward phrase, 'refugees coming from Germany' served as a blanket term to cover those in flight from Nazi Germany, including German Jews and non-Jewish socialist and communist political opponents of the regime. By the refusal to cover both groups under the term 'German', this language, to some extent, accepts the Nazi contention, enshrined in the Nuremberg Laws, that Jews should not be considered to be German citizens. The definition contained in Art. 1 did not require that the refugees be outside Germany's territorial borders, but this would seem to be implied by the provisions of Art. 2, discussed below.

2. Travel and Identity Certificates

Articles 2 and 3 of the 1936 Provisional Arrangement outline the parameters of what was to be a 'Nansen passport system' for refugees from Germany. Under Art. 2, the contracting governments were to issue identity certificates to refugees subject to these conditions: the issue should not violate any national laws on the supervision of foreigners within the country; the certificates would generally be valid for one year; the government would have the right to renew the certificate; special consuls could extend the validity of the certificates for a period of up to six months; they would be made out in French and the language of the issuing country; children under the age of 16 would be included on the certificates of their parents. In addition, Art. 2 contains the provision that the cost of the certificates should 'not exceed the lowest tariff applied to national passports' and that they be given to destitute persons at no charge. Article 3 includes a similar provision on the costs of visas. Article 2 also envisions that refugees whose presence was 'irregular' when the 1936 Provisional Arrangement came into force would still be eligible for the issue of certificates within a certain time period. This important provision recognized the sometime irregular nature of refugee flight. Article 3 adds an additional measure recommending again restrictions on internal freedom of movement.

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3. *Expulsion and Non-Refoulement*

Article 4 of the 1936 Provisional Arrangement concerns the important topic of expulsion and *non-refoulement*. While the provisions are weaker than those in the 1933 Convention, they do place some limitations on the rights of governments to expel refugees. Article 4, para. 1 stipulates that in all cases, if a refugee is required to leave, she or 'he shall be granted a suitable period to make the necessary arrangements'. For those refugees who have been given authorization to live in a country, Art. 4, para. 2 says that they should not be expelled unless required by 'national security or public order'. Article 4, para. 3 includes the important qualification that even when expulsion or return at the frontier is warranted by reasons of national security or public order, 'refugees shall not be sent back across the frontier of the Reich unless they have been warned and have refused to make the arrangements

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¹⁵⁸ Holborn, *AJIL* 32 (1938), pp. 680, 695.

necessary to proceed to another country'. In the case of a refugee being unable to make such arrangements, the 1936 Provisional Arrangement is silent on their fate.

4. Legal Status

- 78** The provisions of Art. 5, on the personal status of refugees, Art. 6, on rights acquired under national law, and Art. 7, on rights related to courts, substantially follow the standards set out in the 1933 Convention.

5. Application and Impact

- 79** Under the terms of Art. 10, the 1936 Provisional Arrangement comes into force 30 days after the deposition with the Secretary-General of two signatures. Article 11 specifies that the 1936 Provisional Arrangement could be denounced at any time, and Art. 12 makes possible the exclusion of overseas territories and colonies. Underscoring the temporary nature of the 1936 Provisional Arrangement, Art. 14 allows governments to place reservations on any portion of the document and to make additional reservations at a later date.
- 80** Only six governments—those of Belgium, Denmark, France, the Netherlands, Norway, and Switzerland—signed the 1936 Provisional Arrangement, which came into force on 4 August 1936.¹⁵⁹ The United Kingdom later accepted the 1936 Provisional Arrangement as well, bringing the total number of adherents to seven.¹⁶⁰ Although the terms of the 1936 Provisional Arrangement represented an official recognition of the need for legal protection of refugees from Germany, the small number of signatories and the weak provisions of the document limited its relevance to those in flight from Germany. One of the most important deficits of the 1936 Provisional Arrangement was its lack of applicability to stateless refugees. Unlike the 1933 Convention, the 1936 Provisional Arrangement did not include clauses on employment, reciprocity, and social welfare. The exclusion of these areas, especially the controversial issue of refugee employment, left a significant gap in the legal framework for refugees from Germany.

III. Analysis of the 1938 Convention

- 81** The 1936 Provisional Arrangement was never meant to be a permanent legal document, as its title indicates. Governments took advantage of a period of relative calm from the autumn of 1937 to January 1938 to develop a more permanent legal framework for refugees from Germany. In his report to the League of Nations' Assembly in September 1937, High Commissioner Malcolm estimated that there were not more than 35,000 refugees in countries in and around Germany, largely because of departures for overseas countries and Palestine.¹⁶¹ A survey of refugees undertaken by Sir John Hope Simpson under the auspices of the Royal Institute of International Affairs estimated that there were 165,000 refugees from Germany at the end of 1937; Simpson's assessment of the refugee problem was that

¹⁵⁹ League of Nations, Report Submitted to the Seventeenth Ordinary Session of the Assembly of the League of Nations by the High Commissioner, Sir Neill Malcolm, 1 September 1936, LN Doc. A.19.1936.XII (1936), p. 4.

¹⁶⁰ League of Nations, Report Submitted to the Eighteenth Ordinary Session of the Assembly of the League of Nations by the High Commissioner, Sir Neill Malcolm, 1 September 1937, LN Doc. A.17.1937.XII (1937), p. 2.

¹⁶¹ *Ibid.*

‘though intractable, [it] could be solved by concerted efforts and the best use of existing institutions.’¹⁶² A typical refugee at this time experienced up to a 50 per cent capital loss because of exit taxes and other policies designed to extract wealth from Jews attempting to leave Germany.¹⁶³ It was within this climate that representatives from 14 States¹⁶⁴ and three observers¹⁶⁵ met at Geneva from 7 to 10 February 1938, to draft a formal treaty. The conference resulted in the 1938 Convention, which was signed by representatives from seven States: Belgium, Denmark, France, the Netherlands, Norway, Spain, and the United Kingdom.¹⁶⁶

1. Preamble

The opening lines of the 1938 Convention take into account previous measures on behalf of ‘refugees coming from Germany’, especially the 1936 Provisional Arrangement of 4 July 1936. They further note the endorsement of the League of Nations’ Assembly, which at its 18th Assembly in 1937, instructed the High Commissioner for Refugees coming from Germany to convene an intergovernmental conference with the purpose of adopting an international convention for ‘the benefit of refugees coming from Germany’. An additional paragraph calls attention to the need for ‘the making of arrangements for the emigration of those who cannot be absorbed in the countries in which they have taken refuge’. This paragraph is a small indication of the difficulty that many German refugees faced in trying to find a country of asylum. The conclusion of the Preamble essentially repeats the text of the 1933 Convention on the desire for refugees to be able to enjoy civil rights. Although the Preamble does not pay homage to the 1933 Convention, as will be seen below, substantial sections of the two treaties are virtually identical. 82

2. Definition of a Refugee

Article 1, para. 1 of the 1938 Convention defines ‘refugees coming from Germany’ as: 83

- (a) Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or in fact, the protection of the German Government;
 - (b) Stateless persons not covered by previous Conventions or Agreements who have left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German Government.
2. Persons who leave Germany for reasons of purely personal convenience are not included in this definition.

Article 1, para. 1 (a) of this definition substantially repeats the definition given in the 1936 Provisional Arrangement, with this exception: under the earlier definition, a person must have been ‘settled in that country’ and have left it to take refuge in the territory of another State. But, in the 1938 Convention, ‘this condition of settlement is no longer required’ for 84

¹⁶² Simpson, *Refugee Problem*, pp. 515–516.

¹⁶³ Sherman, *Island Refugee: Britain and Refugees from the Third Reich: 1933–1939* (1973), *passim*.

¹⁶⁴ Belgium, the UK, Czechoslovakia, Cuba, Denmark, France, Luxemburg, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, and Switzerland.

¹⁶⁵ Finland, the US, and Yugoslavia.

¹⁶⁶ League of Nations, Report Submitted to the Nineteenth Ordinary Session of the Assembly of the League of Nations by Sir Neill Malcolm, High Commissioner, 22 August 1938, LN Doc. A.25.1938.XII (1938), p. 2.

those with German nationality. Article 1, para. 1 (b) also extends explicit coverage to stateless refugees, provided that they had been settled in Germany. In other words, the definition did not apply to all stateless persons. Although it is not explicitly stated in Art. 1, para. 1 (a) that refugees should be outside German territory, this requirement is implicit in the 1938 Convention as a whole, particularly in Chapter III on travel documents. The additional provision, that those who left Germany for 'reasons of purely personal convenience' were excluded from the definition, differentiates refugees from more ordinary migrants.

3. Identity and Travel

- 85** Article 2 of the 1938 Convention stipulates that 'a refugee shall be entitled to move about freely, to sojourn or reside in the territory to which the present Convention applies, in accordance with the laws and internal regulations applying therein'. This article repeats Art. 3, para. 1 of the 1936 Provisional Arrangement and adds to the terms of the 1933 Convention.
- 86** Under Art. 3 of the 1938 Convention, the high contracting parties agree to issue travel documents to 'refugees coming from Germany and sojourning lawfully in their territory'. Although Chapter III¹⁶⁷ refers to travel documents rather than to identity certificates, the terms are similar to those of the 1936 Provisional Arrangement, with the proviso that the 1938 Convention applies to stateless refugees as well. Like the 1936 Provisional Arrangement, the 1938 Convention has provisions for irregular migrants; Art. 3, para. 1 (b), says that 'as a transitional measure, such travel documents may be issued to refugees not staying lawfully in these territories'.¹⁶⁸ Moreover, Art. 3 (b), (e), and (f) include the notion that the certificate be generally valid for one year, the travel document should be made out in French and the language of the issuing authority, and that children under the age of 16 be included on the travel document of their parent or parents. With regard to fees, Art. 3, para. 2 (g) stipulates that 'the fees charged for the issue of travel documents shall not exceed the lowest scale of charges for national passports'. Moreover, it recommends that indigent refugees receive travel documents free of charge. Article 4 includes additional qualifications, including the one in Art. 4, para. 1 (a) that the travel document 'shall entitle the holder to leave the territory where it has been issued and to return thereto' and another in Art. 4, para. 2 that authorities may 'affix a visa' to the document.

4. *Expulsion and Non-Refoulement*

- 87** Both the 1936 Provisional Arrangement (Art. 4) and the 1938 Convention (Art. 5) limit the practice of expulsion and lend support to a norm of *non-refoulement*.¹⁶⁹ Both documents ask that in a case where a refugee is required to leave the territory of one of the contracting parties, the refugee 'be granted a suitable period to make the necessary arrangements'.¹⁷⁰ In the case of legally resident refugees, expulsion or reconduction should not take place 'unless

¹⁶⁷ For further details cf. Vedsted-Hansen on Art. 28, MN 4–6.

¹⁶⁸ Art. 3, para. 1 (b) of the 1938 Convention reads: 'As a transitional measure, such travel documents may be issued to refugees not staying lawfully in these territories on the date of the coming into force of the present Convention, provided such refugees report themselves to the authorities within the period prescribed by the Government of the High Contracting Party concerned.'

¹⁶⁹ Cf. also Kälin/Caroni/Heim on Art. 33, para. 1, MN 8.

¹⁷⁰ Art. 4 of the 1936 Provisional Arrangement: '1. In every case in which a refugee is required to leave the territory of one of the contracting countries, he shall be granted a suitable period to make the necessary arrangements'; Art. 5, para. 1 of the 1938 Convention: 'In every case in which a refugee is required to leave the territory of one of the High Contracting Parties to which the present Convention applies, he shall be granted a suitable period to make the necessary arrangements.'

such measures are dictated by reasons of national security or public order'.¹⁷¹ In addition, the parties 'undertake not to reconduct refugees to German territory' or the 'frontier of the Reich',¹⁷² subject to a number of qualifications, including that a refugee should not be sent back unless he had been warned and refused to make arrangements to go elsewhere. While the 1936 Provisional Arrangement would seem to allow few exceptions to this rule, the 1938 Convention also includes the phrase 'without just cause' as a possible escape clause for refugees unable to find another country to take them.¹⁷³

5. Refugee Status and Rights

Article 6 on personal status,¹⁷⁴ Art. 7 on rights acquired under national law,¹⁷⁵ and Art. 8¹⁷⁶ on the right to appear before the courts, substantially repeat key provisions of the 1933 Convention. With regard to personal status, however, the 1938 Convention and the 1936 Provisional Arrangement only apply the law of the country of domicile to 'refugees having no nationality'. Those refugees with nationality are to have their personal status 'governed by the rules applicable in the country concerned to foreigners possessing a nationality'. 88

Unlike the 1933 Convention, the 1938 Convention does not have a specific article dealing with the dissolution of refugee marriages.¹⁷⁷ The 1938 Convention, via Art. 7, does affirm that 'rights acquired under the former national law of the refugee shall be respected, subject to compliance with the formalities of the law of their country of domicile, or failing such, of the law of their country of residence'.¹⁷⁸ The examples given of such rights in Art. 7 include rights resulting from marriage and the legal capacity of married women. 89

6. Labour Rights

No provisions in the 1936 Provisional Arrangement deal specifically with labour rights, largely because many governments did not support these measures. Article 9 of the 1938 Convention, however, asks that restrictions for the 'protection of the national labour market shall not be applied in all their severity' on refugees and that they be suspended altogether in these three special cases: 90

- (a) The refugee has been resident for not less than three years in the country;

¹⁷¹ Art. 5, para. 2 of the 1938 Convention: 'Without prejudice to the measures which may be taken within any territory, refugees who have been authorised to reside therein may not be subjected by the authorities to measures of *expulsion or reconduction* unless such measures are dictated by reasons of national security or public order.' (emphasis added); Art. 4, para. 2 of the 1936 Provisional Arrangement: 'Without prejudice to the measures which may be taken within the country, refugees who have been authorised to reside in a country may not be subjected by the authorities of that country to measures of *expulsion or be sent back across the frontier* unless such measures are dictated by reasons of national security or public order.' (emphasis added).

¹⁷² Art. 5, para. 3 of the 1938 Convention: 'The High Contracting Parties undertake not to reconduct refugees to *Germany territory...*' (emphasis added); Art. 4, para. 3 of the 1936 Provisional Arrangement: 'Even in this last-mentioned case the Governments undertake that refugees shall not be sent back across the *frontier of the Reich...*' (emphasis added).

¹⁷³ Art. 5, para. 3 of the 1938 Convention: 'The High Contracting Parties undertake not to reconduct refugees to Germany territory unless they have been warned and have refused, *without just cause*, to make the necessary arrangements to proceed to another territory or to take advantage of the arrangements made for them with that object.' (emphasis added).

¹⁷⁴ Art. 4 of the 1936 Provisional Arrangement.

¹⁷⁵ *Ibid.*

¹⁷⁶ Art. 7 of the 1936 Provisional Arrangement.

¹⁷⁷ Art. 5 of the 1933 Convention.

¹⁷⁸ Weis, *AJIL* 48 (1954), pp. 193, 203.

- (b) The refugee is married to a person possessing the nationality of the country of residence;
- (c) The refugee has one or more children possessing the nationality of the country of residence.

7. Social Welfare

- 91** Chapters VII, VIII, and IX reproduce the terms of the 1933 Convention on the same topics. In all cases, the standard set for the treatment of refugees is that refugees should be given 'the most favourable treatment accorded to the nationals of a foreign country'.
- 92** Article 15 of the 1938 Convention introduces concern for the professional training of refugees and links this concern to the possibility of emigration:

With a view to facilitating the emigration of refugees to oversea [*sic*] countries, every facility shall be granted to the refugees and to the organizations which deal with them for the establishment of schools for professional re-adaption and technical training.

- 93** Article 15 of the 1938 Convention reflects the hopes of the drafters, highlighted in the Preamble, that the convention might facilitate the emigration of refugees. The majority of refugees from Nazi Germany came from middle and upper class urban backgrounds, including doctors, lawyers, academics, and other professionals. A significant part of the work of High Commissioner McDonald's office was the assistance of professional, especially academic, refugees. At the time, these refugees were deemed to have special problems in migrating and to be unsuitable for group settlement to rural areas. Hence, governments saw the retraining of refugees as an important way to overcome obstacles to emigration.¹⁷⁹

8. Other Provisions

- 94** Article 16 (taxation) and Art. 17 (exemption from reciprocity) repeat provisions of the 1933 Convention.
- 95** Although similar in many respects to the 1933 Convention and the 1936 Provisional Arrangement, the terms on general provisions that governed the 1938 Convention reflected very limited commitments to refugee assistance. In creating the treaty, governments wanted the convention to reflect a 'greater measure of elasticity' than that shown in earlier documents.¹⁸⁰ In contrast to the 1933 Convention, which by Art. 21 prohibits denunciation for five years, Art. 23 permits the 1938 Convention to be denounced at any time, although this would not take effect until one year after the notice was given; an earlier draft had set the period at six months.¹⁸¹ By Art. 25, parties had the option to accept the treaty in stages, allowing them to indicate whether their 'signature, ratification, accession or declaration applied to the whole of the provisions of Chapters I, II, III, IV, V, and XIII' or to the 1938 'Convention in its entirety'. Article 25, para. 3 also permits the parties to make reservations on any article.

¹⁷⁹ Bentwich, *The Rescue and Achievement of Refugee Scholars: The Story of Displaced Scholars and Scientists, 1933–1952* (1953), *passim*; Bentwich, *They Found Refuge* (1956), *passim*.

¹⁸⁰ League of Nations, Report Submitted to the Eighteenth Ordinary Session of the Assembly of the League of Nations by the High Commissioner, Sir Neill Malcolm, 1 September 1937, LN Doc. A.17.1937.XII (1937), p. 3.

¹⁸¹ *Ibid.*

IV. Impact of the 1938 Convention

The 1938 Convention had seven signatories—Belgium, Denmark, France, the Netherlands, Norway, Spain, and the United Kingdom—but was ratified by only two. Under the terms of Art. 22, it came into force with the ratifications of Belgium and the United Kingdom. Both Britain and Belgium made a number of reservations and refused to fully extend labour rights, under Art. 9, or reciprocity, under Art. 17, or the applicability of the treaty to their colonies. Britain made a further qualification on Art. 5, stipulating that the term ‘public order’ would ‘include matters relating to crime and morals.’¹⁸² No additional governments ratified the treaty before the outbreak of the Second World War in 1939. 96

Though similar in text, content, and style, the impact of the 1938 Convention was far less than that of the 1933 Convention. Neither legal framework in any way guaranteed refugees a place of asylum, but in the case of Russian and other Nansen refugees, the refugees had already been given asylum before the legal arrangements were made. The signature problem for the Jewish refugees fleeing Nazi Germany was their inability to find a country of asylum. Without political will, the impact of the guarantees of personal status in the 1938 Convention was greatly reduced. 97

The difficulties that refugees faced in finding asylum greatly increased in 1938 and 1939 due to harsher application of Nazi policies. Following the *Anschluss* with Austria in March 1938, the plight of thousands of Austrian Jews who faced closed borders attracted international attention. In an attempt to deal with this new mass exodus, US President Roosevelt called a special conference outside the framework of the League of Nations in July 1938. This conference in Evian resulted in the creation of the Inter-Governmental Committee on Refugees (IGCR), which, unlike the League of Nations’ High Commissioner, had the authority to deal directly with the German government concerning ‘potential’ refugees.¹⁸³ The direct approach of the IGCR overshadowed the juridical methods of the League of Nations and signalled a frustration with legal solutions to refugee problems. In addition, the decision of the IGCR, created as an outgrowth of the Evian conference, to define refugees as those who ‘left their countries of origin (Germany including Austria)’ on account ‘of their political opinions, religious beliefs and racial origin,’ further signalled a new, more individualistic approach to defining refugeehood.¹⁸⁴ 98

One of the greatest controversies about the 1938 Convention concerned the application of Art. 2, on sojourn and residence, and Art. 5, para. 2, on expulsion. After the British government interned enemy aliens in the summer of 1940, critics of the policy accused the government of violating both the letter and spirit of the 1938 Convention as German and Austrian refugees were not excluded. Government apologists, including Sir Herbert Emerson, a former British civil servant and then High Commissioner for Refugees, claimed that its reservation on Art. 5, para. 2 that made it not ‘applicable to refugees who have been admitted 99

¹⁸² LNTS, CXCII, p. 77 and CC, p. 572; cf. also, League of Nations, Convention Concerning the Status of Refugees Coming from Germany, Geneva, February 10th, 1938, LNOJ, Special Suppl. No. 193, pp. 142–143.

¹⁸³ Intergovernmental Committee for Refugees, Proceeding of the Intergovernmental Committee, Evian, July 6th to 15th 1938: Verbatim Record of the Plenary Meetings of the Committee and Resolutions (July 1938); for further details cf. Schmahl on Art. 1 A, para. 1, MN 55.

¹⁸⁴ Hathaway, *ICLQ* 33 (1984), pp. 348, 371.

to the United Kingdom for a temporary visit or purpose' allowed for their policy.¹⁸⁵ The dispute shows part of the lasting impact of the 1938 Convention—that it could be utilized by refugee advocates to protest policies perceived to be unjust to refugees.

E. Legal Legacy of the League of Nations Era

- 100** The legal legacy of the body of refugee law developed in the era of the League of Nations is a complex one that is both simultaneously inadequate and innovative as a foundation for what followed. Criticisms of the legal framework for refugees in the interwar period have centred on issues of definition,¹⁸⁶ scope, and strength. On the issue of definition, post-war legal scholars have faulted the definitions put forward by both the League of Nations and the Institute for International Law¹⁸⁷ for focusing on a lack of diplomatic protection as the key defining element of refugee status. Grahl-Madsen, *e.g.*, writes that a focus on a lack of diplomatic protection as the 'essential criterion of refugeehood is in need of quite some qualification'. To him 'the lack of protection is not relevant unless it is caused by a deep-rooted political controversy between the authorities and the individual'.¹⁸⁸ This view is affirmed by Hathaway and Foster, who write that 'refugee law is thus principally concerned with providing a remedy to a fundamental breakdown in the relationship between an individual and her State'.¹⁸⁹ A related point is made by Jacques Vernant, who emphasizes that a lack of diplomatic protection alone is inadequate if not accompanied by 'persecution or by the threat of persecution . . .'.¹⁹⁰ More recently, Jane McAdam has argued that the concept of persecution was, in fact, understood as part of the interwar definitions: 'although the term "persecution" was not mentioned, it was clearly understood at the time as being implicit in the refugee concept'. McAdam's point is a valid one, as refugee advocates of the interwar years certainly understood the reality of persecution for interwar refugees. However, the language of persecution was not an explicit part of interwar attempts to define refugee status.¹⁹¹
- 101** Another criticism of definitions used in the interwar years is that they applied only to specified groups rather than to individual exiles. These criticisms received political expression when, at the 1935 League of Nations' Assembly, the Norwegian delegation proposed the creation of a single refugee organization that would protect all refugees. This initiative to combine activities for 'Nansen' and German refugees garnered support from numerous private organizations, but failed to change the League of Nations' policy.¹⁹² Writing in 1938, Louise Holborn makes the case for 'a generally accepted legal status for all political refugees' which would include not only the Russian and Armenian refugees, but Italian and Spanish ones as well.¹⁹³

¹⁸⁵ League of Nations, Report Submitted by Sir Herbert Emerson, High Commissioner for Refugees, February 1942, LN Doc. C.25.M.25.1942.XII (1942), pp. 5–6.

¹⁸⁶ For further details *cf.* also Einarsen, *Drafting History*, MN 9.

¹⁸⁷ Art. 2, para. 2 *Statut Juridique des Apatrides et des Réfugiés*, AIDI, vol. II (1936), p. 294.

¹⁸⁸ Grahl-Madsen, *Status*, vol. I, p. 98.

¹⁸⁹ Hathaway/Foster, *Status*, p. 288.

¹⁹⁰ Vernant, *The Refugee in the Post-War World* (1953), p. 6.

¹⁹¹ McAdam, 'Rethinking the Origins of "Persecution" in Refugee Law', *IJRL* 25 (2013), pp. 667–692 (p. 673).

¹⁹² Skran, *Interwar Refugees*, pp. 143–144.

¹⁹³ Holborn, *AJIL* 32 (1938), pp. 680, 702.

A third strand of criticism stresses that provisions in interwar refugee conventions did not go far enough in the direction of protection. Writing in 1951, Paul Weis faults treaties of the interwar years for covering 'only the main elements' of refugee status, having few ratifications, and many reservations. He echoes the evaluation of Jennings who, writing in 1939, called the legal framework 'rudimentary'.¹⁹⁴ Goodwin-Gill and McAdam also find interwar arrangements lacking, as 'limited ratifications of instruments containing equivocal and much qualified provisions effectively prevented the consolidation of a formal principle of *non-refoulement*'.¹⁹⁵ 102

One of the most innovative legacies of the interwar period is the emphasis on the importance of refugee labour and the need to address interlinkages between refugee employment, mobility, legal recognition, and legal travel documents. Although often forgotten, the ILO's successful employment-matching scheme represents a model for refugee settlement that is garnering renewed interest in the restrictionist period of 21st-century resettlement. At the same time, despite its significant impact, the history of the Nansen passport is also one of missed opportunities of extending rights to refugees, as the original draft would have provided refugees with the right to freedom of movement and the right to work; thus the interwar history of refugee rights also illustrate longstanding tensions, such as those surrounding movement and labour, which are still being grappled with today. 103

Almost a century after its creation, the Nansen passport system is still an example of successful innovation that is relevant to the forced migration issues of the 21st century. The Nansen passport has been called 'a significant tool for finding sustainable solutions for refugees and stateless persons in the 20th century' that needs to be built upon. Others have used the Nansen system as a relevant example in discussions about the Model International Mobility Convention (MIMC).¹⁹⁶ 104

Another innovation that derives from the interwar period are the numerous arrangements and conventions, coupled with the activities of the various refugee agencies, which helped to establish refugee assistance and protection as a legitimate function of international organization and law. It must be remembered that international cooperation on transnational issues was in its infancy in the 1920s. The efforts to develop refugee law in the interwar years also helped to establish refugees as a special category of migrant. Both the 1933 and 1938 Conventions set standards for the treatment of refugees and, in some cases, influenced the shape of domestic laws and practices. While their provisions may have not gone far enough, their overall impact was to establish refugees as a special category of migrant deserving attention and help. The 1933 Convention in particular—by highlighting the issues of *non-refoulement*—focused on the most difficult problems that refugees faced. Ultimately, the most important legal legacy of the League of Nations era was providing a foundation for the framers of the 1951 Convention to build upon. 105

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¹⁹⁴ Weis, *AJIL* 48 (1954), pp. 193–221, *passim*; Jennings, *supra*, fn. 40, pp. 98–114, *passim*.

¹⁹⁵ Goodwin-Gill/McAdam, *Refugee*, p. 243.

¹⁹⁶ Aleinikoff, *supra*, fn. 66, *passim*.

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Drafting History of the 1951 Convention and the 1967 Protocol

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A. Introduction

This chapter examines the drafting history of the 1951 Convention and the 1967 Protocol, with emphasis on the development and meaning of the general refugee definition, *cf.* Art. 1 A, para. 2 of the 1951 Convention.¹ The 1967 Protocol is primarily concerned with the question of universality of the general refugee definition, and by implication the universality of refugee protection under international law. The 1951 Convention was the first human rights treaty to be adopted by the UN after the Second World War. It became the second pillar of the international refugee regime then established for the purpose of protection of contemporary and future refugees; the UNHCR created by the GA in 1950 being the first. According to its Preamble, the 1951 Convention is based on the principle that all human beings shall enjoy fundamental rights and freedoms without discrimination. For this reason it was desirable 'to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement'.² It is noteworthy that the 1951 Convention at the time of its adoption was seen as an instrument of burden sharing. Henceforth the Preamble states that 'the grant of asylum may [otherwise] place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognised the international scope and nature cannot therefore be achieved without international co-operation'. Binding obligations upon States were considered a requirement for effective international cooperation as well as more equal commitments and sharing of responsibility with regard to refugee problems.

The 1951 Convention can be viewed as a third party agreement; a treaty whereby the contracting States take on obligations towards each other for the benefit of refugees who are by the same token provided with refugee rights. The treaty rights are of two different kinds: a fundamental right of non-return to persecution directed against any contracting State even at its borders (or beyond, depending on where and how the actual state powers are exercised), *cf.* the *non-refoulement* provision of Art. 33 of the 1951 Convention;³ and enumerated

¹ For the pre-1951 refugee law development *cf.* Skran/Easton-Calabria, Historical Development, *passim*.

² Preamble to the 1951 Convention.

³ *Cf.* further Kälin/Caroni/Heim on Art. 33, para. 1, MN 2, *passim*; Einarsen/Schultz, Global Developments, *passim*.

civil, political, and social rights, some of them only applicable at certain stages of the stay or residence of a person who claims to be a refugee within the territory of a contracting State of refuge, *cf.* Arts. 3 to 32 of the 1951 Convention.⁴ The key in this system of rights is the term ‘refugee’ as defined in Art. 1 of the 1951 Convention. The 1951 Convention does not provide for specific national or international procedures for the determination of whether a person is in fact a ‘refugee’. However, contracting States must apply the 1951 Convention in good faith in accordance with the Vienna Convention on the Law of Treaties (VCLT).⁵ The implication is that States in practice must choose between accepting asylum seekers as refugees and providing fair procedures for the determination of refugee status. The UNHCR is entrusted with competence to oversee the implementation of the 1951 Convention by contracting States and a duty to supervise its application, *cf.* Art. 35 of the 1951 Convention.⁶ In contrast to some other human rights treaties, the 1951 Convention does not provide for international judicial review of individual cases.⁷

- 3 In sum, the obligations undertaken by the contracting States of the 1951 Convention are potentially of a far-reaching nature and this treaty must be considered one of the successes of the early years of the UN. However, the true motives and intentions behind the 1951 Convention have been subject to debate and still influence its interpretation in theory and practice.⁸ An analysis of the drafting history might shed light on just how far-reaching the obligations towards other contracting States and the refugees themselves were meant to be.⁹ The particular drafting history of the 1967 Protocol is analysed in a subsequent section.¹⁰ These two drafting processes can arguably not be properly understood without taking into account also a broader historical, political, and legal context.

B. History of International Refugee Protection

I. Early Authors of International Law

- 4 The tradition of providing ‘asylum’ for victims of persecution has ancient roots and appears in old books and other written materials from the Middle East, Greece, and several other countries. Closer to modern time, well-known incidents of religious and political persecution have taken place in Spain (expulsion of Jews in 1492) and France (persecution of Huguenots in 1685), among other countries. The theoretical founders of modern international law include authors such as Francisco de Vitoria (1480–1546), Francisco Suárez (1548–1617), Hugo Grotius (1583–1645), Samuel Pufendorf (1632–1694), Christian Wolff (1679–1754), and Emerich de Vattel (1717–1767). They were all concerned with the issue of asylum for refugees and seem to agree that the possibility of seeking asylum in another

⁴ *Cf.* Zimmermann/Herrmann on Art. 1, para. 2, MN 73 and 711.

⁵ *Infra*, MN 21. *Cf.* further McAdam/Dunlop, Interpretation, *passim*.

⁶ *Cf.* also Zieck on Art. 35/Art. II, *passim*; *cf.* further McAdam/Dunlop, Interpretation, MN 4 *et seq.*

⁷ *Cf. e.g.* the individual complaints mechanisms established with regard to the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *cf.* further Einarsen/Schultz, Global Developments, MN 27–45. A kind of preliminary ruling procedure might, however, be envisaged under the 1951 Convention, *cf.* Einarsen on Art. 45, MN 47.

⁸ *Cf. infra*, MN 29–30, 67, and 82.

⁹ *Cf. infra*, MN 21–67.

¹⁰ *Cf. infra*, MN 68–78.

country was an important guarantee for freedom. This idea was often linked to the conception that individual freedom had to be secured by humankind as such and through acts of solidarity among nations, regardless of any given division of the world into different societies and States. According to Suárez, the human race constitutes a certain moral and political unity, a fact which should be recognized as inherent in international law.¹¹

The asylum doctrines of Grotius and Pufendorf illustrate an interesting division of a ‘human rights’ versus a discretionary ‘humanitarian’ approach. Grotius, at one point a refugee himself in France, was of the opinion that ‘victims of unmerited persecution’ under certain conditions had a right to asylum and favourable treatment. The ‘inviolable nature of asylums’ was, however, not designed for those ‘who had committed crimes injurious to mankind and destructive to society’. It was also conditioned upon submission to established law and order, and refugees had ‘no right to demand a share in the government’.¹² Pufendorf, on the other hand, held the view that each State is first and foremost an agent for its own interests. The grant of asylum to non-criminal strangers driven from their homes might well be a commendable ‘act of humanity’, but not something the State was obliged to do. Furthermore, Pufendorf did not accept the claim of equal treatment and considered that refugees should keep quiet and be content with what they received.¹³ Consequently, whereas States according to Grotius had to follow common principles of law in their reception of refugees, Pufendorf reduced the notion of asylum to an issue of governmental discretion—where the balance of self-interest and reasonableness had to be struck exclusively by the State itself. Politicians and lawyers have ever since disagreed on which of the two models should be preferred in practice, or how one or the other could be modified.

Wolff is known for having introduced the concept of *civitas maxima*, ‘the world community’, whereby the solidarity of humankind should counterbalance the division of States.¹⁴ He considered that States have a duty to grant asylum as community members, but individuals seeking asylum cannot as such challenge the sovereignty of each State. Inherent in Wolff’s theory, though, is the possibility of binding treaties whereby States accept

¹¹ Suárez, *De Legibus Ac Deo Legislatore* (1612), (Williams, transl., 1944), p. 348: ‘The rational basis, moreover, of this phase of law [law of nations] consists in the fact that the human race, into howsoever many different peoples and kingdoms it may be divided, always preserves a certain unity, not only as species, but also a moral and political unity (as it were) enjoined by the natural precept of mutual love and mercy, a precept which applies to all, even to strangers of every nation.’

¹² Grotius, *De Jure Belli ac Pacis* (1925), (Campbell, transl., 1901), pp. 98–100 and p. 260: ‘Nor ought a permanent residence to be refused to foreigners who, driven away from their own country, seek a place of refuge... To drive away refugees... is acting like barbarians... But then it is only upon condition that they submit to the established laws of the place, and avoid every occasion of exciting tumult and sedition... the inviolable nature of asylums... are designed only for those, who are the victims of unmerited persecution, not for those who have committed crimes injurious to mankind, and destructive to society... foreigners, who have once been admitted, cannot be driven away [in difficult times];... a common evil must be borne by all alike... Yet settlers of this description have no right to demand a share in the government.’

¹³ Pufendorf, *De Jure Naturae et Gentium Libri Octo* (1672), (Scott ed., Oldfather/Oldfather, transl., 1934), pp. 366–367: ‘It belongs, indeed, to humanity to receive a few strangers, who have not been driven from their homes for some crime, especially if they are industrious and wealthy, and will not disturb neither our religious faith nor our institutions... every state may decide after its own custom what privilege should be granted in such a situation... But when these people are worthy of our sympathy, and no other reason stand in the way, it would certainly be an act of humanity on our part to confer a kindness on them, that will not be too onerous on us, or the cause of later regret... Furthermore, since whatever is conferred upon such people we can impute to them as a kindness, it follows that they cannot seize for themselves anything they may want to occupy, as if they had a perfect right to it, or any section of our land that may be unused, but they must be content with what we have assigned to them.’

¹⁴ Cf. García-Mora, *International Law and Asylum as a Human Right* (1956), pp. 34–37.

responsibility towards refugees. Vattel recommended a more clear-cut compromise solution to the problem: neither an absolute right for the individual nor complete discretion for the receiving State when a person has been forced to flee from his country. Vattel concluded that man has a conditioned human right to seek asylum. Only if a State had just reasons, it could reject the claim for asylum from a man driven from his country.¹⁵

II. Traditional Inter-State Law

- 7 For a long time the notion of a right to asylum remained just a theory. During most of the classical inter-State period of international law until 1945, the issue of asylum was considered by governments to concern only the legal relationship between sovereign States. The question was whether one State had a right to grant asylum to a foreigner on its territory, in conflict with the interests of the foreigner's country of nationality ('right of asylum'). A subjective right to asylum for the individual was not recognized.¹⁶ On the other hand, persecuted people before the 20th century often simply moved to new countries or even new continents without many immigration restrictions.¹⁷

III. League of Nations

- 8 In the aftermath of the First World War, Europe experienced refugee flows of unprecedented dimensions. Austria-Hungary and the Ottoman Empire fell, and the Tsar regime in Russia was overthrown. During the interwar period, great numbers of refugees and stateless persons of various national origins formed part of everyday European politics. At the same time many countries adopted passport requirements and other immigration restrictions.¹⁸ The control of State borders became increasingly important. A series of current and potential mass flight situations thus had an impact both on international relations and the issue of refugee protection. In 1926, right between the two wars, it was estimated that nearly 10 million uprooted people were present in Europe alone.¹⁹ The reasons why so many people were forced to leave their homes and countries of origin were mixed. It has for instance been claimed that at least six categories of fleeing Russians could be identified after the Russian revolution. Some of them were related to fear of persecution, specific harm, or general discrimination, whereas others were grounded primarily in economic or personal convenience. A substantial number of military personnel, especially from the White Army, added to the problem.²⁰ The formation of new States in Europe was another factor, where minority groups did not quite fit the prevailing and rather strict doctrines of the 'national' State. In

¹⁵ Cf. de Vattel, *Le Droit des Gens, ou Principes de la Loi Naturelle, Appliqués à la Conduite et aux Affaires des Nations et des Soverains* (1758) (Fenwick, transl., 1916), p. 92: '...since the introduction of private ownership of land can not defeat the right belonging to every human being of not being absolutely deprived of the necessities of life, no Nation may, without good reason, refuse even a perpetual residence to a man who has been driven from his country. But if for definite and just reasons a State is prevented from offering him an asylum, the man has no further right to demand it...'

¹⁶ Cf. among others, Grahl-Madsen, 'Asylum, Territorial' in *EPIL*, vol. 1, pp. 283–287 (pp. 283, 284).

¹⁷ Cf. also Skran/Easton-Calabria, *Historical Development*, MN 2.

¹⁸ *Ibid.* Cf. further Schmahl on Art. 1 A, para. 1, MN 33 *et seq.*

¹⁹ Cf. Zolberg/Suhrke/Aguayo, *Escape*, p. 18.

²⁰ Cf. Simpson, *Refugee Problem*, pp. 83–84.

the 1930s, new groups in society were exposed to persecution, among others by the Franco regime during the civil war in Spain and after the Nazi takeover of Germany. The same occurred in the Soviet Union.²¹

In general, the role of international law was still considered limited with respect to the humanitarian problems at stake.²² Some important work was, however, pursued within the framework of the League of Nations. Fridtjof Nansen was appointed the first High Commissioner for Refugees in 1921. His first missions concerned the Russian and Armenian refugees.²³ A definition of so-called Nansen refugees was developed in 1926, with respect to identity certificates and travelling documents for Russian and Armenian refugees:

The Conference adopts the following definitions of the term 'refugee':

Russian: Any person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of Socialist Soviet Republics and who has not acquired another nationality.

Armenian: Any person of Armenian origin formerly a subject of the Ottoman Empire who does not enjoy or who no longer enjoys the protection of the Government of the Turkish Republic and who has not acquired another nationality.²⁴

The criteria for inclusion were thus a particular national origin, lack of protection by the government in the country of origin, and absence of a new nationality.²⁵ The expression 'any person... who does not enjoy or who no longer enjoys protection' was wide enough to cover different situations, from direct persecution by the government to persecution by other groups in society which the government was not able or willing to protect against. It also included stateless persons who did not necessarily fear physical abuse, but rather discrimination or governmental obstacles to enjoying civil and social rights or the underlying benefits. This method, to tie protection to particular national groups in *ad hoc* instruments as new refugee situations arose, would be characteristic for the League of Nations' approach to the refugee problem throughout its years.²⁶ With this type of definition 'by categories', interpretation was simple, but protection of new groups uncertain.²⁷

In 1928, similar arrangements were made for refugees of Assyrian, Assyro-Chaldean, Syrian, Kurdish, and Turkish origin.²⁸ The first real refugee convention was the 1933

²¹ Cf. e.g. Arendt, *The Origins of Totalitarianism* (1973), pp. 267–290; Burleigh/Wippermann, *The Racial State Germany 1933–1945* (1992), pp. 75–199; McLoughlin/McDermott (eds.), *Stalin's Terror: High Politics and the Mass Repression in the Soviet Union* (2003), pp. 1–240; cf. Schmahl on Art. 1 A, para. 1, MN 4 *et seq.*

²² Cf. Skran/Easton-Calabria, Historical Development, MN 3, who puts more emphasis on the emerging idealistic beliefs that legal norms could shape politics and pragmatic considerations that international legal agreements could assist governments to solve common problems.

²³ Cf. further Skran/Easton-Calabria, Historical Development, MN 5–8 and Schmahl on Art. 1 A, para. 1, MN 33 *et seq.*

²⁴ Provision 2 Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees Supplementing and Amending the Previous Arrangements Dated July 5th 1922, and May 31st 1924 (1926 Arrangement).

²⁵ Cf. Skran/Easton-Calabria, Historical Development, MN 17 *et seq.*; cf. also Schmahl on Art. 1 A, para. 1, MN 36 and 39.

²⁶ Cf. Schmahl on Art. 1 A, para. 1, MN 6.

²⁷ Cf. Skran/Easton-Calabria, Historical Development, MN 100–105.

²⁸ Arrangement Concerning the Extension to Other Categories of Refugees of Certain Measures Taken in Favour of Russian and Armenian Refugees; Arrangement Relating to the Legal Status of Russian and Armenian Refugees. Cf. Skran/Easton-Calabria, Historical Development, MN 20 *et seq.*

Convention.²⁹ It covered the refugee groups as defined in the instruments of 1926 and 1928, but not more recent or future refugee groups.³⁰ Another major weakness was the possibility for each contracting State to make 'such modifications or amplifications as each Contracting Party may introduce in this definition at the moment of signature or accession' (Art. 1 of the 1933 Convention). The 1933 Convention contained binding rules on *non-refoulement* and other refugee rights, but only eight States ratified it, three of which made reservations with regard to *refoulement* and expulsion.³¹

- 11 The greatest failure to act efficiently concerned the modest responses to the persecution of Jews and political opponents in Nazi Germany from 1933 onwards. Already in October 1933, the League of Nations had appointed a High Commissioner for Refugees from Germany, and several legal and humanitarian initiatives were discussed and set forth at the normative and institutional level.³² In 1938, President Roosevelt called for a conference in Evian on the European problem, which now also included persecution of Austrian Jews.³³ The practical results, however, were meagre. A convention concerned with refugees from Germany was adopted, but only Belgium and the United Kingdom were to ratify the resulting 1938 Convention before the Second World War.³⁴ Requirements such as passports and visas were often applied by States in a highly restrictive manner. Especially Jews experienced the *non-entrée* practice after their passports had been stamped with the infamous 'J'.³⁵ The slogan 'never again' after the Second World War was relevant here also, as the bad conscience towards the victims of genocide and persecution eventually found expression among statesmen.

IV. International Refugee Organization

- 12 At least 30 million Europeans were forced to leave their homes during the Second World War.³⁶ By the end of the war, more than 10 million people resided outside their countries of origin and could be considered 'refugees'.³⁷ They belonged to different groups: Jews who had survived the Holocaust; former citizens of the Soviet Union who had been uprooted during the war; forced migrant workers (slave labourers) recruited by the Nazis in occupied States; and a great number of so-called 'Volksdeutsche' from Eastern Europe who had fled westwards when the German Army retreated.³⁸ In addition a varied group of different

²⁹ Cf. further Skran/Easton-Calabria, Historical Development, MN 31–70 and Schmahl on Art. 1 A, para. 1, MN 49.

³⁰ Cf. Skran/Easton-Calabria, Historical Development, MN 39.

³¹ Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/2 (1950), p. 9; cf. also Kälin/Caroni/Heim on Art. 33, para. 1, MN 6–7; Skran/Easton-Calabria, Historical Development, MN 42–46.

³² Cf. Skran/Easton-Calabria, Historical Development, MN 71–99 and Schmahl on Art. 1 A, para. 1, MN 51 *et seq.*

³³ Cf. Skran/Easton-Calabria, Historical Development, MN 98.

³⁴ *Ibid.*, MN 80–98.

³⁵ It has been claimed that the introduction of the 'J'-stamp in Germany was actually a result of a Swiss-Swedish initiative, for the obvious purpose of more efficient border-rejections of Jews, cf. Kjærsum, 'Temporary Protection in Europe in the 1990s', *IJRL* 6 (1994), pp. 444–456 (pp. 444, 448).

³⁶ Zolberg/Suhrke/Aguayo, *Escape*, p. 21.

³⁷ Zolberg/Suhrke/Aguayo, *Escape*, have estimated the number to be around 11 million. Other authors have suggested significantly higher numbers; cf. e.g. Stenberg, *Non-Expulsion*, pp. 48–49.

³⁸ Salomon, 'The Cold War Heritage: UNRRA and the IRO as Predecessors of UNHCR', in *The Uprooted—Forced Migration as International Problem in the Post-War Era* (Rystad ed., 1991), pp. 157–178 (pp. 157, 161).

nationals from Eastern Europe had chosen to flee or emigrate to the West in order to escape the communist regimes. After 1945 new refugee groups were added as well, *e.g.*, from the Greek civil war. Although some people returned on their own initiative or found their way into new communities, many refugees and displaced people needed international assistance and protection.

Different international organizations and agencies dealt with the refugee problem during and immediately after the Second World War.³⁹ However, there was a clear call for a larger and coordinated effort. In the Charter of the United Nations (UN Charter) the principle of 'human rights' had already been expressed,⁴⁰ and in one of its first sessions in 1946 the GA considered that 'the problem of refugees and displaced persons of all categories is one of immediate urgency'.⁴¹ It was decided to start the work on a general convention for the protection of refugees and stateless persons. The international spirit had changed and was significantly more visionary than before. 13

The pressing need to tackle the European refugee problem resulted in the establishment of a new and powerful international refugee organization in December 1946; the International Refugee Organization (IRO). It was treaty-based, with as many as 5,700 employees, and it had a steering committee of governmental representatives. Most of its costs were covered by the United States. Its purpose was to seek voluntary return, integration in the country of refuge, or resettlement in a third country. In practice, the last solution was usually pursued. During the period between July 1947 and March 1952, the IRO assisted more than 1.6 million people.⁴² Maybe as many as 80 per cent of the refugees covered by its mandate actually received assistance and protection.⁴³ Holborn has expressed the view that refugee work had never before 'been planned so carefully, so humanely, and on such a scale'.⁴⁴ Others have been somewhat more inconclusive or critical; with respect to the European State practice of reception of refugees in the same period,⁴⁵ and with respect to the specific ideological content invested in the IRO by the United States.⁴⁶ The case in point concerned the refugees and displaced persons of Eastern European origin, who left communism and 'voted with their feet'. In any case it is true that humanitarian motives and political interests were generally reconcilable from the perspective of the United States during the years of the IRO, something from which many refugees assisted by the IRO are likely to have benefited. 14

The refugee concept of the Constitution of the International Refugee Organization (IRO Constitution) can be seen as a formalized link between the League of Nations' refugee instruments and the later 1951 Convention. For instance, refugees recognized by the IRO are included under Art. 1 A, para. 1 of the 1951 Convention.⁴⁷ Secondly, and more important from our point of view, the IRO refugee definition expresses what main actors of the world 15

³⁹ They included the League of Nations High Commissioner for Refugees, the Supreme Headquarters Allied Expeditionary Force (SHAEF), the Inter-Governmental Committee on Refugees (IGCR), and the United Nations Relief and Rehabilitation Administration (UNRRA).

⁴⁰ Cf. Preamble and Arts. 55, 56 UN Charter.

⁴¹ GA Res. 8 (I) of 12 February 1946.

⁴² Mbuyi, *Refugees and International Law* (1993), p. 103.

⁴³ Stenberg, *Non-Expulsion*, p. 56.

⁴⁴ Holborn, *Refugees*, vol. I, p. 35.

⁴⁵ Goodwin-Gill/McAdam, *Refugee*, p. 243 (fn. 14).

⁴⁶ Loescher, *Beyond Charity: International Co-operation and the Global Refugee Crisis* (1993), p. 51.

⁴⁷ Cf. further Schmahl on Art. 1 A, para. 1, MN 56–65.

community generally understood by a 'refugee' right after the Second World War, *cf.* Art. 1 and Annex I, Part I, Sec. A of the IRO Constitution. It is noteworthy that the term 'refugee' comprised different refugee categories that seen together mapped out a broad definition of refugees. The common denominator was that the refugees were explicitly or implicitly victims of persecution, war circumstances, or certain political regimes before, during, or after the war.⁴⁸ The refugee definition was not neutral with respect to moral judgement of the refugees' background. Notably, between six and eight million *Volksdeutsche* were excluded from protection by the IRO (and later by the 1951 Convention as well). It is strikingly clear that the refugee definition itself, and thus the IRO, from the outset primarily sided against certain European right-wing (Nazi, Fascist, and Falangist) regimes.

16 The six protected categories were the following:

- (a) [V]ictims of nazi or fascist regimes or of regimes which took part on their side in the second world war, or of the quisling or similar regimes which assisted them against the United Nations, whether enjoying international refugee status or not;
- (b) Spanish Republicans and other victims of the Falangist regime in Spain ...;
- (c) persons who were considered refugees before the outbreak of the second world war, for reasons of race, religion, nationality or political opinion.
2. Subject to the...exclusion of...war criminals, quislings and traitors...a person...who is outside of his country of nationality or former habitual residence, and who, as a result of events subsequent to the outbreak of the second world war, is unable or unwilling to avail himself of the protection of the Government of his country of nationality or former nationality.
3. ...persons who, having resided in Germany or Austria, and being of Jewish origin or foreigners or stateless persons, were victims of nazi persecution and were detained in, or were obliged to flee from, and were subsequently returned to, one of those countries as a result of enemy action, or of war circumstances, and have not yet been firmly resettled therein.
4. ...unaccompanied children who are war orphans or whose parents have disappeared, and who are outside their countries of origin...⁴⁹

Paragraph 2 could be applied to the Eastern Europeans who in practice did not want to go home for fear of persecution and other valid reasons linked to a lack of protection from their own governments. Resettlement of this group in the West was not in the interest of the Soviet leadership, and the Soviet Union and other Eastern European States consequently refused membership in the IRO.⁵⁰ This political conflict later spilled over in the preparations of the 1951 Convention, although the impact of the political controversies on the actual treaty text, and in particular the substance of the general refugee definition, ought not to be overestimated.⁵¹

17 The UN decided in 1949 that the IRO should be replaced with a new institution, the UNHCR, with a global focus on the refugee problem.⁵² At this point in time the concluding

⁴⁸ *Ibid.*, MN 60–61.

⁴⁹ Annex I Part I Sec. A IRO Constitution.

⁵⁰ Salomon, *supra*, fn. 38 (pp. 157, 162); *cf.* Schmahl on Art. 1 A, para. 1, MN 9.

⁵¹ *Cf. infra*, MN 41–44, 60–63.

⁵² *Cf.* GA Res. 319 (IV) of 3 December 1949.

work on a new universal refugee convention was forthcoming. The UN had furthermore proclaimed a human right to asylum.

V. Universal Declaration of Human Rights

Article, 14, para. 1 of the Universal Declaration of Human Rights (UDHR) sets out the right 'to seek, and to enjoy in other countries, asylum from persecution'. Like any human right, legally binding or not, it is supposed to be invoked by an individual when need be. However, the interpretation of Art. 14 UDHR has often been disputed, and so has its legal status in contemporary international law. A more detailed discussion falls outside the scope of this contribution. What is clear already from the ordinary meaning of its terms, though, is that the content of Art. 14 UDHR does not secure prior (formal) admission to any particular country, for instance by means of a visa for refugee purposes. It is also clear that Art. 14 UDHR does not contain a guarantee of formalized asylum or permanent residence in the receiving State. On the other hand, it would no doubt be out of line with the right 'to seek, and to enjoy ... asylum'—especially in the light of the object and purpose of Art. 14 UDHR, which was to establish the institution of individual asylum at the international level⁵³—if a State actively denies a refugee protection from persecution. Article 14 UDHR must, at least, include protection against expulsion or forced return of refugees already within a foreign State to territories where they are threatened with persecution.⁵⁴

The more difficult part concerns refugees arriving at the borders of a foreign State (or who are otherwise under the actual jurisdiction/control of a foreign State), who try to apply for asylum.⁵⁵ Does such a person have the right to enter, to have his or her case for asylum fairly processed, and a right to stay if the fear of persecution is well founded? The wording of Art. 14 UDHR, and its character of being a human 'right', speak in favour of such protection, especially since the concept 'enjoy' had considerable historical and legal merit in earlier refugee instruments with regard to enjoyment of 'protection'.⁵⁶ In the opinion of this author, the drafting history is open to different interpretations.⁵⁷ The preparatory works should in any case not override the ordinary meaning of the terms, read in the light of its particular object and purpose, the protection of victims and potential victims of persecution. The preparatory work on Art. 14 UDHR should furthermore be seen in the context of the existing IRO Constitution and the planned drafting process of the 1951 Convention. Although some State members of the UN wanted to restrict the scope of a right to asylum as much as possible, there is no convincing evidence that Art. 14 UDHR was meant to be virtually without substance.⁵⁸ A better inference from the available legal sources is probably that the right 'to enjoy' asylum, read in conjunction with the UDHR as a whole, is basically

⁵³ Cf. UNHCR ExCom, Conclusion No. 82 (1997), lit. b.

⁵⁴ *Ibid.*, lit. d (i), cf. also (ii) and (iii); for the differentiation between the notion of *non-refoulement* and *asylum* cf. Kälin/Caroni/Heim on Art. 33, para. 1, MN 2.

⁵⁵ For the comparable question on *refoulement* at the border cf. Kälin/Caroni/Heim on Art. 33, para. 1, MN 86–91 and 105–110; cf. also Bank, Introduction to Art. 11, MN 57–108.

⁵⁶ Cf. *supra*, MN 9.

⁵⁷ The author has analysed the drafting history of Art. 14 UDHR in Einarsen, *Retten*, pp. 111–119.

⁵⁸ Some other authors might have put too much emphasis on some statements made by State representatives in the Third Committee of ECOSOC, cf. Einarsen, *Retten*, p. 119.