

# On the history of the international protection of refugees

by  
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Whereas the history of protection of refugees dates back at least a few centuries, not to mention refugee situations in Antiquity, the history of international protection starts with the League of Nations. No one would be surprised to learn that the International Committee of the Red Cross was the initiator of the international protection system set up by the League of Nations.

## The League of Nations period

World War I (1914-1918), its preliminaries (the Balkan Wars, 1912-1913) and its aftermath in the Near East (the wars in the Caucasus, 1918-1921, and the Greco-Turkish War, 1919-1922) caused considerable upheavals in the States involved and especially in the Russian Empire. Large numbers of refugees (estimates vary between 1 and 2 million) left Russian — later Soviet — territories for various countries of Europe or Asia Minor, Central and East Asia between 1918 and 1922 and also thereafter.

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Emergency relief was provided mainly by charitable organizations. However, these organizations could not extend their succour beyond material assistance. Furthermore,

“[r]esources were becoming exhausted, and there was no central co-ordinating body. In these circumstances the Joint Committee of the International Committee of the Red Cross and the League of Red Cross Societies called a conference of the principal organizations concerned on 16 February 1921, at which it was decided to invite the Council to appoint a High Commissioner to define the status of refugees, to secure their repatriation or their employment outside Russia, and to co-ordinate measures for their assistance. The proposal was received by the Council on 21 February 1921, and States Members were sounded on the feasibility of international co-operation and the forms it should take. On 27 June the Council considered the replies received, they adopted the original proposal in principle, and instructed the Secretariat to make some preliminary investigation. The appointment of a High Commissioner was left to the discretion of the President of the Council. Dr. Fridtjof Nansen accepted the commission on 1 September 1921.”<sup>1</sup>

Well before World War I tragic events in the Ottoman Empire had affected various ethno-religious communities — the Armenians, who are the victims most frequently mentioned, as well as Assyrians (Nestorians), Chaldeans (Uniate Nestorians) and Jacobite Syrians. Turks, Kurds and other Muslim groups also suffered.

As for the Greeks who survived the massacres and the Balkan and Greco-Turkish Wars, they joined with their Bulgarian or Turkish counterparts in the “facultative mutual” exchange of populations that took place under the Treaty of Constantinople (1913), the Turco-Bulgarian Treaty (1913), the Greek-Turkish Agreement (May 1914) and the Treaty of Neuilly (1919), and finally in the compulsory exchange of Greek and Turkish populations provided for by the Treaty of Lausanne (1923).

<sup>1</sup> Sir John Hope Simpson, *The Refugee Problem*, Oxford University Press, London, 1939, p. 199.

In order to protect and assist the refugees from the Ottoman Empire and the Turkish Republic, the mandate of the High Commissioner of the League of Nations was extended to Armenians in 1924 and to “other categories of refugees” (Assyrians, Assyro-Chaldeans, Syrians, Kurds and a small group of Turks) in 1928.

During the League of Nations period (1921-1946) several institutions were created to perform some or all of the tasks of the High Commissioner for Refugees: the Nansen International Office for Refugees (1931-1938), the Office of the High Commissioner for Refugees coming from Germany (1933-1938), the Office of the High Commissioner of the League of Nations for Refugees (1939-1946) and the Intergovernmental Committee on Refugees (1938-1947).

#### **The task of international protection**

These institutions afforded international protection to refugees on the basis of international legal instruments generally<sup>2</sup> concluded within the framework of the League of Nations. The first Arrangements of 5 July 1922, 31 May 1924 and 12 May 1926 provided a definition of Russian and Armenian refugees and dealt mainly with “identity certificates” for refugees.

The governments which adopted the Arrangement relating to the Legal Status of Russian and Armenian Refugees, of 30 June 1928, “[h]aving agreed that it is necessary to define more clearly the legal status of Russian and Armenian refugees”, recommended the appointment of representatives of the High Commissioner for Refugees “in the greatest possible number of countries”. They also made a number of recommendations to governments of countries of residence (the term “asylum” was not used) regarding personal status, divorce, exemption from reciprocity, from the *cautio judicatum solvi* and from restrictive labour regulations, expulsion, taxation and travel visas.<sup>3</sup>

By adhering to the Convention relating to the International Status of Refugees, of 28 October 1933, States Parties for the first time undertook real obligations on behalf of Russian,

<sup>2</sup> A notable exception is the “Evian Resolution”. See below.

<sup>3</sup> League of Nations, *Treaty Series*, Vol. LXXXIX, No. 2005.

Armenian and assimilated refugees.<sup>4</sup> It dealt with administrative measures (the issuance of “Nansen certificates”), *refoulement*, legal questions, labour conditions, industrial accidents, welfare and relief, education, fiscal regime and exemption from reciprocity, and provided for the “creation of committees for refugees”.

The Convention of 1933 is a milestone in the protection of refugees and served as a model for the 1951 Convention. Its Article 3 reads:

“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 (*refoulement*), refugees who have been authorized 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 frontier 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 authorizations and visas permitting them to proceed to another country.”

The Convention of 1933 was ratified by nine States, including France and the United Kingdom, the most important powers of that time. The UK did not, however, accept the second paragraph of Article 3. Nevertheless, it was by virtue of this Convention that the principle of *non-refoulement* acquired the status of international treaty law.

Mention should be made of two treaties concluded to provide protection for refugees coming from Germany: the Provisional Arrangement concerning the Status of Refugees coming

<sup>4</sup> League of Nations, *Treaty Series*, Vol. CLIX, No. 3663. Assimilated refugees were Assyrians, Assyro-Chaldeans, Syrians, Kurds and a small number of Turks.

from Germany, signed in Geneva on 4 July 1936,<sup>5</sup> and the Convention concerning the Status of Refugees coming from Germany, signed in Geneva on 10 February 1938.<sup>6</sup> An Additional Protocol to these treaties, opened for signature in Geneva on 14 September 1939, extended them to include refugees from Austria.<sup>7</sup>

As refugees from Germany were not entitled to Nansen certificates, these treaties provided for a separate identity certificate. The Convention of 1938 was likewise modelled on the Convention of 1933.

Neither the Provisional Arrangement of 1936 nor the Convention of 1938 mention the expression *refoulement*, and their provisions on asylum are weaker than those of the 1933 Convention. It was even laid down that, in extreme cases, refugees could “be sent back across the frontier of the Reich”.

A further international legal instrument of that period is the resolution which the Intergovernmental Committee on Refugees (IGCR) adopted in Evian on 14 July 1938 to define its functions.<sup>8</sup> The Evian meeting was called by President Franklin Roosevelt outside the formal framework of the League of Nations “for the primary purpose of facilitating involuntary emigration from Germany (including Austria)” of

“(1) persons who have not already left their country of origin (Germany, including Austria), but who must emigrate on account of their political opinions, religious beliefs or racial origin, and (2) persons as defined in (1) who have already left their country of origin and who have not yet established themselves permanently elsewhere...”

<sup>5</sup> League of Nations, *Treaty Series*, Vol. CLXXI, No. 3952.

<sup>6</sup> League of Nations, *Treaty Series*, Vol. CXCII, No. 4461, p. 59.

<sup>7</sup> League of Nations, *Treaty Series*, Vol. CSCVIII, No. 4634, p. 141.

<sup>8</sup> League of Nations, *Official Journal*, XIXth Year, Nos 8-9, August-September 1938, pp. 676 and 677; C. 244 M. 143.1938 XII, annex. — See Tommie Sjöberg, *The Powers and the Persecuted: The Refugee Problem and the Intergovernmental Committee on Refugees (IGCR), 1938-1947*, Lund University Press, Lund, 1991.

For the first time protection was extended to would-be refugees inside the country of potential departure.

In February 1939 the Member States of the IGCR appointed as Director the newly appointed High Commissioner for Refugees, whose headquarters were likewise in London. The IGCR ended its activities on 30 June 1947, six months after the Office of the High Commissioner closed. During that time the IGCR also protected the “Nansen refugees”.

#### **The period 1946-1951**

The next important phase in international protection was that of the International Refugee Organization (IRO). Established on 15 December 1946 by Resolution 62 (I) of the UN General Assembly, it initially worked as the Preparatory Commission for the IRO from 14 July 1947 to 20 August 1948 and then as full IRO from August 1948 until its termination on 28 February 1952.

The IRO became known as a resettlement agency, for its principal activity was the resettlement of 1,049 refugees and displaced persons, mainly from Central Europe, in the United States, Australia, Western Europe, Israel, Canada and Latin America. However, according to its Constitution, the IRO was “entrusted with the legal and political protection of persons who are its concern”. The agreements concluded by the IRO with governments contain a general clause confirming its competence to provide protection and often specify certain aspects of the status of IRO refugees. Contrary to previous or subsequent international agencies, the IRO in some respects assumed the role of a supranational agency.

The IRO was originally meant to complete its operational activities on 30 June 1950. As soon became evident, it was unlikely — to say the least — that the problem of refugees would be solved by that date. With new refugees from Central and Eastern Europe arriving in increasing numbers in the West, the Commission on Human Rights adopted a resolution as early as 1946 in which it expressed the wish:

“[t]hat early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any government, in particular pending the acquisition of

nationality, as regards their legal and social protection and their documentation.”<sup>9</sup>

Taking note of that resolution, the Economic and Social Council:

“Requests the Secretary-General, in consultation with interested commissions and specialized agencies:

- (a) to undertake a study of the existing situation in regard to the protection of stateless persons by the issuance of necessary documents and other measures, and to make recommendations to an early session of the Council on the interim measures which might be taken by the United Nations to further this object;
- (b) to undertake a study of national legislation and international agreements and conventions relevant to statelessness, and to submit recommendations to the Council as to the desirability of concluding a further convention on this subject.”<sup>10</sup>

This is the origin of *A Study of Statelessness*, a key document in the modern history of international protection of refugees.<sup>11</sup> Part One of the Study, entitled “Improvement of the Status of Stateless Persons”, deals with refugees who are mostly *de facto* stateless persons, although some are *de jure* stateless. It provides a full history of institutions of internal protection and of international legal instruments, from the days of the League of Nations until and including the IRO.

The Study examines in detail the various aspects of the “status of stateless persons” (read “refugees”): international travel, right of entry and sojourn, personal status, family rights, rights of property, exercise of trades or professions, education, relief, social security, right to appear before the courts as plaintiff or defendant, exemption from reciprocity, expulsion and reconduction, taxation and military service, taking into account the provisions of the two existing Conventions of 1933 and 1938. It then discusses the “form to be given to the status”

<sup>9</sup> *Official Records of the Economic and Social Council*, Third Year, sixth session, Suppl. No. 1, 1946, pp. 13-14.

<sup>10</sup> Resolution 116 (VI) D, of 1 and 2 March 1948.

<sup>11</sup> UN Doc. E/1112, of 1 February 1949, and E/1112/Add.1, of 19 May 1949.

and concludes in favour of a general convention, a *lex generalis* which would coexist with previous conventions which should represent the *lex specialis*.

The main elements of the 1951 Convention relating to the Status of Refugees can already be found in the Study, which also shows very clearly the derivation of the 1951 Convention from the pre-war conventions.

On the “nature and function of protection” the Study expresses the belief that:

“The conferment of a status is not sufficient in itself to regularize the standing of stateless persons and to bring them into the orbit of the law; they must also be linked to an independent organ which would to some extent make up for the absence of national protection and render them certain services which the authorities of a country of origin render to their nationals resident abroad.

Such an organ is undoubtedly needed. The status of stateless persons, however carefully determined, cannot become a reality unless there is an organ of international protection.

Such an organ would need to work in close collaboration with the Governments of the reception countries.

It should comprise a central office with subsidiary branches in the countries concerned.”

There is nothing new in this. The authors of the Study merely recommended the system that existed under the League of Nations and its High Commissioners. This applies also to the main functions of the central office:

- “(a) To collaborate in the application of the agreements in force;
- (b) To facilitate joint and simultaneous action by Governments on behalf of stateless persons;
- (c) To take a census of stateless persons, determine their requirements, collect all necessary data and information relating to them;



- (d) To promote the conclusions of such new agreements as may be required; and to secure further accessions to the agreements already concluded;
- (e) To conclude with Governments the arrangements necessary to enable stateless persons to obtain such documents as will allow them to perform various acts of civil and administrative life;
- (f) To facilitate the admission of stateless persons into countries willing to receive them temporarily or to allow them to settle there permanently;
- (g) To facilitate the assimilation and naturalization of stateless persons;
- (h) To co-ordinate the work of private voluntary associations on behalf of stateless persons.”

The Study of Statelessness also elaborates on “the organ responsible for protection” and discusses the merits of the type of international organ required: a service within the United Nations Secretariat, a High Commissioner's Office, continuance of the IRO in another form, or a new specialized agency. It finally recommends that the Economic and Social Council “recognize the necessity of providing at an appropriate time permanent international machinery for ensuring the protection of stateless persons”.

Having considered the Study, the Economic and Social Council appointed on 8 August 1949 an ad hoc Committee on Refugees and Stateless Persons to

“*Consider* the desirability of preparing a revised and consolidated convention relating to the international status of refugees and stateless persons and, if they consider such a course desirable, draft the text of such a convention...”.<sup>12</sup>

The Council's intention was that the final draft of the convention be approved by the UN General Assembly.

<sup>12</sup> ECOSOC Res. 248 (IX), Study of Statelessness, B, of 8 August 1949.

Eventually, after the submission and revision of large sections of the future convention and a further resolution of the Economic and Social Council, the UN General Assembly decided on 14 December 1950 “to convene in Geneva a conference of plenipotentiaries to complete the drafting of and to sign (...) the Convention relating to the Status of Refugees...”<sup>13</sup> The new convention was adopted soon after on 28 July 1951.

As for the aforesaid “permanent international machinery”, the UN General Assembly decided on 3 December 1949 “to establish, as of 1 January 1951, a High Commissioner's Office for Refugees”,<sup>14</sup> and on 14 December 1950 adopted the Statute of the Office of the United Nations High Commissioner for Refugees.<sup>15</sup>

Thus since 1 January 1951, the international protection of refugees has been in the hands of the High Commissioner of the United Nations on the basis of its Statute. A steadily growing number of States have meanwhile ratified and implemented the *Magna Carta* for refugees, the 1951 Convention relating to the Status of Refugees.

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<sup>13</sup> UNGA Res. 429 (V), Draft Convention relating to the Status of Refugees, of 14 December 1950.

<sup>14</sup> UNGA Res. 319 (IV), Refugees and stateless persons, of 3 December 1949.

<sup>15</sup> UNGA Res. 428 (V), Statute of the Office of the United Nations High Commissioner for Refugees, of 14 December 1950.

## Résumé

### **À propos de l'histoire de la protection internationale des réfugiés**

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*L'histoire de la protection internationale des réfugiés commence à l'époque de la Société des Nations, en réponse aux flux de réfugiés pendant et après la Première Guerre mondiale, notamment en Russie et dans les Balkans. Suite à une proposition émise lors d'une conférence convoquée par le CICR et la Fédération internationale, la Société des Nations nomma, en septembre 1921, un haut commissaire pour les réfugiés en la personne de Fridtjof Nansen. L'auteur retrace l'histoire des mesures internationales prises en faveur des réfugiés au cours de l'entre-deux-guerres, puis pendant la période qui suivit immédiatement la Seconde Guerre mondiale. C'est pendant cette dernière période, marquée par des mouvements de réfugiés de grande ampleur, qu'un droit moderne des réfugiés vit le jour – notamment avec l'adoption en 1951 de la Convention relative au statut des réfugiés – et que le Haut Commissariat des Nations Unies pour les réfugiés fut créé.*

