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The League of Nations, Refugees and Individual Rights

Barbara Metzger

In February 1921, Gustav Ador, the president of the International Committee of the Red Cross (ICRC), drew the League of Nations' attention to the plight of over one million Russian refugees scattered all over Europe, in order to suggest the appointment of a High Commissioner for Russian Refugees.¹ Nobody could foresee that this appeal would lay the foundations for an international refugee assistance system which exists to this day. The United Nations High Commissioner for Refugees (UNHCR) is today one of the central UN agencies, maintaining regional offices all over the world, providing emergency relief during wartime as well as promoting long-term repatriation and resettlement schemes. UNHCR monitors compliance with the 1951 Refugee Convention and forms a pillar of the contemporary United Nations human rights regime.

The interwar years witnessed the beginning of international refugee law, initially in response to a series of humanitarian crises in the aftermath of the Great War. Subsequently, the League of Nations found itself at the centre of an ongoing debate concerning the role of the international community with regard to the obligations of states and the protection of individuals – particularly refugees who had been deprived of their citizenship. This chapter does not argue that the League's achievements in the field of refugee protection and creation of refugee law are the source of the current human rights regime.² Instead, the chapter looks at the emergence of refugee law during the interwar years and examines how both the successes and failures of the interwar refugee regime led to new thinking and advocacy with respect to individual rights. Even in the wreckage of the refugee regime in the late 1930s, we find voices who place the obligations of states to individuals at the centre of their response to the crises of their time.

This chapter builds on a number of insights in the existing literature. In his excellent study, *The Great War and the Origins of Humanitarianism 1918-1924*, Bruno Cabanes suggests looking at the emergence of humanitarian rights (which he identifies as rights of victims to aid) in the light of the war experience. Cabanes proposes that instead of viewing the politics of rights in the 1920s as an incomplete version – less universal, less mobilizing, less efficient – of the 'utopia' of human rights as we know it today, it should be understood through the traumatic experience of the Great War. The emergence of protective, humanitarian rights in the 1920s is thus seen as a key moment in shaping attitudes and values.³

Dorothy V. Jones was one of the first scholars to take a new perspective on the League in the 1990s. She maintains that within the context of the League ‘protection was seen as an active and vital force in international affairs.’ She identifies as one of the lasting legacies of the interwar period the idea that protection is an international concern to be exercised on a regular and continuing basis and not just ‘when some outrage catches the public’s attention.’⁴ This chapter argues that, by setting up an institutional framework to accommodate the needs of refugees, the League created an institutional memory which documented the impact of state behaviour on individuals and the success of international action on behalf of refugees. This influenced the emergence of refugee law and enabled a new advocacy about the obligations of states to individuals, even amid the failures of the 1930s.

The balance sheet of the League’s efforts to find durable solutions to the massive refugee flows during the interwar years is riddled with remarkable accomplishments and failures, particularly with regard to the European Jews in the 1930s. As a consequence, a large majority of those victims of German persecution perished. Nevertheless, the emergence of the League’s refugee regime is worth examining, particularly during the 1920s when the institutionalization of international cooperation enabled the development of innovative approaches and was part of an overarching peace agenda, as Claudena Skran maintains.⁵

The High Commissioner for Russian Refugees

The initial appointment of a High Commissioner for Russian Refugees was the response of the newly founded League of Nations to enormous changes in the international system that rendered millions of people homeless and stateless. In 1921, over one million Russian refugees, members of the defeated White armies and civilians, were scattered all over the Balkans, Poland, the Baltic, Central Europe, Europe and the Far East, the majority living under appalling circumstances.⁶ After the First World War large multi-ethnic empires – Ottoman, Austro-Hungarian and Russian – collapsed and were transformed into nation-states striving for ethnic homogeneity, often forcing members of ethnic minorities to leave. In addition, dramatic changes like the Russian Revolution profoundly affected the entire social fabric of states, forcing many to flee.

The interwar period has been termed the ‘era of refugees’.⁷ Between 1919 and 1939 at least five million refugees had to leave their homes in Europe. In the early 1920s, civil war and famine forced over one million Russian refugees to flee what became the Soviet Union. In the Near East, the 1921–2 Greco-Turkish war uprooted 1.5 million Greeks, 400,000 Turks and 300,000 Armenians. In addition, disputes between Bulgaria and its neighbours caused 225,000 ethnic Bulgarians to seek refuge in their mother country. In the 1930s, approximately 400,000 people escaped Nazi Germany, 10,000 left Mussolini’s Italy and 400,000 Spanish Republicans left Franco’s Spain.⁸

The rise of strict immigration controls across the world after the First World War and the universal acceptance of the norm that requires international travellers to carry passports made it increasingly difficult for refugees to cross international boundaries. John Torpey identifies the ‘development of welfare states and the rise of labor

movements seeking to control access to jobs and social benefits' as playing their part in promoting immigration controls. The growing welfare state system made governments reluctant to accept refugees since they feared the financial obligations involved. Refugees were met with increasing hostility as they were viewed as political suspects and an economic burden.⁹ Refugee movements could no longer be easily absorbed and naturalized in the host countries.¹⁰ This brought home to policy makers that refugees had to be recognized as a matter of crucial international concern. Governments thus urged the League to take up the issue, regardless of the fact that its Covenant did not make any explicit reference to the protection of refugees.

The appointment of a High Commissioner for Russian Refugees was initiated and strongly promoted by private relief organizations. A member of the former Russian Red Cross expressed the hope that 'the League embodying the idea of solidarity and international justice is willing to accept the difficult task of defending the rights and interests of the Russian expatriates.'¹¹ From the start, private refugee organizations sent reports to Geneva documenting the desperate refugee situation and encouraging the League to act.¹² Although the League of Nations Council was originally concerned that governments might see the high commissioner as interfering with domestic affairs, it agreed to instruct the secretary general to gather relevant information from all refugee-hosting countries.¹³ Following the standard League procedure, a questionnaire was sent out to all governments concerned to obtain information and suggestions. Most governments were strongly in favour of the League taking up the issue.¹⁴ The High Commission was assigned three tasks: to find a definition of the legal position of refugees; to organize resettlement or repatriation; and to coordinate the efforts for the assistance of refugees. All three aspects required international arrangements and cooperation.¹⁵

In August 1921 the League secured the appointment of Fridtjof Nansen as its first High Commissioner for Refugees. Since the refugee problem was perceived as a temporary phenomenon the League only covered the administrative expenses of the high commission. Nansen had a small staff in Geneva and appointed delegates in refugee-hosting countries to liaise with government officials, private voluntary organizations providing refugee relief and the refugees themselves. He often employed refugees as delegates, as they knew the languages and were familiar with the traditions and customs of the respective refugee community, thus giving some of the refugees a voice.

As Nansen depended heavily on the funds and the expertise of private voluntary organizations, in 1922 he set up an Advisory Committee consisting of sixteen private organizations. By 1936, the Advisory Committee had expanded to forty members.¹⁶ Nansen skilfully used the international diplomatic arena and the League Secretariat to seek international consensus and secure support for his work.

The Nansen Passport

'As things are, the Russian refugees cannot travel, marry, be born, or die without creating legal problems to which there is no solution,' a League official remarked succinctly in a memorandum in 1921.¹⁷ Nansen's main objective thus became to endow those in need with at least some rights, mainly the possibility to travel in order to find work and a

livelihood. Nansen's position was difficult: he had to find ways to accommodate his humanitarian goals regarding refugees within a state system governed by the principle of national sovereignty. Each sovereign state had the right to regulate entry.

To address the lack of legal protection suffered by the Russian refugees, Nansen convened in July 1922 an intergovernmental conference attended by sixteen governments. Nansen's great invention was the creation of a special certificate of identity for Russian refugees, commonly called the 'Nansen Passport'. The arrangement was eventually accepted by fifty-three states. It was not legally binding but served as a set of recommendations providing the refugee with a form of legal status. The Nansen Passport allowed its holder to travel to countries where he or she might be more likely to find work and a livelihood. Conversely, states could issue the certificate without having to grant citizenship rights. The document was valid for a year, certifying that its holder was a Russian national by origin. It contained no general definition of a refugee and no specification of the motivations for flight. The system proved so successful that in 1923 thirty-one governments recognized the model certificate for Russian refugees recommended by the high commission.¹⁸

When the plight of the Armenian refugees aroused international public opinion during the refugee crises in the Near East in the early 1920s, Nansen's mandate was extended. From 1924, the 'Nansen Passport' system was applied to Armenian refugees.¹⁹ Two years later a legal agreement was concluded. For the first time it provided a definition of refugee, no matter how limited, specifying that a Russian refugee was 'any person of Russian origin who does not enjoy the protection of the Government of the Union of the Soviet Socialist Republics and who has not acquired any other nationality'. A similar definition applied to the Armenian refugees.²⁰ By paying for the stamp on the Nansen Passport refugees became 'stakeholders'.

Until 1928, Nansen's mandate covered only two national groups of refugees – Armenians and Russians. Despite the growth in the actual numbers of refugees covered under international law, individual political exiles, for instance, remained outside the system. The Italian refugees fleeing fascism were never included in the League's protection scheme, as this would have meant indirectly criticizing a prominent member state of the League.²¹ The Russian émigrés, in contrast, could be designated with impunity in 1921 because the Soviet Union was outside the League until 1934.²²

The designation of refugee status was politically contentious and required a strong international consensus about assisting a particular group. The debate in the late 1920s to open the League refugee protection scheme to a wider range of national groups showed the difficulties. In 1926 the Belgian delegate called the attention of the Seventh Assembly to the plight of refugees not holding a Nansen Passport. The Assembly passed a resolution asking the High Commissioner for Refugees to investigate the extension of protection to other 'analogous categories of refugees', among them Assyrians, Assyro-Chaldeans, Ruthenes in Austria and Czechoslovakia, a large number of stateless people in central Europe, Hungarians in Austria, France and Romania, Jews in Romania and some Turks in Greece who had been friends of the Allies. The Council decided to restrict its consideration to those people who had become refugees as a consequence of the war and events directly connected with the war. The governments were concerned about any additional cost that an extension of the refugees protected by the League

would incur. In the end the League only selected the Assyrians, Assyro-Chaldeans and the Turks from its long list of candidates in need.²³ Thus, in 1928 the opportunity to extend the protection for refugees under the auspices of the League passed by.

The coverage of the Nansen system was extended on only one further occasion. In 1935, about 7,000 refugees were forced to leave the Saar, when a plebiscite held in the region overwhelmingly favoured its return to Germany. Previously, under the administration of the League, the Saar had been an important political refuge for dissidents fleeing Nazi Germany. France, as the host country for those refugees, championed the case of Saar refugees inside the League and secured for them the use of the Nansen certificates.²⁴ For the first and only time the reasons for flight were included in the definition of a refugee entitled to a Nansen Passport, and provisions were made within the Nansen protection system for people who potentially found themselves outside their home country, not as a consequence of war but of the actions of a nation-state.

While the coverage of the Nansen system was never universal, the system was nevertheless highly innovative. In 1928 thirteen states signed an arrangement recommending that consular services for refugees be carried out by delegates of the high commissioner. This included the certification of the refugee's identity and civil status, attesting to the refugee's character and conduct, and recommendations of refugees to governments and educational authorities. Between 1932 and 1938 the Nansen Office, the League's refugee agency created after Nansen's death in 1930, made an average of more than 18,000 interventions annually relating to the personal status of Russian, Armenian, Assyrian and Saar refugees.²⁵ This arrangement was a remarkable development since it acknowledged the reliability and competence of the High Commissioner for Refugees and the working of this international system of refugee protection. Sovereign states gave an international organization administrative authority regarding refugee-related issues. This is a milestone in the emergence of the international administration of refugee rights and international governance in general.

The 1928 agreement was also remarkable in giving substance to the notion of protective rights since it provided for the 'physical protection' of refugees. States acknowledged that refugees should not be expelled if this posed a threat to their life. Paragraph seven recommended that governments suspend measures to expel a Russian or Armenian refugee if it was impossible for the person to enter another country legally.²⁶ This norm reflected the frequent interventions of the high commissioner on behalf of refugees threatened with expulsion. A prominent case occurred, for instance, when the Polish government expelled 10,000 Russian refugees, predominantly Jews, in 1923. The destitute victims of this expulsion were trapped in no man's land under appalling conditions. The League High Commissioner for Refugees successfully negotiated with the Polish government a suspension of the expulsions until the refugees could lawfully emigrate abroad.²⁷ The 1928 agreement made a further noteworthy provision: refugees obtained permission to return to the country where the Nansen Passport had been issued.²⁸

As the refugee problem continued, and the economic crisis rendered the life of many refugees more precarious than ever, the Intergovernmental Advisory Commission for Refugees proposed in August 1931 a formal convention which would 'stabilise the

situation' of refugees in light of the planned liquidation of the Nansen Office at the end of 1938. The 'Nansen passport system', the 1928 arrangement and the practical work performed by the high commission, as in the case of the Polish expulsions, paved the way for the first Refugee Convention adopted in 1933.

The Refugee Convention of 1933

The Refugee Convention of 1933 was legally binding on its signatories and became a landmark in the codification of international refugee law. As the legal scholar Peter Fitzmaurice suggests, the 1933 Convention in many ways constituted the high-water mark of refugee protection between the wars.²⁹ The most striking provision was the right to non-refoulement. This provision acknowledged the right to life of an individual refugee who on his return to his country of origin would have been in danger. The right to 'non-refoulement' was later to become a fundamental provision in the 1951 Refugee Convention.

The 1933 Refugee Convention dealt with a broad variety of concerns ranging from identity certificates to expulsions. It granted refugees the enjoyment of civil rights, free access to courts of law, security and stability in their settlement and employment, facilities to work in the professions, in industry and commerce, freedom of movement and admission to schools and universities.³⁰ It codified basic rights for refugees that were commonly granted to the citizens of the signatory country. It made provisions for labour conditions, industrial accidents, welfare and relief. Until 1938, it had been ratified by sixteen governments. A range of countries did not ratify the 1933 Convention but applied it in practice. A crucial aspect of the Convention was that the signatories opened their national legislation to international scrutiny, later to become an essential feature of the contemporary human rights regime.³¹

Michael Hansson, president of the Nansen Office between 1936 and 1938, made an increase in ratifications one of his top priorities. The Convention set standards in many areas that required translation into national law. The French government, for instance, upgraded benefits to refugees in the area of medical assistance, unemployment insurance and pensions so that they would be equal to those aliens receiving the most favourable treatment under French law. Further, it established a special committee to inform refugees of their rights.³² In contrast to the 1951 Refugee Convention, which requires the refugee to prove a 'well-founded fear of persecution', the 1933 Convention did not elaborate on the reasons for flight. The group affiliation still decided upon the refugee status, thus providing protection only for refugees under the mandate of Nansen Office. Nevertheless, the 1933 Convention left a lasting legacy in the legal arena, and can in hindsight be recognized as an important contribution to the evolution of international human rights law. It established a standard that refugees should be accorded the same treatment given to aliens in the host country. The notion of reciprocity was waived for refugees as they had lost the protection of their country of origin. The guarantee of basic civil, legal and economic rights in law served as a direct precedent for both the refugee rights regime and various international human rights mechanisms.

The High Commissioner for Refugees Coming from Germany

Whereas the 1920s saw a number of innovative approaches to finding long-term solutions to the refugee problems, the League's efforts on behalf of refugees during the 1930s present a less positive picture. Hitler's rise to power and his challenge to the world order triggered a mass refugee movement that the League could not settle, particularly at a time when immigration restrictions were constantly being tightened in response to the Depression. Despite the devastation that ultimately arose from the events of these years, the failure of efforts within the League led to key actors advocating the centrality of the obligations of states to individuals, especially with regard to citizenship rights.

Prior to 1933, the League's interventions with regard to refugees had been firmly rooted in crises arising directly from the Great War and its aftermath. In 1933, the League was forced to take a step beyond this: it used a minority protection treaty to challenge the main refugee-producing country – Germany – in a volatile political and economic context. It was a brief moment where the obligations of a major European power towards an individual person came sharply to the fore. Legal accounts usually only mention the so-called 'Bernheim petition' in passing, but Paul Gordon Lauren gives it a prominent role in his history of human rights.³³ Soon after Hitler's rise to power a series of anti-Semitic decrees commanded a public boycott of Jewish businesses, the discharge of Jewish civil servants, the exclusion of Jewish lawyers from the legal practice and the removal of Jewish physicians from medical practice for health insurance funds. Limits were placed on the admission of Jewish pupils into schools. The German government declared that all such measures came within the sphere of German national sovereignty and were out of bounds to foreign intervention. The World Jewish Congress challenged this view. It brought Germany's discriminatory policies before the League, 'transforming a domestic matter into an international issue'.³⁴

Since Germany was bound by a minority protection treaty in Upper Silesia, the World Jewish Congress tried to convince the League that Germany's discriminatory policies were in violation of her international obligations. A lawyer from Lemberg³⁵ composed a petition, which Franz Bernheim, a young German of Jewish descent who 'had been unfairly and illegally discharged from his job in Upper Silesia solely as a result of Hitler's new decrees against Jews', submitted to the League Council.³⁶ The petition maintained that Bernheim's dismissal represented a clear violation of the minority clauses of the German-Polish Convention regarding Upper Silesia (1922), which guaranteed equality of all Germans before the law in respect to civil and political rights, equal treatment regarding employment, and protection of the life and liberty of all inhabitants without distinction or discrimination as to race, language or religion.³⁷ The League could not ignore this petition and found itself forced to address the issue of international protection of minority rights, in the light of much public attention. While Germany tried to stall the debate, the Council spent considerable time and energy on it. In the end, the Council decided that the discrimination experienced by Franz Bernheim 'represented a breach of treaty obligations' and that Bernheim should receive compensation.³⁸

The 'Bernheim petition' opened a unique debate in the Assembly in September 1933, which put the protection of individual rights at the core. The delegation from Haiti

took the initiative in proposing a universal regime for the protection of human rights. Speaking as its representative, Antoine Frangulis, the Greek jurist and diplomat, termed 'the delegate of the rights of man',³⁹ criticized the selective system for the protection of minorities as being far too limited, leaving 'the most sacred rights of men and citizens' often without respect. Frangulis referred to the 'Declaration of the International Rights of Man', which had been passed by the Institut de Droit International in October 1929. The Federation of League of Nations Unions endorsed this declaration in June 1933 in Montreux. This document provided a catalogue of universal rights which Frangulis urged the League to adopt since

there is not only one category of citizens of a State, described as a minority, which deserves attention, but ... all the citizens of which human communities are made up are entitled to the same freedom and the same protection, and the League of Nations must consider the problem as a whole from the aspect of the rights of man – that is to say, of the rights which men possess as such, whether they belong to a minority or a majority – and it must seek the solutions which are necessary.⁴⁰

Frangulis suggested that the League draft a comprehensive world convention for the protection of human rights everywhere.⁴¹ Not surprisingly, this initiative was met with stiff opposition from the champions of national sovereignty. It could be discussed in the plenary session but stood no chance of being translated into action in the committees. The majority of members of the League had no interest in a general convention that might be turned around to apply to them.⁴²

The conflict between national sovereignty and international action became even more distinct at the same Assembly, when the question of the German refugees was discussed. The League faced its classic dilemma: while it was obvious that some international response was necessary as refugees streamed from Germany into neighbouring countries, League delegations were concerned not to interfere in the internal affairs of a member state or thus criticize German policies. Enjoying great power status Germany could veto any action the League wished to take to assist German refugees.

There were countermoves, however, which drew on the institutional memory and successes of the Nansen Office. In September 1933, the Dutch delegate to the Assembly proposed that the League assist the German refugees through this office. This suggestion was immediately vetoed by the German delegation. What emerged from the following debate was a watered-down compromise: Germany was assured that the refugees would not be placed within the effective mandate of the Nansen Office but rather under the auspices of a separate organization. The High Commission for Refugees (Jewish and Other) Coming from Germany had its headquarters in Lausanne to emphasize its separation from the League. This attempt to accommodate German sensibilities proved particularly futile since Germany announced her withdrawal from the League within a few days of the Assembly closing.

In October 1933, the League Council appointed James G. McDonald to this new position. McDonald had an extensive foreign affairs background having served as the chairman of the Foreign Policy Association since 1919. He was well acquainted with highly placed Germans in Berlin, had visited the Dachau concentration camp

and believed himself under no illusions about Nazism.⁴³ From the very beginning, McDonald's work was severely hampered by the separation of his office from the League and its dependence on private funds. James McDonald enjoyed little support from the League's Secretary General Joseph Avenol, whose sympathies lay with the political right in Europe.⁴⁴ The high commissioner had a small administrative staff as well as a governing body composed of government delegates and an advisory body constituted of representatives of the major private refugee organizations. Both bodies met regularly. The governing body, however, was frequently criticized for its ineffectiveness.⁴⁵ McDonald frantically travelled the world in the hope to find countries willing to accept refugees from Germany.⁴⁶ McDonald was at least partially successful in helping some German academics to find positions abroad.⁴⁷

Documenting the work of the high commission is difficult. The League archives are full of letters, pamphlets, appeals and press clippings which reached the high commissioner. They contain information on thousands of individual cases who saw the high commissioner as their last hope. It is a vast collection, bearing testimony to brutally destroyed existences and injustice suffered at the hands of the German government – as in the 1920s, the tragedy of the individual was reaching the League. One such example was the disturbing story of a German political activist who had managed to escape to Holland in 1933 where he lived illegally without valid papers. He wrote to McDonald that every single day he was petrified that he and his wife might be arrested and deported, which would mean 'death in Nazi Germany'. He pleaded to the high commissioner: 'Mr High Commissioner for Refugees, we appeal to you and incur your help and advice. Please show me a way out of this illegal and chased existence back into a legal life.'⁴⁸ Another refugee begged the high commissioner for a Nansen Passport, unaware that these documents were not granted to German refugees.⁴⁹ Likewise McDonald received a remarkable collection of appeals from private refugee-aid organizations, which narrated the horrific situation at first hand and begged him to act, although he was in no position to grant funds. They emphasized that the problem was an international one which had to be addressed by the League, and vehemently protested against the shift of responsibility onto the shoulders of private charity.

All these instances brought home to McDonald the realization that he lacked the authority to effect change. Private organizations increasingly demanded that he address the refugee problem not only from a humanitarian but also from a political point of view. The president of the Basler Hilfe für Emigrantenkinder, Georgine Gerhard, was one of those untiring activists who regularly urged the high commissioner to make a political appeal to Germany. She emphasized the need to attack the root causes of the refugee problem rather than just to facilitate emigration. In December 1934, she suggested a widespread international appeal 'to rouse the world's conscience.' This appeal 'ought to bring home to the Germans what it means at a time like ours to turn about 80,000 people out of her territory.'⁵⁰ She argued that 'no nation has a right to put the subjects it does not like simply in thousands on to the backs of other nations, and this should be clearly expressed.'⁵¹ Those voices grew stronger and eventually provided the impulse for change.

During the early summer of 1935, different initiatives were launched to bring the high commission back into the framework of the League. Among them was a petition

submitted by the ICRC and refugee organizations, which argued that different refugee groups should no longer be dealt with under different protection schemes. Instead, a universal approach was postulated: all refugees should enjoy the same treatment regardless of the national group they belonged to. The petition also stressed that the refugee problem raised not only humanitarian but political considerations: the lack of effective measures for refugee assistance was a direct menace to peace.⁵² However, the closer the Assembly came, the more disillusioned McDonald became with the realistic prospects of reorganizing the League refugee system.⁵³ Finally, the reorganization was discussed at the same Assembly as the Italian annexation of Abyssinia. While Haile Selassie was appealing to the Assembly to enforce the system of collective security, the Norwegian foreign secretary proposed that the League should create a central organization with responsibility for all refugees, whatever their origin. This proposal was met with singularly little enthusiasm.⁵⁴ Instead of responding to the urgency acknowledged by some of the delegates, the majority decided to set up a subcommittee to study the question in further detail.

James McDonald's letter of resignation: an appeal to the world's conscience to consider the root causes of the refugee problem

James McDonald's frustration grew. Inundated by desperate appeals from private organizations and individual cases, and unable to help since governments were adamant in refusing support, he realized the impossibility of his task. When in September 1935 the proclamation of the Nuremberg Laws caused even more refugees to flee Nazi Germany, it brought home to McDonald that Nazi policies had to be directly confronted. He was the first and the last high commissioner to urge the League publicly to deal with the root causes of the refugee problem. Whereas Nansen had tried to remain above politics and promoted pure humanitarianism, McDonald realized that he had to address the question of sovereignty. In his widely publicized letter of resignation in December 1935, he took a strong stand against the violations of citizens' rights in Germany, contending that they could not possibly be ignored as domestic matters. He identified the violation of a state's responsibilities to its citizens as a clear danger to international peace and security, rendering international action on behalf of the German refugees impossible if unaddressed.⁵⁵

McDonald's letter of resignation is a remarkable document for its time. It is a careful analysis of how the rights of citizens were systematically violated within a totalitarian state. The document is composed of a powerful letter of resignation urging the international community to reach beyond the concerns of 'diplomatic correctness', and a thirty-four-page analysis of how the Nazi disrespect for citizens' rights gradually permeated German society. McDonald showed how the 'rule of law' had been perverted by a racial ideology. He argued that the racial policy of the Nazi government found expression in legislation, in court decisions, in the interpretation and application of the law by local officials and in extra legal measures taken by the National Socialist Party

and its leaders who directed the central and local governments of the country. The result was to deprive hundreds of thousands of German citizens of all standing in the community and any means of livelihood. More than 80,000 persons had been obliged to leave Germany, though the vast majority of those affected remained in Germany in the hope that the programme of racial discrimination would be abandoned or moderated. The Nuremberg Laws, which withdrew citizenship from persons of 'non-German blood', had crushed this hope. The immediate effect of the Nuremberg Laws was that at least half a million people were deprived of their political rights and their civil status, rendering them into 'guests or wards of the State'.

McDonald's approach was similar to the one used today when the United Nations examines human rights violations in any given country. He analysed the substance of the legislation and then illustrated its application. He showed that the German courts had not only failed to safeguard the rights of equality and liberty, which were the basis of all civilized legal systems, but they had transformed legal guarantees into instruments for the extension and application of the racial principle to matters unregulated by formal legislation or administrative decrees. The three cornerstones of judicial morality had been abolished: equality of all men and women before law; independence of judges; and the doctrine that only those acts are to come under the prohibitions of the law for which the law specifically provides. In McDonald's words the Nazis rejected the fundamental guarantees of 'civilized justice'. He also recalled that the German judicial system had departed from certain general principles that limit the arbitrary power of the sovereign or of the law itself, such as could be found in the US Bill of Rights.⁵⁶

McDonald was adamant that the Nuremberg Laws had initiated a fresh wave of repression and persecution of a kind not envisaged in 1933 and demanded a clear change of policy. Ceasing to choose his words to accommodate diplomatic considerations, he wrote:

One portentous fact confronts the community of states. More than half a million persons, against whom no charge can be made except that they are not what the National Socialists choose to regard as 'Nordic,' are being crushed. They cannot escape oppression by any act of their own free will, for what has been called 'the membership of non-Aryan race' cannot be changed or kept in abeyance.⁵⁷

He was in no doubt that the League had to change its strategies towards Germany: 'Efforts must be made to remove or mitigate the causes which create German refugees. ... It is a political function, which properly belongs to the League itself.'⁵⁸ He called for 'fresh collective action'. The moral authority of the League and its member states had to be directed towards 'a determined appeal to the German Government in the name of humanity and of the principles of the public law of Europe.' Turning to what could be done, McDonald proposed friendly but firm intercession with the German government. He made it clear that the German policy towards Jews was definitely a common concern for which the League had been established. He went on to use what has become a human rights argument: 'When domestic policies threaten the demoralisation and exile of hundreds of thousands of human beings, considerations of diplomatic correctness must yield to those of common humanity. I ... plead that

world opinion, acting through the League and its Member-States and other countries move to avert the existing and impending tragedies.' He was in no doubt that 'the protection of the individual from racial and religious intolerance is a vital condition of international peace and security'.⁵⁹

With this letter of resignation James McDonald took the step which other activists like Georgine Gerhard had demanded previously. The original League document was reprinted by the 'Friends of Europe' with a foreword by Robert Cecil.⁶⁰ A Viennese publisher reprinted it in a German translation.⁶¹ Despite its wide distribution and strong media response, McDonald's courageous appeal never generated direct intervention from the League. His letter of resignation remained the one and only direct political appeal of a League advocate to deal with root causes of the refugee problem. McDonald clearly spelt out the connection between the violation of individual rights and the refugee problem.

In organizational terms, the League drew some lessons from McDonald's critique. His successor was brought back into the League. The League Council, however, carefully circumscribed the new high commission's sphere of activity. It ended its autonomous status and subjected the high commission to the close scrutiny of the League's secretary general, a mixed blessing given Joseph Avenol's open right-wing sympathies. In direct contrast to what McDonald had demanded, internal German policy was declared out of bounds for the League.⁶²

Sir Neill Malcolm, a retired British Army official, was appointed the new League High Commissioner for Refugees. Within his limits, he introduced a few legal improvements. Since the German refugees were not covered by the 1933 Convention, their legal status was highly insecure. In 1936, he convened an intergovernmental conference at Geneva where a Provisional Arrangement concerning identity and travel documents for German refugees was adopted.⁶³ Most remarkably, it prescribed a 'period of grace' before a refugee was required to leave his country of refuge, which in theory limited the recourse to expulsion and established the legal standing and personal status of such refugees in the courts of such countries. This arrangement was followed by a 'Convention relating to the Status of Refugees coming from Germany' adopted by an intergovernmental conference on 10 February 1938.⁶⁴ It confirmed the legal status of those refugees who had managed to leave Germany. It repeated previous measures of protection, improved conditions for refugees in countries of asylum and limited the recourse to expulsion. Signed by the major western European countries, it emerged at the last possible moment, just before a new flood of refugees was occasioned by the *Anschluss*. None of the governments who signed the Convention offered the ratification necessary to put it into effect.⁶⁵

Not surprisingly, in the political climate states were slow to accede to this instrument. In practice, stateless persons continued to live outside the law, and no state permitted international obligations to override the fundamental unwillingness to protect the *apatrides*. The system was considered useful enough, however, that in May 1938 the Council directed the secretary general and the high commissioner to request the governments to extend the Arrangement of July 1936 and the Convention of February 1938 to refugees from Austria. Michael Hansson, a Norwegian judge and president of the Nansen International Office for Refugees, continually highlighted the

inhumane nature of the expulsions, calling them 'a game with the refugee as a human tennis ball' and 'one of the greatest scandals of our times'.

In practical terms the success of the travel and identity system for refugees from Germany paled in comparison with the Nansen Passport system. In one crucial respect, the problem of the refugees coming from Germany in the 1930s was fundamentally different from the Russians and Armenians in the 1920s. While the latter were usually in their country of refuge, the major problem faced by German refugees was finding countries willing to permit them to enter at all. Without this willingness, international agreements on refugee certificates could do little to improve their desperate situation.⁶⁶ Katy Long argues convincingly that refugees during the interwar years were basically treated like protected migrants. The aim of the Nansen Passport was to facilitate their onward movement and enable them to become self-sufficient wherever possible. Thus, their protection was dependent upon economic criteria. And during the economic crisis of the 1930s it grew increasingly difficult to find a country of refuge as the reasons for flight were not given consideration in defining refugee status.⁶⁷

The Evian Conference

Having appointed the former League High Commissioner for Refugees Coming from Germany, James McDonald, as acting chairman of his advisory committee for political refugees,⁶⁸ the US president, Franklin D. Roosevelt, took a last initiative to find new solutions to the German refugee problem just before the outbreak of war. In July 1938, he convened an intergovernmental conference in Evian-les-Bains on the French shore of the Lake Geneva. Switzerland had refused to host the conference in Geneva.⁶⁹ The conference aimed at facilitating the immigration of political refugees from Germany and presumably Austria, but at the same time it was emphasized that 'no state would be expected to receive greater numbers of emigrants than is permitted by its existing legislation.'⁷⁰

The proceedings at Evian were depressing and the historian Shlomo Katz captured the mood by coining it the 'Jewish Munich'.⁷¹ While the League in its refugee work had always sought constructive dialogue and cooperation with private refugee organizations, in Evian this cooperation was expressly avoided.⁷² This was a very different approach to the League refugee work which had heavily relied on the input of the refugees themselves. The outcome of the Evian Conference was that no government committed itself to accepting large numbers of refugees but rather agreed to create an Intergovernmental Committee on Refugees (IGCR) in London. The novelty of this committee was that it was authorized to concern itself with 'actual and potential refugees from Germany (including Austria)'. At last, it was acknowledged that German Jews who had not crossed the border yet had – in language of today – a 'well-founded fear of persecution' and deserved support from this newly created international body. Twenty-seven states were represented on the IGCR. George Rublee, a US Department of State official, was appointed director of the IGCR's permanent secretariat. The idea was that Rublee, since he was not connected with the League, could negotiate with the German government directly.⁷³

Despite the sorry proceedings of the Evian Conference, voices still emerged questioning long-established concepts of sovereignty, arguing the need for an international protection of individual rights and linking it to discourses which later grew strongly in influence after 1945. The Colombian delegate, for instance, raised the question of principle:

Can a State ... arbitrarily withdraw nationality from a whole class of its citizens, thereby making them Stateless persons whom no country is compelled to receive on its territory? Can a State ... pour upon other countries masses of citizens of whom it wishes to get rid, and can it in this way thrust upon others the consequences of a fatal internal policy? The whole tragedy of those thousands of unfortunate people who are driven from country to country [is that] all their tragedy arises from the fact that this preliminary question was not settled in time.

He was under no illusion that as long as this question of principle was not solved, little would be done for the refugees. He suggested the creation of a committee which would study the 'essential problem of the right and duties of the State towards its own nationals, and particularly the question of whether the organisation of the international community is or is not based upon the principle that every individual has the right to belong to any particular nation and not to be deprived of his nationality without automatically acquiring another'. This committee would consider the question of granting to refugees a passport or some other paper of international validity, which would enable them to proceed normally from one country to another. It would also have to devise a full legal status for denationalized political refugees.

The Colombian delegate also drew the attention of his audience to the 'Declaration of the International Rights of Man', which had been adopted by the Institut de Droit International at its meeting in New York in 1929 as well as by the International Federation of League of Nations Unions in Montreux in 1933. Together with the Covenant of the League and the great principles of modern international law, he described this as 'the constitutional charter of the contemporary world'. The declaration, signed by the most authoritative legal institutions, declared in its first article: 'It is the duty of every State to recognise the equal rights of all persons to life, liberty and property, and to grant to all within their territory the full and complete protection of those rights without distinction of sex, race, language and religion.' Article 5 prohibited discrimination saying: 'The equality referred to must not be nominal but actual and effective: no discrimination, either direct or indirect, will be tolerated, and in particular it will not be permissible for any State arbitrarily to withdraw its nationality from those, who for reasons of race, language or religion, it would wish to deprive of the rights of its nationality.'⁷⁴ Myron Taylor, the US representative, also used the vocabulary of human rights when he concluded: 'I need not emphasise that discrimination and pressure against minority groups and the disregard of elementary human rights are contrary to the principle of what we have come to regard as the accepted standards of civilisation.' He added that disrespect for human rights actually posed a threat to peace and security.⁷⁵ Though this debate had little effect and initiated no action, these speakers placed the state's responsibility for individuals at the centre of their arguments, particularly with regard to citizenship, race, language and religion.

At Evian, the authority with regard to the refugee question shifted away from the League and to the newly created IGCR. The Evian Conference failed to grant protection to the dramatically growing numbers of refugees, but even in a situation of highest political tension where the belief in national sovereignty was dominant, the need for a new thinking about individual rights was, if cautiously, displaced.

Conclusion

During the interwar years large refugee flows became symptomatic of the ills of a state system where individuals could be deprived of their citizenship and lose their fundamental rights at a stroke. The plight of those refugees resonated strongly with the international community. The League of Nations High Commission for Refugees and Fridtjof Nansen in particular enlarged the sphere of international responsibility for refugees. As the League's work was heavily reliant on a strong cooperation with refugee relief organizations, the refugees themselves were given a voice in this institutional context. In some cases, individuals who had become the victim of domestic law were heard and their needs considered in the international arena. The League Assembly debates of the 1920s contributed to the internationalization of the refugee problem. More than one million refugees benefited in some form from the League-sponsored international refugee regime.

The introduction of the 'Nansen Passport' and the 1933 Refugee Conventions can be judged as outstanding accomplishments in the development of international refugee law and, in hindsight, to human rights law. Even though the actors in the international refugee regime did not develop a system of universal protection for refugees during the interwar period, they left a lasting legacy in the legal arena. Refugee protection remained dependent on national affiliation – yet, the numbers of national groups covered increased notably. A comprehensive body of rules developed governing refugee identity and travel, economic and social well-being, and notably 'physical protection'. Building on the practical experience of the League High Commission for Refugees during the 1920s, physical protection against expulsion and refoulement became part of international refugee law and is included in the 1951 Refugee Convention.

The story from 1933 onwards is largely one of failure, but it is the responses to that failure and the surrounding discourse which resonate today. With James McDonald's resignation as high commissioner the global understanding of the refugee problem deepened. Even if his widely publicized letter of resignation did not have the desired effect, it was a remarkable attempt to identify the root causes of the refugee movement. No High Commissioner for Refugees before McDonald had the courage to show how the legal practice of a great power had systematically discriminated against a group of its own citizens and, in doing so, posed a threat to international peace and security. With the benefit of hindsight, it becomes evident that McDonald was one of the first people to advocate international measures to protect the basic rights of individuals inside a state. He believed that the abuse of basic rights was fundamental to the refugee problem and thus concerned the entire international community, not just the government involved. Although we see echoes of these views at Evian, they gained

widespread acceptance only after the Second World War, and were embedded in the Universal Declaration of Human Rights in 1948, which has become a point of reference ever since. The Refugee Convention which in part builds on the 1933 convention was adopted in 1951 and forms the basis for all contemporary refugee protection.

Although one cannot speak of a 'human rights regime' during the interwar years, the League's intervention in refugee issues inevitably led to new thinking on the limits of sovereignty, the responsibilities of the state to the individual, and the need for international protection of the individual under threat from the state. Unusually for the times, this thinking was born out of practice as much as ideology – the League's practical experience during the humanitarian crises of the early 1920s with handling millions of refugees, including tens of thousands of individual cases, led it to attempt action in the 1930s. Throughout, the international community had been forced to consider the needs of large numbers of refugees scattered all over Europe. There is no doubt that the majority of states guarded their sovereignty at all costs. Nevertheless, they accepted international legal agreements and obligations towards refugees in order to relieve the plight of the displaced. While minority and national rights undoubtedly received greater attention during the interwar years, an emphasis on individual rights emerged inexorably from both the success and failures of the League's refugee regime.

Notes

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- 2 Samuel Moyn, *The Last Utopia. Human Rights in History* (Cambridge, MA: Harvard University Press, 2010). Moyn identifies 'an agenda for improving the world', in short a 'utopian program' in the current human rights regime, which cannot be found during the interwar years.
- 3 Bruno Cabanes, *The Great War and the Origins of Humanitarianism 1918–1924* (Cambridge: Cambridge University Press, 2014), 10.
- 4 Dorothy Jones, 'The League of Nations Experiment in International Protection', *Ethics & International Affairs*, 8 (1994), 76–96.
- 5 Claudena M. Skran, *Refugees in Inter-War Europe. The Emergence of a Regime* (Oxford: Oxford University Press, 1995).
- 6 Karl Schlögel, *Der Grosse Exodus: Die Russische Emigration und ihre Zentren, 1917–1941* (Munich: Beck, 1994).
- 7 Arie Tartakower and Kurt R. Grossman, *The Jewish Refugee* (New York: Institute of Jewish Affairs, 1944), 1.
- 8 Skran, *Refugees*, 30–61.
- 9 John Torpey, *The Invention of the Passport, Surveillance, Citizenship and the State*, (Cambridge: Cambridge University Press, 2000), 121.
- 10 *Ibid.*, 26.
- 11 Prince Lvov, chairman of the Russian Political Council in Paris, to da Cunha, rapporteur to the Council on refugee questions, 14 May 1921, in 45.12820.12319, R1713, League of Nations Archive (UNOG), Geneva.
- 12 N. Astrov of the Comité des Zemstvos et villes russes de secours aux citoyens russes à l'étranger sent a detailed account to the Secretary General of the League of Nations arguing that something had to be done to improve the situation of Russian refugees.

This report was used in the Council meeting on 5 August 1921. See 45.14500.12319, R1713, UNOG.

- 13 Extrait du procès-verbal de la 9eme séance du Conseil, 12eme séance, Paris, 26 February 1921, in 45.12324.12324, R1717, UNOG.
- 14 Belgian foreign secretary to Eric Drummond, 25 April 1921, in 45.12356.12334, R1717, UNOG.
- 15 Secretary general memorandum concerning Russian refugees, 16 March 1921, in 45.12334.12334, R1717, UNOG.
- 16 Skran, *Refugees*, 75–6.
- 17 Memorandum of 6 May 1921 on ‘Possible action of the League in connection with Russian refugees’, Philip Noel-Baker Papers, 4/450, Churchill College, Cambridge University, cited in Cabanes, *Humanitarianism*, 161.
- 18 Report of the High Commission for Refugees by Fridtjof Nansen on the Work presented to the Fourth Assembly, 4 September 1923, in A.30.1923, UNOG.
- 19 Keith Watenpaugh, ‘Between Communal Survival and National Aspiration: Armenian Genocide, Refugees, the League of Nations and Practices of Interwar Humanitarianism’, *Humanity: An International Journal of Human Rights, Humanitarianism and Development*, 2 (2014), 159–81.
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- 21 Michael R. Marrus, *The Unwanted: European Refugees in the Twentieth Century* (New York: Oxford University Press, 1985), 126–8.
- 22 Ibid., 110.
- 23 Skran, *Refugees*, 116–8.
- 24 Marrus, *The Unwanted*, 133.
- 25 Skran, *Refugees*, 116–8.
- 26 Ibid., 133–8.
- 27 Barbara Metzger, ‘The League of Nations and Human Rights: From Practice to Theory’, unpublished PhD thesis, Cambridge 2001.
- 28 Fitzmaurice, ‘Between the Wars’, 238.
- 29 Ibid.
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- 32 Skran, *Refugees*, 129.
- 33 Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia: University of Philadelphia Press, 1998), 131–4.
- 34 Lauren, *Human Rights*, 131.
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- 36 Interview with Dr Gerhart M. Riegner, former president of the World Jewish Congress, Geneva, 18 October 1995.
- 37 ‘Les Droits de l’homme et du citoyen devant la 14e Assemblée de la S.D.N.’, *La Revue Diplomatique* (31 October 1933), 6–7. Cited in Lauren, *Human Rights*, 134.
- 38 Marrus, *The Unwanted*, 160.

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- 40 League of Nations, *Official Journal*, Special Supplement, No. 115: Records of the Fourteenth Assembly, Fifth Plenary Meeting, 30 September 1933, 50.
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- 42 League of Nations, Verbatim Records of the Fourteen Session of the Assembly of the League of Nations, Fifth Plenary Meeting, 30 September 1933. See Antoine Frangulis, 'Droits de L'Homme', *Dictionnaire Diplomatique* (Paris, 1937), cited in Lauren, *Human Rights*, 135.
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- 49 Letter from Edmund Rümmele to High Commission for Refugees, 31 October 1934, in C1605-No.8, 33–5, UNOG.
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- 55 James G. McDonald, *Letter of Resignation Addressed to the Secretary General of the League of Nations, With an Annex* (London 1935). The letter was written by Oscar Janowsky, a professor of history in New York, and Melvin Fagen, a specialist in international law. See Skran, *Refugees*, 234; Breitman et al. (eds), *Refugees and Rescue*.
- 56 Ibid., Annex 21.
- 57 Ibid., point 3.
- 58 Ibid., point 3.
- 59 Ibid., point 15.
- 60 Letter from Rennie Smith, Friends of Europe, to Norman Bentwich, High Commission for Refugees Coming from Germany, 22 January 1936, in C1611-No. 7, 36, UNOG.

- 61 Letter from Norman Bentwich, High Commission for Refugees Coming from Germany, to Dr Heinrich Glanz, 28 January 1936, in C1611-No. 7, 36, UNOG.
- 62 Marrus, *The Unwanted*, 164.
- 63 This provisional arrangement was ratified by the governments of France, the United Kingdom, Belgium, Denmark, Spain, Norway and Switzerland.
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