

# The Legal Status of Russian Refugees, 1921–1936

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## ABSTRACT

Dieser Aufsatz untersucht die rechtlichen Lösungen, die die High Commission for Refugees in der Zwischenkriegszeit für den Verbleib von Hunderttausenden von Flüchtlingen, die aus dem früheren Russischen und dem Osmanischen Reich nach Europa gekommen waren. Diese Flüchtlinge galten als Staatenlose in einer Welt, in der Rechte davon abhingen, dass ein Staat Individuen schützt. Russische Flüchtlingsanwälte und Rechtsexperten beteiligten sich in dieser Phase an einer juristischen Definition der Kategorie Flüchtling und versuchten ihm Rechte wie das der freien Bewegung, des Verbotes der Reziprozität von Vertreibung und das Recht auf Arbeit zu sichern. Sie überzeugten europäische Staaten Grenzen ihrer staatlichen Souveränität zu akzeptieren, so dass Staaten in den 1920er und 1930er Jahren ihr Einverständnis zu Arrangements und Konventionen gaben, die einen speziellen Schutz für Flüchtlinge in ihrer Gesetzgebung vorsahen. Damit wurden die Grundlagen für den Rechtsschutz der Flüchtlinge im 20. Jahrhundert geschaffen.

## 1. Introduction

During 1919–1920, thousands of Russian refugees crossed the Black Sea from Southern Russia to Constantinople. These were military evacuations of the anti-Bolshevik armies, though each included thousands of civilians. Simultaneously, Russian subjects left across all the borders of the former Russian Empire as it was engulfed in class war and imperial collapse. Constantinople claimed the attention of the new post-war international community. Constantinople was under Allied occupation and the Allies had responsibility for the Russians they supported during the Russian Civil War. The arrival of these refugees proved to be a financial, logistical and political burden to them. Transnational relief or-

organisations such as the International Committee of the Red Cross (ICRC) and the Save the Children Union were concerned with the humanitarian crisis in Constantinople. Such organisations and interested states put pressure on the new League of Nations to take up the problem of the refugees, as it could only be resolved on an international level. In June 1921, the League of Nations created a High Commission for Russian Refugees (HCR), the precursor to the UNHCR. The remit of this new body was to ‘liquidate’ the refugee problem through repatriation or naturalisation; to help coordinate relief efforts, to find work for the refugees and to examine legal solutions.

This article will examine the measures developed within the HCR for the legal status of the refugees. From the beginning legal status was discussed, although the HCR gave it lower priority as its preferred solutions were repatriation, colonisation or naturalization. The dominating legal issue for the refugees was their statelessness in a world from which meaningful rights were derived from state protection. Russian refugee legal experts positioned the solution to the refugee issue as a social and juridical one, where refugees would adapt and absorb into their new states and be gradually treated as ‘nationals’ in so far as that was compatible with their status as aliens.<sup>1</sup> Their legal solutions would involve the creation of the refugee as a legal category and securing certain rights and protection, including that of movement and exemption from reciprocity. This involved states agreeing to accept limits on state sovereignty, as through the 1920s and 1930s they agreed to adhere to Arrangements and Conventions which gave special protection to the refugees in their jurisdictions. This incremental work laid the foundations of legal protection for refugees in the twentieth century.

## 2. The High Commission for Russian Refugees and Repatriation

Fritdjof Nansen, the Norwegian diplomat, scientist and explorer was chosen as the High Commissioner for Russian Refugees. It was hoped that the League of Nations would arrange their repatriation, which was seen as the most viable solution. In 1920 Nansen had helped organise the repatriation of the Central Powers’ POWs from Russia and had established working relations with Moscow. Like others, Nansen believed that contact with the West would moderate the Bolshevik regime, that Russia’s main problem was its economic backwardness and that Russia’s economic reconstruction was essential for international peace. The Bolsheviks were willing to contemplate the return of certain sections of the emigration that could help with economic reconstruction, chiefly Cossacks who had often been skilled farmers in their wealthy agricultural regions of Southern Russia and Ukraine. They also expressed an interest in the return of medical students and doctors.<sup>2</sup>

1 J.L. Rubinstein, ‘The Refugee Problem’, *International Affairs* 15 (September–October 1936) p. 727.

2 United Nations Office in Geneva, Nansen Fonds (NF), Mixed Refugees Archive, R.715, doc. 27914, p.9.

The Soviet Union was not a member of the League, so Nansen and his personal representatives, John Gorvin, a British civil servant from the Ministry of Agriculture and the Norwegian Vidkun Quisling, negotiated with representatives of the Soviet government over the repatriation of Cossacks in 1922-24.<sup>3</sup> The Soviet government issued wide Amnesty Decrees in November 1922 to soldiers and officers of the White Armies who could demonstrate that they had fought against the Bolsheviks due to 'deception and force'. A Soviet Red Cross mission was established in Bulgaria – the only state willing to host it – to organise the repatriation across the Black Sea to Russia in 1923. The repatriation programme, in which so many (non-Russian) hopes were invested, never solved the Russian refugee 'problem'. The HCR estimated that only some 6,000 refugees, chiefly Cossacks, returned on these official schemes.<sup>4</sup> The majority of Russian refugees did not want to return while the Bolsheviks were in power. Optimistic claims about numbers wishing to return by Nansen and those who had a vested interest in the success of the scheme were wishful thinking. Russian refugee lawyers argued that under the Soviet state returnees would have no legal protection despite claims to the contrary. Russian refugee organisations across the political spectrum opposed it, partly as they felt that voluntary repatriation could jeopardise the right to asylum in Europe. The mass famine in the Volga region in 1921 acted as a check to return. Political intrigue and a coup in Bulgaria led to the closing of the Soviet Red Cross mission. By 1924, the Soviet government had entered a period of relative political stability and economic development and seems to have felt that the HCR's involvement in checking up on the repatriated was an unacceptable limit to state sovereignty. They withdrew consent for repatriation.<sup>5</sup> HCR negotiations with the Soviet regime ended in May 1924.<sup>6</sup>

There was some limited legal movement to and from the Soviet Union in the 1920s under the relatively liberal policy of the New Economic Policy, as well as illegal movement across the borders. Legal movement largely ended with the general tightening of security after Stalin assumed power in 1928 when restrictions on the internal and external movement of Soviet citizens were put into place. In the interwar period, Russians in Europe fell into two categories; Russian refugees who had left during the Civil War and Russian minorities in the new states arising from the end of the Russian Empire and out of the Treaty of Versailles. The first group were only the concern of the HCR. Russian refugees initially arrived in all the states bordering or close to Russia, particularly Finland, the Baltic states, Poland, Germany, Romania, Turkey, Greece and China. These were quickly joined as places of first asylum by the Slav states of Czechoslovakia, Bulgaria and Yugoslavia, as thousands of refugees were moved there with the consent of the governments

3 For the repatriation programmes from the viewpoint of the HCR see M. Housden, 'White Russians crossing the Black Sea: Fridtjof Nansen, Constantinople and the first Modern Repatriation of Refugees Displaced by Civil Conflict, 1922-1923', *The Slavonic and East European Review*, Vol. 88, No. 3, July 2010, pp. 495-524; K. Long, 'Early Repatriation Policy: Russian Refugee Return 1922-1924', *Journal of Refugee Studies* 2009;22(2), pp. 133-54.

4 League of Nations, *Rapport du Haut-Commissariat*, Document A. 23. 1929. 7.

5 Long, 'Early Repatriation Policy' p. 147.

6 UNOG, NF, R1716, 36138.

in the early 1920s. These states, and then France and Belgium, would form the core of the international refugee regime. The second group, that of settled Russian minorities in Poland, the Baltic States and Romania were protected under the minorities' legislation of the League of Nations.

### 3. Determining the Legal Status of Refugees

The HCR's responsibility was to define the refugees' legal status. Belgium, France, Czechoslovakia and Switzerland had already asked the League to clarify this in spring 1921.<sup>7</sup> This issue was raised by Russian refugee lawyers and ex-diplomats; as shall be seen, they were intimately involved in the work behind the scenes of developing refugee law. A series of Soviet decrees in late 1921 deprived Russians abroad of their citizenship, rendering them stateless.<sup>8</sup> They usually lacked identity certificates or passports, and without a state's protection behind them could not travel across borders. However, alongside repatriation, the HCR policy was to transfer the refugee males out of Constantinople to other states on work contracts. The arrival of large groups of skilled males of working age on the fringes of Europe in 1920 was both a threat and an opportunity. France was desperate for male labour to work on economic reconstruction after the war. The new Czechoslovak state and its industrialists (at that time Russophile) welcomed Russian labour for agricultural reconstruction or the Škoda works. The new states of Yugoslavia and Bulgaria wished for groups of labour to work on large infrastructure projects as well as also having Russophile elites. In 1922 for example, Nansen arranged for the transfer of five thousand refugees to Bulgaria to work on railroad construction.<sup>9</sup> Zolberg comments, as far as international migration regimes are concerned, 'statecraft and humanitarianism went hand in hand.'<sup>10</sup> In the early 1920s the HCR and the International Labour Organisation (ILO), to whom refugee work was transferred in 1924, moved tens of thousands of Russian refugees around Europe to work. Passports were also important to move the refugees on if states wished. In 1925, for example, the Refugee Service of the ILO in Belgrade arranged for the emigration of around 2,000 Russian refugees out of Bulgaria, mainly to France, after the Bulgarian government complained that Russian and Armenian refugees were a 'source of danger to production and social peace.'<sup>11</sup>

As John Torpey has written, states successfully monopolised the right to control movement in the modern period, 'particularly though by no means exclusively across international boundaries.'<sup>12</sup> State sovereignty became uniquely embedded in this control

7 C. Gousseff, *L'exil Russe. La Fabrique de réfugié apatride 1920–1928*, Paris 2011, p. 218.

8 S.S. Ippolitov, *Rossiskaya emigratsiya i Evropa: nesostoyavshiysya al'yans*, Moscow 2004, p. 40.

9 NF, Memorandum 22 November 1922. Report of a conversation which Dr Nansen had with Mr Goulkevitch, November 14, 1922. 45/24653/x

10 A. Zolberg, 'Matters of State. Theorising Migration Policy' in C. Hirschman (ed), *The Handbook of international migration. The American experience*, New York 1999, p. 85.

11 A. Tixier, *The Refugee Problem in Bulgaria*, International Labour Organisation, Geneva 1925, p. 25.

12 J. Torpey, *The Invention of the Passport. Surveillance, Citizenship and the State*, Cambridge 2000, p. 4.

and 'sovereignty is nowhere more absolute than in matters of emigration, naturalisation, nationality, and expulsion'.<sup>13</sup> At the same time, the identification revolution made it easier to distinguish through files and documentation who was a national and who was an alien. In France for example the category of 'immigrant worker', which eventually became synonymous with 'foreigner', was created in the late nineteenth century.<sup>14</sup> The Great War saw states introduce even tighter restrictions on immigration, migration, passport control and residency rights. The Aliens Restriction Act was passed in Britain in 1914, followed by an Aliens Order in 1920. Passport controls were reintroduced in France during the war, and in 1917 an individual identity card became mandatory for all foreigners above age fifteen.<sup>15</sup> Italy and Germany also saw new restrictions on foreigners entering and these continued into the interwar era. As the state became more 'national' and rights were connected with citizenship, those who were no longer citizens of a state became a legal anomaly and had no rights. The main principle which governed the status of aliens in individual states, particularly under the Napoleonic Code, was the principle of reciprocity which clearly could not be applied to Russian refugees. The passport and identity issue was seen as most urgent. Without these, the refugees would remain unprotected and potentially ineligible for social welfare, such as access to education for their children. At first therefore, there was considerable variation in what laws states applied to Russian refugees. Indeed in August 1921 Nansen held an Inter-governmental Conference in Geneva where it was agreed that each state should deal with the legal status of refugees individually.<sup>16</sup>

While Constantinople was under Allied control, Russians were treated under the Ottoman capitulation laws. The French state applied Imperial Russian civil law to Russians within its border, so the principle of reciprocity held, until 1924 when it recognised the Soviet Union. Some of the confusion can be seen from the statement of the HCR representative in Vienna in 1922:

*The Austrian government has decided that for the future Russian refugees may obtain 'Staatenlosenspässe' from the police authorities, which will be regarded abroad as Austrian passports. This will regularise the position of Russian refugees in Austria, who, until the recognition by Austria of the Soviet government in March last, received papers from the Spanish Legation in Vienna.*<sup>17</sup>

The need though for a consistent and internationalised approach was recognised from the beginning and at all meetings the need for Russian refugees to have identity papers was discussed. The issue was passed to the Legal Section of the League, with the involvement of Russian refugee lawyers. It was suggested that Nansen, under the authority of the League, could issue them with an identity certificate, although it was acknowledged

13 H. Arendt, *The Origins of Totalitarianism*, p. 265.

14 Gousseff, *L'Exil Russe*, p. 219.

15 *Ibid.*, p. 219.

16 Gousseff, p. 223.

17 UNOG, NF, R. 1719/45/19522, HCR Liaison Report, 4<sup>th</sup> August 1922.

that this would give refugees no legal protection. Another suggestion was that states accepting the refugees should issue them provisional passports for a period of twelve months, renewed on good behaviour. Another was to regularise the status of the Russians by continuing to recognise the Tsarist Russian embassies and consulates abroad as legal representative of the refugees and for Russian Imperial law to be applied to them under the principle of reciprocity (this was the preferred solution of many Russian organisations). Another was to have one of the Allied powers issue protective passports. Another option apparently emanating from the HCR was to internationalise a ‘controversial territory’ (Constantinople) and place it under the control of the League of Nations. This could become a territory to which refugees could be ‘repatriated’ by states who no longer wanted them or refused to accept them; it was considered states would be more likely to allow refugees in if they could send them away again.<sup>18</sup> In the end the decision was made that the HCR should develop an internationally accepted identity certificate.

#### **4. The Nansen Passport and the 1922 Arrangement: the right to a legal identity**

The solution for the problem of providing an internationally recognised identity document was the so-called Nansen Passport, formalised on 5 July 1922 in the Arrangement with Respect to the Issue of Certificates of Identity to Russian Refugees. This was approved at an Inter-Governmental Conference attended by representatives of sixteen governments. The Nansen Passport was not a proper passport, but an identity certificate for an individual refugee, valid for one year. The HCR and the states concerned also defined who was eligible for a Nansen passport. Russian representatives did not want the word ‘refugee’ on the certificate and insisted that the term ‘Russian’ be used to cover all the nationalities of the former Russian Empire. Konstantin Gul’kevich, the ex-Tsarist diplomat who was based in Geneva and advised the HCR on refugee issues, apparently suggested the phrase ‘person of Russian origin who has not acquired another nationality.’<sup>19</sup> This became the kernel of the legal definition of a refugee in the interwar period, which would become finalised in 1928 and used in the 1933 Convention. It was a group definition based on nationality and the deprivation of the protection by the state of origin or its successor. This was different to the 1936 International Agreement for refugees from Nazi Germany, which defined refugees as persons who were deprived of the protection of the German state, but crucially left it to the responsibility of the individual state where asylum was being requested to determine who was eligible for this refugee status. Nor was it an individual designation based on fear of political persecution, as it would become after the Second World War. Later on, the HCR protection was expanded to other

18 F. Johnson, *International Tramps*, London 1936, pp. 259-260.

19 Gul’kevitch had been the Russian Ambassador in Norway and had good relations with Nansen. Other Russian lawyers described this definition as legally senseless.

groups of refugees of Christian minorities from the Ottoman Empire, who had been subject to violent forced displacement in this period. The largest group of these, the Armenians became eligible for Nansen passports in 1924 under the definition ‘any person of Armenian origin, formerly a subject of the Ottoman Empire, who does not enjoy the protection of the Turkish Republic and who has not acquired any other nationality.’ In 1928, the right to hold a Nansen passport was given to Assyrians and Assyro-Chaldeans who had been displaced largely to Syria and Iraq during the Turkish War of Independence. The Nansen passport was also given to several hundred Turks who had earlier worked for the Allied occupation of Turkey. In 1935 it was extended to several thousand Saar refugees after the region voted to reunite with Germany.

The Nansen Passport was a watered down version of a draft by the League’s Legal Section and Russian lawyers which would have given the refugee some of the same rights as citizens, including the right of free movement and the right to work. This was considered too great an infringement of state sovereignty and was changed by France.<sup>20</sup> The Nansen Passport facilitated moving on from the first country of arrival to find employment. One of its major drawbacks was that it did not give the refugee the automatic right to return to the state in which it had been issued. This made some states reluctant to accept refugees even with Nansen passports, as they were not deportable.

The Nansen Passport is considered a major achievement of the interwar refugee regime. Apart from the refugees themselves, the only states it benefitted were the states of first arrival who could hope their ‘burden’ of refugees might move on. Yet thirty-two states had recognised it by 1923 and it was eventually recognised by over fifty. The HCR persuaded states to adhere to the Arrangements by arguing that the Nansen passport would facilitate employment, help ascertain how many refugees they had and facilitate their departure elsewhere. For those who had recognised the Soviet Union, it helped politically that the state could recognise the refugees through the intermediary of the League. It did very little to limit state sovereignty, and states continued to treat refugees in line with their own interests, which probably accounts for its wide adoption. States were willing to recognise it as it had little impact on their right to regulate entry and gave no rights to the individual refugee, apart from the right to be recognised.

## 5. The Problems of the Nansen Passport and the 1926 Arrangement

After the end of the repatriation scheme in 1924 technical and administrative responsibilities for refugee work were transferred to the Refugee Service of the International Labour Office (ILO), while Nansen retained responsibility for the political, legal and financial aspects. Major Frank Johnson was both Chief of the Refugee Section of the ILO and Assistant High Commissioner for the HCR. He was the key figure in refugee

20 Russkie Bezhtentsy. Problemy rasseleniya, vozvrashchenie v rodinu, uregulirovaniya pravovo polozeniya. 1920-1930-e gody. Moscow 2004, p. 15.

work throughout the period. Russian refugee lawyers and activists were not satisfied with the Nansen Passport and continued working towards further improvements in the legal status of the refugees. The émigré Central Juridical Committee in Paris sent Johnson a memorandum in late 1925 with suggested changes to the Nansen passport system and the legal rights of the refugees, many of which were to be incorporated in a new Arrangement of 1926. Russian refugee lawyers saw freedom of movement as a human right that was still being denied by states to refugees.<sup>21</sup> Their memorandum listed ways in which states were still avoiding or moderating the Arrangement of 1922. Nansen passports were being denied to certain categories of refugee; those who had arrived in the state after a fixed date (usually connected with the state's recognition of the Soviet Union) or those coming from areas of the former Russian Empire not currently within the border of the Soviet Union or even the Russian Federative Socialist Republic. Some states would only give Nansen passports to those who had promised to leave the state. Others were demanding expensive notarised documents or even statements from the Soviet embassy that the refugee was not a citizen of the USSR. Some states were threatening those without Nansen passports with forced repatriation.<sup>22</sup> Lithuania was strictly limiting the number of Nansen passports it was handing out and Estonia was refusing to accept the Nansen passport at all.<sup>23</sup> All state interactions with the HCR were voluntary: in February 1923, the Yugoslav government told the HCR that it was dealing with the Russian refugee issue on its own and had no need to work with it.<sup>24</sup>

The Russian lawyers reiterated their original resolutions to the problem of legal status and identification; that local émigré committees, recognised by individual states, should be allowed to approve identity claims. They wanted the Nansen passport to be eligible for a three year period (instead of one) and family members to be included. Further, they claimed that the strict visa regime imposed during the Great War was loosening in Europe from 1922, but not for Russian refugees. The lawyers wanted the refugees to have the same general rights to visas as other citizens of the state and also the automatic right of return as well as free movement within states. They also suggested that The League of Nations or the ILO should manage the Nansen passport system itself and not leave it to individual states, though they accepted this was unlikely to happen yet as it would be a step too far.

A major stumbling block to the resolution of the refugee problem was that the traditional migration states which had absorbed Europe's surplus populations were closing their doors. The US and Canada refused to recognise the Nansen passport. In 1921, the Canadian government passed Order-in-Council P.C. 2669, which stipulated that only immigrants from the British Isles and the US could arrive without passports. All others

21 Memorandum of members of the Central Legal Commission with attached recommendations in connection with the Geneva Arrangement. 27 February 1926, in *Russkie bezhentsy*, p. 234.

22 *Russkie bezhentsy*, p. 236.

23 NF, R 1730, Report of HCR 1923.

24 NF, R 1730, 17000/3. The Yugoslav government was opposed to the HCR's repatriation policy; the HCR blamed 'White Russian' intrigues.

had to have a valid passport less than a year old and had to obtain visas in their country of origin.<sup>25</sup> The Minister of Immigration and Colonization declared in the House of Commons that in order to ‘hold back the flood’ of refugees desperate to leave Europe they were introducing a \$250 financial requirement for all refugees apart from agricultural workers and domestics and a ‘through passage’ requirement that all refugees must arrive in Canada directly from their country of birth or citizenship. This put insurmountable obstacles in the way of Russian refugees.<sup>26</sup>

Canada would not recognise the Nansen passport as it gave no guaranteed right that they could return un-naturalised immigrants who turned out to be undesirable. Churchill argues that this was a cover for the fact that the Canadian authorities did not want to accept Russian and Armenian refugees per se, as they still refused to accept refugees even when some states, keen to move their refugees on, did start to guarantee a five year return period.<sup>27</sup> The Canadian government took the position that the Russian refugees should be repatriated or assimilated into European states. They were unwilling to take the burden and responsibility for refugees and kept them out through non-recognition of the Nansen passport and high financial requirements. The HCR worked tirelessly and futilely to break down the resistance of Canada and the United States to the admission of Russian refugees, who they presented as excellent agricultural workers.

On 10 May 1926 there was another Inter-Governmental Conference in Geneva on refugee identity documents, with the participation of twenty-four states. The Conference was to again define who was entitled to receive a Nansen passport; to make further changes to the passport system; to determine the numbers of refugees in various countries; and to create a revolving fund to provide for the cost of the transportation and settlement of refugees abroad. The Russian lawyers did not get what they ultimately wanted, which was for the Nansen Passport to become a real passport. This was rejected by states.<sup>28</sup> Nonetheless, the legal status of refugees was improved incrementally. Provision 3 recommended that the Nansen passport holder should have the general right to a return visa for up to a year, ‘on the understanding that Governments shall be free to make exceptions to this principle in special cases.’ They should also have greater rights to entry, exit and transit visas. Children should be included on their parents’ passports. A Nansen stamp was also introduced, in which refugees paid a small sum which went into a fund for loans to refugees to set up businesses and facilitate their emigration to South America.<sup>29</sup>

25 I. Churchill-Kaprelian, ‘Rejecting “misfits”: Canada and the Nansen Passport’, *The International Migration Review*, 28 (2), p. 281.

26 Churchill-Kaprelian, p. 23. A small number of specific groups of Russian refugees who had sponsorship were permitted to come to Canada.

27 Churchill-Kaprelian, p. 7. Czechoslovakia, Romania, Poland and Greece all eventually agreed to a five year return period.

28 *Russkie bezhentsy*, p. 27.

29 This was very unpopular with refugee groups, who resented refugees’ money being spent on unviable emigration schemes.

The definition for the Russians was also expanded to ‘any person of Russian origin, who does not enjoy, or has ceased to enjoy, the protection of the government of the Union of Soviet Socialist Republics and has not taken any other nationality.’<sup>30</sup> The Arrangement of 12 May 1926 clarified that ‘Russian’ referred to an old legal national identity and country of origin and not ethnicity, and also meant from the entire territory of the former Russian Empire.<sup>31</sup> This stopped the use of cut-off dates for who could be eligible for a Nansen passport and also stopped states refusing to issue Nansen passports to Russians originally from the former *limitrophe* states or from non-Russian areas of the USSR. This was a juridical and non-political definition. This new Arrangement was endorsed by twenty-three states; Belgium, Bulgaria, Cuba, Estonia, Finland, France, Germany, UK, Greece, Hungary, India, Latvia, Norway, Poland, Romania, Sweden, Switzerland, Denmark, and Yugoslavia.

## 5. The 1928 Arrangement

A Central Commission for the Study of the Condition of Russian and Armenian Refugees was founded within the Nansen Office in 1926 which included Konstantin Gulkevitch, Jacques Rubinstein, Baron Boris Nolde and Andre Mandelstam, all key figures in the development of refugee law. They continued to push for more protection for refugees, particularly in terms of the rights of the most favoured foreigners (exemption from reciprocity) and the rights to return or restraints on expulsion. They argued that a formal Convention between states defining the international status of refugees was needed to guarantee this protection.

Stateless refugees were *a priori* excluded from the category of most favoured foreigner, whose social rights (employment and social welfare) were facilitated by bilateral agreements between the home state and state of immigration. Rights dependent on being a foreigner became much more important due to the increasingly restrictive policy towards aliens. By the late 1920s states, including Poland, Czechoslovakia and France, were introducing restrictive labour legislation to protect national labour markets. In 1928 for example, Czechoslovakia passed a law that anyone who had arrived in the state after January 1923 was not allowed to get employment without a special permit.<sup>32</sup> A law of 10 August 1932 would restrict the number of foreign employees in certain enterprises and businesses in France. This had a negative impact on Russian refugee employment.<sup>33</sup> There also was a growth in popular xenophobia and ‘anti-foreigner’ campaigns. Russian refugees had no particular rights of asylum or protection and as stateless had no chance

30 Russkie bezhentsy, p. 28.

31 League of Nations Report, HCR, 1930.

32 M. Frankl, ‘Prejudiced Asylum: Czechoslovak Refugee Policy, 1918–60’, *Journal of Contemporary History*, 2014, Vol. 49 (3), p. 543.

33 M. Dewhurst Lewis, *The Boundaries of the Republic. Migrant Rights and the Limits of Universalism in France, 1918–1940*, Stanford 2007, p. 171.

of being in the category of most favoured foreigner. In 1925, the Russian Red Cross (Old Organisation) complained to the chief Russian refugee representative to the French state, Vasily Maklakov, that Russians in France were being denied their rights of asylum. Maklakov replied that 'the right to asylum has no juridical significance and does not grant any specific rights...you are mistaken when you claim that all the Russian refugees are here as emigrants with asylum rights granted by France...the overwhelming majority are here as not as emigrants, but as labour forces and therefore subject to special control and regulation.'<sup>34</sup> As well as being subjected to protective labour laws, Russian refugees did not always automatically qualify for social welfare protection such as unemployment and sickness benefits. Another major issue was that of expulsion. Records from Marseille and Lyon indicate that the local French authorities often tried to expel refugees and imprisoned those who refused to go, usually because they had nowhere to go.<sup>35</sup> Driven underground and forced into crime and illegal living, some refugees were reduced to a life of trial and imprisonment.

A further Inter-Governmental Conference was held 28-30 June 1928 in the hope of resolving these issues. The Russian lawyers met with Johnson before the conference and it was agreed that the League of Nations should have the power to perform consular functions for Russian refugees in different states; that Russian and Armenian refugees should not suffer in general because of any lack of reciprocity; that they should not be penalised in the labour market, or expelled from the state; that they should have tax and visa equality with nationals or citizens of other states; that they should also enjoy freedom of movement and have an automatic right of return unless specifically forbidden.<sup>36</sup> A new Arrangement of 30 June 1928 gave the Nansen Office the authority to perform consular functions in individual countries for refugees, such as certifying their identity and civil status; their former family position and status based on documents issued in their country of origin; the regularity, validity and conformity of their documents with the previous law of their country of origin issued in that country; the signature of refugees; attesting to their character, and recommending them to government and educational authorities. France and Belgium concluded an Agreement adhering to this, and Bulgaria and Yugoslavia informally adopted this system. This provided for direct protection by the League of Nations. Refugees should enjoy certain rights usually granted to aliens, subject to reciprocity. It was agreed that their personal status should be determined by the laws of domicile or residence, that they should be entitled to free legal advice and that they should be treated more sympathetically than foreigners in terms of restrictions on labour. Their travel should be also facilitated, with the 'return clause' that certificate holders had the right to return to the issuing state. This was a voluntary non-binding arrangement,

34 Ippolitov, p. 67.

35 Dewhurst Lewis, pp. 159, 168.

36 Report of the Special Technical Commission on the Legal Situation of Russian and Armenian Refugees in the Session of the Advisory Committee, 22 May 1928, in *Russkie bezhensty*, p. 255.

but many of these points would be codified into international law in the 1933 Convention Relating to International Status of Refugees.

This was a genuine step forward in refugee protection and has been described as promoting a kind of ‘supranational citizenship’.<sup>37</sup> In the absence of diplomatic protection, the refugees could benefit from actions taken on their behalf by the League of Nations. It highlighted the inadequacy of the reciprocity principle in regard to refugees and signified the first attempt to standardize the rights given to refugees. The 1928 Convention went some ways to according refugees the same rights as national citizens as well as special rights not given to ordinary foreigners. Rubinstein states that the HCR had become a juridical person playing an important role in moderating agreements and international normative acts.<sup>38</sup> Yet the recommendations remained just that, and it was clear that a Convention was needed, where all states agreed to a legal definition.

This Arrangement had less appeal and only thirteen states signed this. Germany, Austria, Belgium, Bulgaria, France and Lithuania signed it in full. Poland, Romania, Yugoslavia and Switzerland did not accept the role of the HCR. Greece and Estonia accepted it with considerable reservations. Egypt, Finland and Czechoslovakia refused to sign it. According to Rubinstein, the ‘majority of states were unwilling to contract formal obligations on behalf of the refugees.’<sup>39</sup> Governments also believed that only states where refugees had gone should have an ‘interest’ in refugees, and that other states had no obligations to them.<sup>40</sup> Undaunted, the Russian lawyers decided to work towards a Convention. The 1928 Arrangement had opened the door just enough.

In 1928 an Intergovernmental Advisory Commission on Refugees was formed within the HCR, consisting of representatives of 14 states where Russian refugees were based and eight advisors nominated by the Advisory Committee for Private Organisations of the HCR. This included Gul’kevitch, Rubinstein and Nolde. The League decided to call an international conference, and questionnaires on the legal status of refugees were sent out to all interested governments. Jacques Rubinstein headed a committee looking at the responses and wrote a series of recommendations then discussed at the Intergovernmental Conference on the Legal Status of Refugees in June 1928. This recommended transferring all refugee work back to Nansen. After Nansen’s death in 1930, an autonomous Nansen International Office for Refugees was formed to look after the labour settlement and humanitarian aspects of refugee work. It was to be wound up at the end of 1938.

37 Torpey, p. 129.

38 Russkie bezhentsy, p.260.

39 Rubinstein, ‘The Refugee Problem’, p. 727.

40 R. J. Beck, ‘Britain and the 1933 Refugee Convention. National or State Sovereignty?’, *International Journal of Refugee Law*, Vol. 11, No 4, 1999, p. 602.

## 6. The 1933 Refugee Convention

In 1930, it was estimated that there were around 400–500,000 Russian refugees in Europe, with the largest single concentration in France, around 150–200,000.<sup>41</sup> As noted above, their living conditions were deteriorating and their vulnerability was heightened with the onset of the Depression in Europe. The Russian lawyers kept up the pressure for a Convention to protect these refugees, particularly as the Nansen Office was destined for closure in 1938. The Nansen Office argued that statelessness was still the greatest barrier to the improvement of the conditions of the refugees.<sup>42</sup> Refugees as a social group were least favoured in the ‘struggle for existence’, as states became more nationalistic and protective of their own citizens. As foreigners, they had fewer rights than citizens or those with most favoured foreigner status. Being stateless, they found it hard to get visas to move on if they lost employment and thus were at risk of falling into vagrancy or expulsion even though they had nowhere to go. As Rubinstein commented ‘the expulsion of a stateless person is a shameful thing...to the expelled refugee all frontiers are closed, all territories forbidden; he is confronted by two sovereign wills, that of the State that says “go” and that of the State that says “stay out”.’<sup>43</sup> Dewhurst-Lewis cites the case of one Russian in Marseille, Boris M. who was imprisoned nine times between 1932–36 for vagrancy and failing to honour his expulsion order.<sup>44</sup>

The Advisory Committee for Refugees held a second meeting in September 1930 to look at the future organisation of refugee work.<sup>45</sup> A ‘radical solution’ for the refugees still needed to be found. Neither repatriation nor mass naturalisation was an option. In 1929 the Tenth Assembly of the League suggested the wholesale naturalisation of refugees and the HCR carried an inquiry as to whether states would consider this. This proposal was decisively rejected by states. Naturalisation was seen as an individual act ‘gifted’ by the state.<sup>46</sup> Naturalisation data was not easy to come by, but the Nansen Office estimated that only about seven per cent of refugees had been naturalised.<sup>47</sup> Few refugees seemed to actively seek out naturalisation. The majority of Russian refugees even by 1930 had not given up hope of the Soviet regime collapsing, a hope that may have seemed realistic at this point as the Soviet Union was convulsed by peasant uprisings during forced collectivization.

41 League of Nations Report by the Inter-Governmental Advisory Committee attached the High Commissioner for Refugees, September 5 1930. A.34. 1930.XII

42 League of Nations Report by the Inter-Governmental Advisory Committee attached the High Commissioner for Refugees, September 5 1930. A.34. 1930.XII

43 Rubinstein, p. 723.

44 Dewhurst Lewis, p. 172.

45 League of Nations Report by the Inter-Governmental Advisory Committee attached the High Commissioner for Refugees, September 5 1930. A.34. 1930.XII

46 League of Nations, Document G.A.C. – 11.1929. There had earlier been a mass naturalisation organised by Nansen and the HCR; the granting of Greek citizenship to Greek refugees arriving as a result of the population exchanges with Turkey in 1922.

47 League of Nations Report by the Inter-Governmental Advisory Committee attached the High Commissioner for Refugees, September 5 1930. A.34. 1930.XII

In August 1931 the Inter-governmental Advisory Commission on Refugees met in Geneva for its Fourth Session and endorsed the establishment of a Convention to stabilise the legal situation of the refugees. This was supported by the Twelfth League Assembly. A Committee of Experts was set up and more information was gathered about the legal status of refugees in individual states. Initial preparations were not auspicious. Thirteen states did not respond to the drafting of the Convention passed to them in late 1931.<sup>48</sup> This lack of interest allowed the Russian lawyers more freedom to push forward their own ideas. On 26 October 1933 the Inter-governmental Conference on Refugees was convened in Geneva, with the participation of Austria, Belgium, Bulgaria, China, Czechoslovakia, Egypt, Estonia, Finland, France, Greece, Latvia, Poland, Romania, Switzerland and Yugoslavia. Britain, Germany and Lithuania were invited but did not attend. On 28 October 1933, The Convention Relating to the International Legal Status of Russian and Armenian Refugees was announced. The Russian lawyers had achieved some of what they hoped for. As Rubinstein later explained in a speech in London

*It [the Convention] betters the Nansen certificate system, it restricts abuses in the practice of expulsion, and it regulates certain points of private international law. Furthermore, it secures for refugees freedom of access to the law courts, and the most favourable treatment in respect of social life and assurance and of taxation; it exempts them from the rule of reciprocity, it provides for the optional institution of refugee committees in every country and it secures certain modifications of the measures restricting employment.*<sup>49</sup>

Yet he also pointed out its main flaw; that it did not give all refugees the same rights as nationals in employment, only four privileged categories, and states had made the largest number of reservations around employment.

The Convention has been described as a landmark in human rights legislation and the protection of refugees. It was the first binding multilateral instrument to offer refugees legal protection and guarantee their political and civil rights. It was also one of the first contributions to establishing a voluntary system of international supervision of human rights.<sup>50</sup> The 1933 Convention limited state's rights to expulsion through the principle of *non-refoulement*. Stated in article 3, this declared that the state should guarantee 'not to remove or keep from its territory by application of police measures, such as expulsions or non-admittance at the frontier (*refouler*) refugees who have been authorised to reside there regularly, unless (for reasons of) national security or public order.' This restricted the sovereign right of states to expel aliens, one of the key elements of state sovereignty, although it did not actually guarantee an individual's right to asylum or admission to the state, as it was to apply to those already resident in the state.<sup>51</sup> The Convention gave

48 Beck, p. 605.

49 Rubinstein, p. 171

50 P. Fitzmaurice, 'Between the wars – the Refugee Convention of 1933: a contemporary analysis', in *The Challenge of Human Rights. Past, Present, Future*, (eds), D. Keane and Y. McDermott, Edward Elgar 2012, pp. 235-255.

51 C. Skran, 'The Historical Development of International Refugee Law' in A. Zimmerman (ed), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: a Commentary*, p. 19.

the Nansen Office the ability to intervene in cases of expulsion. In 1934-35, the Nansen Office interceded in France on behalf of 1,596 Russians subject to expulsion orders, and as many as 4,000 had expulsion orders against them. Expulsion orders rose again in 1939.<sup>52</sup>

Refugees were particularly impacted as they could not move back to their own state (or easily to another) if their employment was terminated. One important element of the Convention was that laws restricting foreign labour should not be applied to specific groups of refugees; those who had lived in the state for at least three years; who were married to a national; who had children who were nationals, or who had been a combatant in the Great War. Czechoslovakia rejected this outright and a number of other states made reservations. In terms of the right to social welfare and education, the Convention stated that refugees should be given the most favourable treatment the state gives to nationals of a foreign country. These were broadly accepted. The Convention has been seen as most successful in this area, as states made more effort to provide social provisions for refugees.<sup>53</sup> Article 14 of the Convention stated 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.' As noted above, the Napoleonic Code was based on reciprocity and thus stateless refugees could be deprived of various rights, such as the right to inherit, to appear in court, to be a trustee, to acquire a patent or to receive employment accident compensation. Only France accepted this without reservation.<sup>54</sup>

## 7. Reasons for Accepting Limits to State Sovereignty

Why did some states agree (and others refuse) to the Convention and other instruments of the refugee regime in the 1920s which put limits on their sovereignty? Some states had close relations with Russian émigré groups dating back to the Civil War, or even before. Although life for the refugees became harder in Czechoslovakia in the 1930s, the government there resisted Soviet pressure to cut official ties with Russian refugee groups despite their increasing need for a rapprochement with the Soviet Union. Czechoslovak elites constructed an idea of new national identity that was caught up with exile and flight, from religious refugees fleeing Catholic restoration in the early seventeenth century, to the exile experiences of Masaryk and Beneš and others fighting for an independent Czechoslovak state.<sup>55</sup> They also wanted to play a leading role in the new international order and to be seen as a leading liberal democratic state at the heart of the new world order. Similarly Bulgaria and Yugoslavia may have been influenced by pan-Slavism and personal links with the pre-revolutionary Russian elites, as well as a desire to be seen to

52 J.E. Hassell, *Russian Refugees in France and the US between the World Wars*, Transactions of the American Philosophical Society 1999, p. 20.

53 Skran, p. 25.

54 Skran, p. 23.

55 See Frankl, 'Prejudiced Asylum: Czechoslovak Refugee Policy, 1918-60', pp. 537-555.

be part of the new international community. France had a large and relatively stable Russian refugee population who it may have wanted to support so as to be seen as adhering to French traditional liberal principles of offering asylum at not too much risk. Other times, granting refugee rights was done in the hope they may move on; this was a source of support for the Nansen passport in all its forms. Granting a five year extension to right to return, as did some states, was a way of making it more likely other states would then accept them. Robert Beck has analysed why Britain adhered to the Convention. Britain did not contribute to preliminary discussions or attend the Conference. One of Britain's main concerns with the Russian refugees had always been their fear that not only Great Britain itself, but also the Dominions would be forced to accept them, particularly when the refugee issue was managed by the ILO. The Foreign Office wrote to Geneva in 1933 that 'The Home Office, Colonial Office, Dominions Office and the Ministry of Labour are especially anxious to avoid being placed in the position of having to turn down, or to act upon any immigration or settlement recommendations coming from such a source [the League].<sup>56</sup> Their attitude was also that they had very few refugees in Great Britain, so the issue of refugees was nothing to do with them. This was a refusal to see refugees as an international responsibility as well as a refusal to make other states accept general obligations to refugees, which they saw as an encroachment on other states' sovereignty. The British state wished to retain the right to deal with stateless refugees as aliens under the Aliens Order of 1920. However, Britain signed an Instrument of Accession to the 1933 Convention in October 1936, after it was established that refugees from Germany would not be included in it. They agreed to sign it for stateless refugees only, and rejected the non-refoulement clause. The statelessness was important as by only protecting this group, they were not impacting on the state sovereignty of the refugees' country of origin. British policy makers defined sovereignty in territorial terms and would only offer protection to refugees without a state. Additionally, it cost little for Britain to adhere to the Convention as it had very few Nansen passport holders but it made it look like a reasonable player. By this decision the British acknowledged refugees as an international responsibility. The Dutch also adhered to the 1922 and 1924 arrangements to preserve their image as a hospitable and liberal state, though they had accepted very few refugees and their motivation for issuing Nansen passports was the traditional one of ensuring the refugees could move on.<sup>57</sup>

## 8. The Impact of the 1933 Convention

The Convention was only ratified by eight countries; Belgium, Bulgaria, Czechoslovakia, Denmark, France, Italy, Norway and the UK. Italy, Czechoslovakia and the UK

<sup>56</sup> Beck, p. 612.

<sup>57</sup> M. Kuitenbrouwer and H.C.H. Leenders, 'Nederland en het Nansen-paspoort. De houding van de Nederlandse regering tegenover statenloze vluchtelingen', in: Kuitenbrouwer M. en M. H. C. H. Leenders (eds.), *Geschiedenis van de mensenrechten*, Hilversum 1996, pp. 108-119.

made reservations about the principle of admission at the frontier. Estonia, Finland, Iraq, Greece, Latvia, Sweden, Switzerland and the United States did not sign it, but applied it in practice. Egypt signed it but did not ratify it.<sup>58</sup>

The Convention came into force in 1935 and the standard was set that refugees should have the same treatment as most favoured foreigners. The legal situation of Russian refugees remained very varied and the reservations of the states acceding to the Convention restricted in particular the right to work. Russian legal experts stated that the legal situation for refugees was considered positive in France, Czechoslovakia, Bulgaria and Switzerland, all of whom adhered to the Convention. In other states with substantial Russian refugee populations such as China, Poland and Romania, which had not signed the Convention, their situation was precarious and arbitrary. In France, the Popular Front government under Leon Blum ratified the Convention and adopted a non-restrictive policy towards refugees. The right to asylum was identified with the right to work and social service provision was widened in general in this period. This was ended by the Daladier government which came to power in 1938, though the Nansen passport holders remained protected. Local authorities could try to avoid their responsibilities; Hassell writes that in 1938 the Paris region of Billancourt, the home of the Renault works, gave no unemployment benefit to Russians who tried to move elsewhere.<sup>59</sup> The Marseille municipal government tried to argue that it could not afford to give unemployment benefits to stateless persons, but this was rejected by the centre.<sup>60</sup> Even if local authorities had varying attitudes to refugees they had to accept centrally taken decisions. Belgium signed the Convention in 1933 with the reservations that Russian refugees were not to benefit from the advantages given to Dutch, French and Luxembourg immigrants and they could still be expelled. This was later criticized in the Belgian Parliament as 'national egoism'. Yet even before the Convention was ratified in 1937, following the French example Russian refugee workers were exempted from dismissal under the Decree of 1935 which declared ceilings on the employment of foreign labour in the mining industry.<sup>61</sup> They also benefitted from the Convention in other ways, for example they gained the unqualified right to work in Belgium after five years residency, whereas the time limit was ten years for other foreigners. The proviso allowing for expulsion was also dropped by the Belgian authorities, although they could have their movements limited if they were considered a danger to national security.

## 9. Russian Refugee Lawyers and the HCR

Many scholars have noted how individuals and non-State actors challenged State sovereignty in the interwar period. The Russian lawyers formed an epistemic community

58 Fitzmaurice, 'Between the wars', p. 39.

59 Hassell, 38.

60 Dewhurst Lewis, p. 183.

61 See F. Caestecker, *Alien Policy in Belgium, 1840–1940*.

and the final achievement of their work was the 1933 Convention. The sources for the Convention have been identified as international aliens' law and the protection of national minorities. These were areas of expertise for the Russian lawyers abroad, and many formed organisations and pressure groups to push for new rights. In 1926 in Germany, for example, the *Verband der Staatenlosen*, was set up, which was formed of many nationalities, but chiefly Russians. They also wanted stateless people to have the same rights as either nationals or most favoured foreigners.<sup>62</sup> Most of the impetus for the development of refugee protection therefore in the interwar period came from refugees themselves. Possibly HCR interests in repatriation and colonisation acted as a brake. In 1936 Johnson wrote that the mass settlement of refugees abroad was still in his view the solution to the refugee problem. He resented the involvement of Russian refugee representatives ('enterprising jurists') on the Governing Body and Managing Committee of the Nansen Organisation.<sup>63</sup> He stated that he and Nansen had always been opposed to refugees forming a 'permanent institution, a kind of new nationality' in Europe with their own rights of representation.<sup>64</sup> Even as late as 1936, when terror was beginning on a mass scale in the Soviet Union, Johnson insisted that repatriation had been the correct policy and expressed resentment and frustration at refugee groups for 'sabotaging' it.<sup>65</sup> In the interwar period both the HCR and the ILO invested hope and resources in colonisation schemes in Brazil, Argentina and Paraguay. Johnson claimed that Albert Thomas, the Director of the ILO, wanted the refugee work to form the nucleus of transforming the ILO into an 'international employment agency.'<sup>66</sup> As noted above, this was particularly resisted by the British and the Dominions who feared an 'immigration dictatorship' by the ILO and an attack on their sovereignty.<sup>67</sup> The colonisation schemes in South America were unrealistic and unpopular with Russians.<sup>68</sup>

The Russian lawyers on their other hand wished for Russian consulates abroad to be recognised by states as legal representatives of the refugees, preserving the sovereignty of the pre-Bolshevik Russian state abroad. The Russian legal experts had similar backgrounds. Several (Mandelstam, Rubinstein, Vishnyak) were Russian Jews from the Russian Empire, who had an understanding of multiple overlapping identities and issues of minority protection. Many had also worked for the Tsarist Ministry of Foreign Affairs in Constantinople. The Ottoman Empire was the testing ground for ideas of minority protection, limits on state sovereignty and international humanitarian intervention. One of the key Russian lawyers in the interwar period advising on refugee law was Andrei

62 Ippolitov, p. 60.

63 Johnson, *International Tramps*, pp. 200, 268. This polemic is very critical of Russian refugee individuals and organisations, who he blamed for sabotaging his repatriation and resettlement schemes.

64 *International Tramps*, p. 238.

65 *International Tramps*. Major Frank Johnson was the key figure in the HCR in its various inceptions from 1921 to 1934, when he was asked to resign partly due to his clashes with the Russian lawyers.

66 *International Tramps*, p. 183.

67 *International Tramps*, p. 291; p. 175. The British Ministry of Labour was also against this.

68 See S. Lawford Childs, *Youth Uncharted*, 1935 for a description of these schemes. Lawford Childs was a British Foreign Ministry representative who worked for the HCR in the 1920s.

Mandelstam (1869–1949). Mandelstam worked for the Russian Ministry of Foreign Affairs and had been a Dragoman at the Russian Embassy in Constantinople before the Great War and had developed a proposal for the international territorial administration for an Armenian province in 1913.<sup>69</sup> Throughout his legal career Mandelstam argued against an absolutist concept of sovereignty in favour of a liberal one which emphasised the relativity of sovereignty and therefore a role for international human rights legislation.<sup>70</sup> Interwar legal ideas about the limits on state sovereignty were influenced by earlier Russian interventions in the Ottoman Empire and the capitulations policies. After 1930, Russian refugee lawyers gained official positions within the Nansen Office and drove their projects through to the 1933 Convention. Johnson complained in his memoir, that once there, they started ‘putting into effect their old policy of establishing the refugees as some kind of permanent nationality with themselves as their diplomatic and consular agents.’<sup>71</sup> He continued to insist that this was the wrong approach, but in many ways it was how refugee protection law was developed. The Russian (and others) refugees became a protected nationality in Europe. Their representatives envisaged that they would keep this protected status, and not be sent abroad or naturalised en masse, but that they would still adapt to, and be absorbed in their new states. They hoped that this would be a single generational status, as more states like France adopted enlightened citizenship laws allowing all children born in the state to claim citizenship.

## 10. Conclusion

In 1934 the Nansen International Office for Refugees estimated there were about one million Russian, Armenian, Assyrian, Assyrian-Chaldean and Turkish refugees in Europe. In some countries about fifty per cent were unemployed, while twenty five per cent were unable to work.<sup>72</sup> They noted that ‘Practically every one of the refugees represents a problem of some kind for the Office.’<sup>73</sup> Governments were still restricting the rights of foreigners to work and expelling refugees. They called for the proper application of the 1933 Convention, which had provided for an international status for refugees and asked again that measures taken against foreigners should not be applied rigorously to refugees. They asked states:

69 H. Aust, ‘From Diplomat to Academic Activist: André Mandelstam and the History of Human Rights’, *The European Journal of International Law*, Vol 25, No 4, 2015, pp. 1105-1121. Aust describes how Mandelstam was the driving force behind attempts to codify human rights at the international level, ending absolute state sovereignty, culminating in the 1929 Declaration of the Universal Rights of Man by the *Institut*.

70 Aust, p. 1110.

71 *International Tramps*, p. 188.

72 League of Nations C.L. 32, 1935, XII.

73 League of Nations, A.12. 1934. Nansen International Office for Refugees, Report of the Governing Body for year ending June 30<sup>th</sup> 1934

*to establish conditions which would enable the decision already taken by various States... to become fully effective; that the refugees should 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 professions, of industry and of commerce; and in regard to the movement of persons, admissions to schools and universities.*<sup>74</sup>

Europe saw many more refugees in the late 1930s from Nazi Germany and Spain. In 1939, Joseph Roth compared the fate of these new refugees with that of the earlier Russians. In his reportage ‘Old Cossacks’, he writes of a Russian Cossack troupe of experienced musicians who he first came across in the early 1920s, ‘the earliest victims of a world which was just beginning to make people stateless, and things hadn’t yet gotten really tough’. Seeing them again in 1939 older and more tired, after twenty years of travelling (‘It wasn’t really travelling, it was more that they had themselves forwarded’), he reflects on the fates of stateless Jews in Paris:

*A new wave of refugees has arrived in the city. You and I for instance with a pain that’s twenty years fresher. And our destinies will be haggled over in ministries rather than in concert agencies. But we too will be going on a lot of ‘tours’ that one would have to be a real Cossack to survive.*<sup>75</sup>

The Russian refugee was a common figure in the inter-war cultural imaginary, depicted for example in the reportage of George Orwell and Joseph Roth and the fiction of inter-war thriller writers such as Eric Ambler and Leo Perutz. Typically featuring as ex-Tsarist Officers, resourceful, philosophical, rather dashing, tenacious, entrepreneurial, and positioned in a flexible boundary between legality and illegality. Not for the Russian was the internment camp which was to be the fate of refugees in the 1930s and 1940s; instead they were seen as travelling along a mobile trajectory to and from such cities as Constantinople, Belgrade, Marseille, Sofia, Prague and Paris. Even Hannah Arendt, who understood that as stateless people, Russian refugees were also ‘the scum of the earth’, expelled from humanity and living under conditions of absolute lawlessness, she still described them as ‘the aristocracy, in every sense, of the stateless persons.’<sup>76</sup> The League of Nations and the Nansen passport did offer them some protection and the ability to make life choices by limiting state sovereignty. The attempts at resolving the legal status of refugees took some time as the HCR hoped that other solutions – repatriation, colonisation and naturalisation – would work.

74 League of Nations, A.12. 1934. Nansen International Office for Refugees, Report of the Governing Body for year ending June 30th 1934

75 ‘Old Cossacks’, *Pariser Tageszeitung*, January 20 1939, in Joseph Roth, *The White Cities. Reports from France, 1925–39*, Granta, London, 2005, p. 252.

76 H. Arendt, *The Origins of Totalitarianism*, New York 1973, p. 267; p.281, f.30. As for the 1930s, she wrote that ‘The Second World War and the DP camps were not necessary to show that the only practical substitute for a non-existent homeland was an internment camp.’ p. 284. Apparently though the HCR did suggest in the 1920s finding a territory to which all unwanted refugees could be deported.

The 1933 Convention did not institute equality of treatment between refugees and nationals. However, it was an incremental improvement in the legal status of refugees and legitimised the idea that national human rights standards should be subject to international supervision, as well as the principle of *non-refoulement*. The notion of waiving reciprocity, usually the basis for international relations, was key to formulating modern notions of human rights. In terms of continuity, the connections with the 1951 Refugee Convention lay in the principles that refugees are a distinct category of migrants deserving special protection and should not be sent back to a country of persecution. A further connection was the involvement of international organizations.<sup>77</sup> Claudena Skran describes refugee law in the interwar period as a success, and a mixture of optimism that legal norms could have positive political effects and pragmatism in dealing with the crisis.<sup>78</sup>

The interwar refugee regime which emerged in the 1920s tried to account for the anomaly of statelessness in a system where protection was tied to the sovereignty of states. Culminating in the Convention of 1933, liberal states such as Czechoslovakia, Belgium, France and the United Kingdom agreed to limit their own sovereignty for those refugees already residing in their states. This loss of sovereignty meant amongst other policies, that they agreed to protect refugees' right to work, grant them social benefits and protect them from expulsion. All this came at a financial cost and also a political cost to these states, as various groups (trade unions for example) advocated national protectionism. The Convention led to an increasing awareness among policy makers that 'refugees' are an exceptional category of immigrants. One of the main reasons, in particular for countries with few refugees, of signing the Convention was the desire to be seen as liberal, which emphasises the importance of the protection of liberal values overall as the best way to protect the rights of refugees, particularly in the current political climate.

77 Skran, p. 6.

78 Skran, p. 6.