

POLICY REPORT

The State of Hungary's Migration Policy during the Development of International Refugee Protection: From Provisional Arrangements and Particularism to Taboo¹

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Abstract

The modern international refugee regime emerged as a response to the unprecedented humanitarian crises of the twentieth century. The First World War, the Russian Revolution, the collapse of multinational empires, and later the rise of National Socialism turned millions of people into refugees or stateless persons who had lost the protection of their own states. These developments gave rise to a legal problem for which international law at the time had no adequate answer: what legal status should be given to individuals whom their own state was no longer able or willing to protect? Although the 1951 Geneva Convention Relating to the Status of Refugees remains the cornerstone of contemporary international refugee law, many of its fundamental principles had already begun to take shape during the interwar period within the framework of the League of Nations and the international agreements adopted between 1921 and 1938 gradually transformed refugee protection from ad hoc humanitarian assistance into a distinct branch of international law. This year's 80th anniversary of the deportation of the German minority in Hungary provides an opportunity to compare the development of the international approach to refugee protection with the legal framework that applied to refugees in Hungary during that same period. A juxtaposition of the international and Hungarian frameworks highlights the complexities and shortcomings of refugee protection in a period that shaped the development of Hungary's refugee protection framework in the 20th century.

Key Words:

Hungary, migration policy, refugee regime, development, deportation of Germans

1 Refugees in International Context

Before the First World War, international humanitarian law focused primarily on the protection of wounded soldiers and prisoners of war. Civilians forced to flee their homes

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as a result of armed conflict largely remained outside the scope of international legal protection. Although the International Committee of the Red Cross increasingly assisted civilians and families separated by war, no independent body of international law existed to regulate the status of refugees or stateless persons (Mazower, 2004). The First World War fundamentally altered this situation, it proved to be a catalyst for the idea of a post-war order based on the principles of collective security (Löhr, 2015). The collapse of the Russian, Ottoman, Austro-Hungarian, and German Empires left millions of people without valid passports, nationality, or diplomatic protection. Traditional international law regarded nationality as the exclusive legal bond between an individual and a state. Once this bond was severed, the individuals concerned effectively fell outside the protection of international law.

The establishment of the League of Nations⁴ represented the first institutional international response to this problem. Refugee issues were no longer regarded solely as matters of domestic concern but became subjects of international cooperation. This reflected a significant shift in legal thinking: the relationship between the individual and the state was no longer considered merely an internal legal matter but also a responsibility of the international community. One of the League of Nations' most significant measures was the appointment of the Norwegian polar explorer and diplomat Fridtjof Nansen as High Commissioner for Refugees.⁵ His most important innovation was the introduction of the Nansen passport, an internationally recognized travel document issued to stateless refugees. From a legal perspective, the Nansen passport did not confer nationality; rather, it recognized that a person could possess an internationally acknowledged legal identity even in the absence of citizenship. The document enabled its holder to cross borders, obtain visas, work, and settle in another country. This marked one of the first occasions on which the international community assumed functions that had previously been exercised exclusively by sovereign states (Weis, 1954).

The refugee agreements concluded under the auspices of the League of Nations during the 1920s primarily concerned Russian and Armenian refugees.⁶ It is important to emphasize, however, that these instruments did not yet contain a general definition of a refugee. Protection was linked to specific national groups; refugee status was therefore a group-based legal category rather than a universal legal status available to all individuals in need of protection.

These agreements nevertheless introduced a significant legal innovation. They recognized that refugeehood could arise not only from the formal loss of nationality (de jure statelessness), but also from the absence of effective state protection (de facto statelessness). A person might formally remain a citizen of a state while no longer receiving diplomatic or legal protection from that state. This distinction fundamentally

⁴ League of Nations, Covenant of the League of Nations, 28 April 1919.
<https://www.refworld.org/legal/constinstr/lon/1919/17145>

⁵ League of Nations Refugees Mixed Archival Group (Nansen Fonds). United Nations Library & Archives Geneva. <https://archives.ungeneva.org/refugees-mixed-archival-group-nansen-fonds>

⁶ League of Nations, Arrangement Relating to the Legal Status of Russian and Armenian Refugees, League of Nations Treaty Series, Vol. LXXXIX, No. 2005, 30 June 1928.
<https://www.refworld.org/legal/agreements/lon/1928/15611>

changed the conceptual framework of refugee law, as the focus gradually shifted from nationality itself to the existence of effective state protection.

The agreements of 1926⁷ and 1928⁸ further developed this approach. Although they still applied to specific refugee groups, they extended protection to other persons in similar situations. Refugee status increasingly depended on whether an individual could rely on the protection of their own state rather than on whether they formally possessed citizenship.

The next major milestone was the 1933 Convention Relating to the International Status of Refugees,⁹ the first legally binding international treaty specifically addressing the situation of refugees. The Convention consolidated the earlier agreements into a coherent legal framework and regulated, among other matters, personal status, access to courts, employment, and the issuance of travel documents.

Its most important innovation was the first treaty-based formulation of the principle of non-refoulement. The Convention stipulated that refugees lawfully residing in a country could be expelled or returned only on exceptional grounds relating to national security or public order. Although this provision was narrower than the corresponding rule later incorporated into the 1951 Geneva Convention, it established the legal foundation for the principle that refugees must not be forced to return to places where they would not receive protection. Today, the principle of non-refoulement is regarded as one of the fundamental pillars of international refugee law.

The rise of National Socialism exposed the shortcomings of the existing refugee protection system. Earlier agreements had been designed primarily for Russian and Armenian refugees and therefore failed to provide adequate legal protection for those fleeing Nazi persecution. Consequently, the League of Nations appointed a separate High Commissioner for Refugees Coming from Germany¹⁰ and subsequently adopted new international agreements in 1936¹¹ and 1938¹².

⁷ League of Nations, Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees, League of Nations, Treaty Series Vol. LXXXIX, No. 2004, 12 May 1926.
<https://www.refworld.org/legal/agreements/lon/1926/14828>

⁸ League of Nations, Arrangement Relating to the Legal Status of Russian and Armenian Refugees, League of Nations Treaty Series, Vol. LXXXIX, No. 2005, 30 June 1928.
<https://www.refworld.org/legal/agreements/lon/1928/15611>

⁹ League of Nations, Convention Relating to the International Status of Refugees, League of Nations, Treaty Series Vol. CLIX No. 3663, 28 October 1933.
<https://www.refworld.org/legal/agreements/lon/1933/17584>

¹⁰ However, this took place outside the League of Nations, as Germany remained a member until October 1933. Due to Germany's objections, the Office of the High Commissioner for Refugees, which was based in Germany, was not incorporated into the League of Nations until 1936, following Germany's withdrawal from the League.

¹¹ League of Nations, Provisional Arrangement concerning the Status of Refugees Coming from Germany, League of Nations Treaty Series, Vol. CLXXI, No. 3952, 4 July 1936.
<https://www.refworld.org/legal/agreements/lon/1936/14927>

¹² League of Nations, Convention concerning the Status of Refugees Coming from Germany, League of Nations Treaty Series, Vol. CXCLII, No. 4461, page 59, 10 February 1938,
<https://www.refworld.org/legal/agreements/lon/1938/17547>

These agreements further refined the concept of a refugee. They established that the decisive legal criterion was not merely the possession of nationality but the loss of effective state protection. Consequently, individuals who formally remained German citizens could nevertheless qualify as refugees if the German state no longer provided them with genuine protection. The agreements also extended protection to stateless persons who had previously been habitually resident in Germany.

A further important theoretical advance came in 1936, when the Institut de Droit International formulated one of the first general legal definitions of a political refugee. Rather than focusing on membership in particular national groups, the definition regarded as refugees those persons who had left their country because of political events, had not acquired a new nationality, and did not enjoy the diplomatic protection of another state.¹³ This marked the beginning of the transition from nationality-based protection to the modern concept of refugee status founded on the individual's need for international protection.

The legal developments of the interwar period were, however, significantly constrained by political realities. The Great Depression and increasingly restrictive immigration policies meant that most states were unwilling to admit large numbers of refugees. Although the Évian Conference and the establishment of the Intergovernmental Committee on Refugees reflected growing international recognition of the refugee problem, the outbreak of the Second World War prevented the emerging legal framework from reaching full maturity.

2 The Beginnings of Refugee Affairs in Hungary

Hungary first encountered refugee issues in the modern sense during the First World War. Refugees had, of course, been present in the country before – for example, Protestants persecuted in other provinces of the Habsburg Empire during the sixteenth and seventeenth centuries (Pálffy, 2009), and Polish freedom fighters following the Polish uprisings of 1830-1831 and 1863-1864 (Szokolay, 2006). Nevertheless, at the beginning of the twentieth century Hungary had neither an institutional refugee system nor legal regulations specifically governing refugees. During the First World War, refugees arrived as a result of hostilities from Galicia and Bukovina in 1914 and later from Transylvania in 1916. Although most were able to return home after only a few months, their arrival demonstrated that the provision of accommodation and relief was inadequate and that neither the central nor the local administration was prepared to deal with the situation (Pálvölgyi, 2018).

The so-called “Trianon refugees”, numbering approximately 400,000 people, were unable – or unwilling – to return to their original homes. They arrived in Hungary between 1918 and 1920 as a consequence of the country's defeat in the First World War and the disintegration of Historic Hungary. Providing them with housing, financial assistance, and employment proved extremely difficult, despite the fact that almost all of these refugees were of Hungarian ethnicity and many were highly educated, including civil servants and other professionals (Pálvölgyi, 2018). Some of them were not refugees in the strict sense but rather optants, who exercised the right provided under Article 63 of the Treaty of

¹³ Statut juridique des apatrides et des réfugiés. https://www.idi-iiil.org/app/uploads/2017/06/1936_bruux_02_fr.pdf

Trianon. This provision allowed individuals who did not wish to become citizens of the state in which they resided to opt, within one year, for the citizenship of the country where their ethnic group constituted the majority. The settlement of such a large number of refugees and optants placed such a heavy burden on Hungary that, even before the one-year option period had expired, the government introduced a ban on immigration on 1 October 1920 (Dövényi, 1997). The Hungarian administration responded to the refugee crisis by first appointing government commissioners to manage refugee affairs and, in 1920, establishing the National Refugee Office (Országos Menekültügyi Hivatal). The Office was dissolved as early as 1924 (Pálvölgyi, 2018), reflecting both the fact that its principal task – the accommodation of refugees – had largely been completed and the prevailing belief that the “refugee problem” and its consequences were only temporary phenomena.

Consequently, Hungary was just as unprepared for the even larger refugee movements that accompanied and followed the Second World War as it had been for those after the First World War. The country was simultaneously a receiving state, a country of origin, and a transit country for refugees. However, they constituted only one category among the victims of the forced migration processes associated with the war, and distinguishing between the various forms of displacement is neither historically nor legally straightforward. Refugees also arrived in Hungary during the war – most notably tens of thousands of Poles from 1939 onwards, including many members of the Polish armed forces (Kapronczay, 1991). Many of the Jewish refugees arriving to Hungary at the same time, regarded as foreigners or persons of uncertain nationality, became victims of the Kamianets-Podilskyi massacre in 1941 (Braham, 1990). A major wave of refugees confronted both the Hungarian authorities and the civilian population from the late summer and autumn of 1944, as the front line approached and subsequently crossed Hungarian territory. In many regions, the first refugees were ethnic Germans (Volksdeutsche) complying with evacuation orders issued by the Volksdeutsche Mittelstelle (Coordination Center for Ethnic Germans). Beginning in the summer of 1944, they left the regions of Sathmar and the Banat, followed by Bačka from October onwards, moving westward in large numbers (Tilkovszky, 1989).

As the front drew nearer, large numbers of ethnic Hungarians also fled. Public panic was intensified by news of the so-called operational evacuation ordered by Government Decree No. 3.210/1944 M.E. (8 September 1944),¹⁴ although this evacuation was ultimately never carried out. Most of those who fled during this period, however, returned to their homes after several weeks or, at most, a few months.

By contrast, long-term accommodation had to be provided for refugees arriving from neighbouring countries in considerable numbers after the armistice agreement restored Hungary's Trianon borders. Some of these refugees faced genuine and immediate threats, while others fled because they feared future persecution on account of their ethnic origin. Under Article 5 of the Armistice Agreement concluded by the Provisional National Government in Moscow on 20 January 1945, Hungary was obliged to admit all displaced persons and refugees within its territory and to accord them treatment equal to that enjoyed by its own citizens. With regard to refugees, this was the only binding source of international law applicable to Hungary at the time, although it did not provide a precise definition of the term: “The Hungarian Government shall take all necessary measures to

¹⁴ Magyarországi Rendeletek Tára 1944. Budapest, Belügyminisztérium, 1945. 1761-1762.

ensure that all displaced persons or refugees within Hungarian territory, including Jews and stateless persons, receive at least the same protection and security as Hungarian nationals." The Armistice Agreement was promulgated by Government Decree No. 525/1945 M.E. on 17 March 1945, thereby becoming part of Hungarian domestic law.¹⁵

Even after the war, however, no comprehensive legislation governing refugees, their legal status, or their rights was adopted. Throughout the mandate of the Provisional National Government, Hungary was governed primarily by decree. As a result, numerous lower-level legal instruments – mainly government and ministerial decrees – were issued, usually concerning specific categories of refugees. Separate rules applied to public employees and to other refugees, and the regulations were frequently amended in response to changing circumstances. The legal framework was further characterised by a large number of pseudo-normative instruments, such as ministerial instructions and circulars, many of which likewise applied only to particular refugee groups. In certain cases, legislators even avoided using the term "refugee" altogether, preferring descriptive wording instead. For example, Section 2(2) of Government Decree No. 1.710/1945 M.E., issued on 10 May 1945 on the establishment of the People Care Office (Népgondozó Hivatal), referred to: "Persons of Hungarian ethnicity not employed in public service who voluntarily or for other reasons crossed the borders from territories lying outside Hungary's frontiers as they stood on 31 December 1937."¹⁶

3 Conclusion

The history of refugee law clearly demonstrates that the development of international law has largely been driven by responses to humanitarian crises. The legal innovations introduced during the interwar period laid the foundations for the post-Second World War international refugee protection regime, including the 1951 Geneva Convention and the establishment of the Office of the United Nations High Commissioner for Refugees (UNHCR). The evolution of international refugee protection also reflects the broader transformation of international law itself. The emphasis gradually shifted away from the exclusive prerogatives of state sovereignty towards the recognition that the international community likewise bears responsibility for protecting individuals whom their own states are unable or unwilling to protect. This principle remains one of the cornerstones of contemporary international refugee law.

In Hungary, however, comprehensive legal regulation of refugee matters was not materialised in the years after the Second World War. No legislation was subsequently enacted defining the concept of a refugee or facilitating refugees' integration into Hungarian society in that period. From 1946 onwards, the number of refugees arriving in – and leaving – the country declined considerably, while other forms of forced migration came to predominate. Accordingly, fewer legal measures concerning refugees were adopted. The issue of refugees gradually disappeared not only from legislation but also from public discourse, together with other forms of post-war forced migration. For decades, it was impossible to speak openly about refugees, Hungarians who had fled from neighbouring countries, the Czechoslovak-Hungarian population exchange, or the victims

¹⁵ Magyarországi Rendeletek Tára 1945. Budapest, Belügyminisztérium, 1946. 43-48.

¹⁶ Magyarországi Rendeletek Tára 1945. Budapest, Belügyminisztérium, 1946. 129-130.

of the expulsion of ethnic Germans. The subject likewise remained taboo within academic research.

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