

Parallel Lives: The Geneva Refugee Convention and the Federal Expellee Law

Jannis Panagiotidis

2021-03-17T13:00:07

The Geneva Refugee Convention is not the only piece of postwar refugee law to survive into the present. The 1953 West German Federal Expellee Law is in many ways a parallel case of a legal document being extended in time beyond its original scope. However, unlike the Refugee Convention it was largely phased out at the end of the Cold War. This provides a starting point for thinking about the need to reform the Refugee Convention.

The [Geneva Refugee Convention](#) was an outcome of the great European refugee crisis after the end of the Second World War. In its original version, it extended to persons who were refugees “as a result of events occurring before 1 January 1951.” It was thus a specific response to a specific historical situation defined by the Second World War and the subsequent Cold War. Its temporal (and spatial) extension only followed with the Protocol Relating to the Status of Refugees of 31 January 1967. Henceforth the Convention no longer looked only to the past, but also to the future. It became universal and remains in force till today.

The “vita parallela” of the West German [Federal Expellee Law](#) is much less known. This piece of refugee legislation was also created in the context of the large movements of people at the end of and after the Second World War. It was also extended toward the future over the following decades, becoming the legal foundation for the reception in Germany of more than 4.5 million so-called “resettlers” (*Aussiedler* and *Spätaussiedler*) from Eastern Europe. In this contribution, I will sketch these “parallel lives” and reflect about the implications for the Geneva Refugee Convention on its seventieth anniversary.

The postwar refugee situation affected many people who had lost their homes for various reasons in the context of war and persecution, expulsion and resettlement. Many of them found themselves in occupied Germany after the war. A dual system of assistance and relief was instituted to take care of them, from which both the universal and the German refugee laws emerged.

Some of these people were in the care of the new international refugee organizations emerging at the time, first of the United Nations Relief and Rehabilitation Administration (UNRRA), and then of the International Refugees Organization (IRO). Both were predecessors to the United Nations High Commissioner for Refugees (UNHCR) that is still active today. We know these people by the label of “Displaced Persons” (DPs). Many of them had been deported by the Nazis for forced labor and to concentration camps, while others had fled the

communist regimes established after the war. DPs were thus by definition victims of Nazism, but the category increasingly came to comprise also victims of communism.

The second major contingent of refugees were the more than twelve million Germans who had fled, had been expelled by force or resettled with Allied blessing under the [Potsdam Agreement](#) from the former “Eastern territories” of the German Reich annexed to Poland and the Soviet Union, from Czechoslovakia, and from other countries of Eastern and Southeastern Europe. The guiding principle here was: “[Make the Germans do it!](#)” The [1948 IRO constitution](#) explicitly excluded from its mandate “persons of German ethnic origin, whether German nationals or members of German minorities in other countries.” The German states therefore created special administrations and laws to accommodate these people. While the “internationalization” of the German refugee problem was on the West German political agenda for quite some time, the integration of German refugees and expellees (as they came to be collectively known) ultimately remained a German issue.

The 1953 [Federal Expellee Law](#) unified the different German refugee laws. Its section 1 gave the first common definition of an “expellee” as someone who “as a German citizen or an ethnic German had his home in the German Eastern territories currently under foreign administration or outside of the borders of the German Reich as of 31 December 1937, and has lost this home in connection with the events of the Second World War as a consequence of expulsion, especially by means of eviction or flight.” Mirroring the IRO Constitution which excluded Germans, the Federal Expellee Law explicitly included German citizens and ethnic Germans. The latter were defined in section 6 of the law as persons who “had identified in their country of origin as belonging to German ethnicity (*Volkstum*), provided that this self-identification (*Bekanntnis*) is backed up by certain characteristics like descent, language, upbringing, and culture.”

Like the Geneva Refugee Convention, the Federal Expellee Law initially referred mainly to past events, accommodating persons who were already inside of Germany. But there was a window to the future: section 1, paragraph 2, no. 3 created the category of “resettlers” (*Aussiedler*), defined as German citizens or ethnic Germans who had left the so-called “expulsion area” – effectively all the communist-ruled states in Eastern Europe – after the end of the “general expulsion measures” or would do so in the future. The geographic scope reveals the anticommunist impetus of the Federal Expellee Law, another thing it had in common with the Refugee Convention. The background to this regulation was the fact that some Germans had remained even in the states covered by the Potsdam Agreements, while other countries in the region—in particular the Soviet Union, Romania, and Yugoslavia—were still home to substantial German minorities.

Originally this rule only seemed to refer to “latecomers” to the expulsion, for instance the relatives of expellees already living in West Germany. But this began to change from the mid-1950s. Between 1956 and 1959, more than 250,000 *Aussiedler* from Poland came to West Germany. Most of them had identified as Polish after the war, but now they remembered their German origins and emigrated. German emigration from Poland continued on a smaller scale throughout the 1960s. Meanwhile,

thousands of Yugoslav citizens also applied for German *Aussiedler* status, even though the German institutions in charge of admission found that many of them hardly spoke German anymore.

Due to these developments, by the mid-1960s West German policy makers had to decide [whether the country should continue to receive *Aussiedler*](#). Most contentious was the question whether the rules on German ethnicity of the Federal Expellee Law, which referred to the situation before 1945, could still be applied to generations born after the war. Moreover, it was unclear whether these postwar generations could justifiably be called “expellees” anymore.

The reform of the so-called takeover procedure for Germans from Eastern Europe in 1968—shortly after the 1967 Refugee Protocol—was a first step to include the postwar generations. The new procedures were extended through several rulings of the Federal Administrative Court and different administrative guidelines. The fundamental assumption was that the postwar generation still suffered from “expulsion pressure,” since their surroundings continued to identify and discriminate them as Germans. This expulsion pressure did not have to be proved individually. What mattered was the status as German, from which the status as expellee was then derived. Though proving German ethnicity became more complicated over time, the Federal Expellee Law remained essentially unchanged until the early 1990s.

The opening of the Iron Curtain increased the pressure on the Federal Expellee Law. Throughout the 1980s, the refugee administration had already tried to qualify the general assumption of “expulsion pressure,” claiming that the situation in the Eastern Bloc had normalized in many cases. These attempts failed due to [resistance by expellee organizations](#). With the opening of the borders in Eastern Europe, the influx of hundreds of thousands of resettlers to West Germany, and the downfall of communist regimes in East Central Europe and eventually also in the Soviet Union, change became impossible to ignore.

The reform of the Federal Expellee Law in 1992 accommodated the new situation. Henceforth, expulsion pressure was only automatically presumed for Germans from the former Soviet Union. All others would have to prove their individual discrimination. Moreover, a person born after 1992 could not receive resettler status anymore. The Federal Expellee Law continues to exist, but it has fulfilled its purpose. The postwar period is over.

Taking a comparative view, we can discern parallel careers of international and German refugee law during the postwar decades. Both became the foundation for migrations through closed borders. Both were temporally extended and detached from their original purpose to accommodate the forced migrants of the Second World War. Yet in the case of the Federal Expellee Law, this reference to the past was so strong that it was largely phased out after the end of the Cold War. Its categories and definitions were no longer adequate.

This observation provides a starting point to think about the temporality and finiteness of these documents. The adequacy of the Federal Expellee Law’s definitions was contentious throughout the postwar decades. With the end of the

Cold War, the idea of an ethnic German suffering from expulsion pressure became largely obsolete. Similar discussions are taking place regarding the definitions of the Geneva Refugee Convention, which recognizes refugees for the “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” This definition made sense in the context of the time. But it is too narrow for a present characterized by people fleeing for multiple causes, not least as a consequence of war, environmental disasters, but also a lack of perspective in “failed states.” The seventieth anniversary of the Geneva Refugee Convention is a good occasion to historicize and reconsider this document, which was born out of a specific temporal context.

This post is part of the series [“70 Years of UNHCR and the 1951 Refugee Convention: Global Developments”](#), which is edited and published in cooperation by the Völkerrechtsblog and the Forced Migration Studies Blog ([FluchtforschungsBlog](#)).

