
From Diplomat to Academic Activist: André Mandelstam and the History of Human Rights

Helmut Philipp Aust*

Abstract

Today mostly forgotten, André Mandelstam (1869–1949) was a pioneer of the human rights movement in the interwar period. Originally a diplomat in the service of the Russian Empire, he went into exile after the Bolshevik revolution and became an important member of the internationalist scene in Paris. An active contributor to the various professional associations and institutions of the time, Mandelstam came to draft the first ever international human rights declaration which was adopted by the Institut de droit international at its New York session in 1929. His work on human rights protection was influenced by his experiences as a diplomat in Constantinople where, in the years preceding World War I, he had witnessed the growing tensions over the treatment of the Armenian population of the Ottoman Empire. This article traces Mandelstam's impact on the development of international human rights law and uncovers the driving forces for his work: the end of the Russian and Ottoman empires as well as his career change from diplomat to academic activist. The contribution invites us to reconsider traditional narratives of the origins of international human rights protection as well as to rethink the imperial(ist) influences upon this development.

1 By Way of Introduction: A Proposal on Armenia

In the 20 years preceding World War I, the 'Armenian question' was a constant concern for the 'European powers' which were by then no longer united as the 'European concert'. In the name of humanity, Austria-Hungary, France, Germany, the United

* Dr. iur., Senior Research Fellow, Humboldt University, Berlin; currently Visiting Scholar at the Institute for International Law and the Humanities, Melbourne Law School. A previous version of the text was presented at the 5th Research Forum entitled 'International Law as a Profession' of the European Society of International Law, Amsterdam, May 2013. Email: helmut.aust@jura.hu-berlin.de.

Kingdom, and Russia had already undertaken a number of armed interventions in the Ottoman Empire.¹ For most of the 19th century, this Empire was viewed as being merely ‘half-civilized’ and thus not part of the system of the *Droit public de l’Europe*. The ‘admission’ of the Sublime Porte to the family of nations in the form of the Treaty of Paris 1856 (which followed the Crimean war) was not unconditional, as the European powers retained a number of rights of intervention.² On some occasions after that date, these powers were used in order to come to the rescue of Christian populations, be it in Lebanon and Syria (1860–1861), Crete (1866–1869 and again 1896–1900), or Bulgaria (1875). No armed intervention, however, was ever taken for the protection of the Armenians, a minority group living in six Eastern provinces (*vilayets*) of the Ottoman Empire as well as across the border in the Russian Empire. After a first series of massacres in the 1890s, there was a constant level of tension and anxiety over the future of the Armenian population; accordingly it was a subject high on the list of priorities of diplomats posted to the Ottoman Empire.

In this context, the Russian Empire tried to make a decisive move in order to improve the conditions for the Armenian population of the Ottoman Empire. In the 19th century, Russia had developed a tradition of interventions into the internal affairs of its neighbour. Partly, these interventions found a legal basis in the treaty of Küçük Kaynarca of 1774 which instituted Russia as the protector for Orthodox Christians.³ On 24 May 1913, the Russian government invited the other European powers to discuss possible reforms of the statute of Armenians in the Ottoman Empire. To this end, the Russian ambassador in Constantinople, Baron de Giers, presented a plan for the creation of a single Armenian province in the Ottoman Empire which would be administered by a Governor General who was either to be an Ottoman citizen, adhering to the Christian faith, or preferably ‘a European’, to be nominated by the Sultan with the assent of the European powers.⁴ This Governor General would have had wide-ranging powers to administer the Armenian province in independence from the general politics of the Ottoman Empire. A legislative assembly, which was to represent both Muslims and Christians living in the Armenian province, would have had law-making powers for local matters. Already watered down in negotiations with the Sublime Porte, the plan was never implemented as the geopolitical situation changed yet again with the outbreak of World War I.

Despite its non-implementation, the plan is an interesting early experiment in international territorial administration. Its author was a Russian diplomat, posted to the Russian embassy in Constantinople. He was an international lawyer by training, having received his education in St Petersburg from no less than Fedor Martens and at the University of Paris. His diplomatic career had earned him the posting to Constantinople, as well as special missions to international conferences, including the 1907 Hague Peace Conference where he was an assistant to Martens. During World

¹ For the most complete account of these interventions to date see D. Rodogno, *Against Massacre. Humanitarian Interventions in the Ottoman Empire 1815–1914* (2012).

² *Ibid.*, at 45.

³ *Ibid.*, at 29.

⁴ See for the text of the draft A. Mandelstam, *Le sort de l’Empire Ottoman* (1917), at 217 ff.

War I, he was charged with questions pertaining to prisoners of war and served in St Petersburg as well as in Switzerland. His name was André Mandelstam.⁵

Today mostly forgotten, Mandelstam is a pioneer of the idea of the international protection of human rights.⁶ His life and work are particularly interesting for a number of reasons: First, Mandelstam the diplomat turned into an academic activist as he was forced into exile after the Bolshevik revolution of 1917. In his new professional identity, he established himself as an assiduous scholar, producing a flood of articles and books on questions of minority law, human rights, but also other issues of public international law. Secondly, Mandelstam was the driving force behind one of the first attempts to codify human rights at the international level, undertaken by the *Institut de Droit international* in 1929. This declaration challenges the still widely held view that the emergence of an international system of human rights protection only occurred after World War II, with the interwar period being merely a transitional stage where all political momentum went into the lost cause of minority protection.⁷ Finally, Mandelstam's life represents a particular type of biographical constellation. The important turns his life took were related to the demise of two great Empires – Russian and Ottoman – whose struggles provided the background against which Mandelstam developed his legal worldview.

This contribution aims to reintroduce and critically assess Mandelstam's academic legacy. In the next section (section 2), it will describe his biographical situation at the end of World War I. Afterwards, his work on international human rights for the *Institut de Droit International* will be presented (section 3). In a fourth and final section, it will emerge that Mandelstam's work in this field was characterized by two factors: identity politics and imperial legacies.

2 The End of Two Empires

As holds true for many of his contemporaries, André Mandelstam's life was substantially affected and, in fact, completely overthrown by what happened in and

⁵ For biographical information on Mandelstam see the brief obituary by Makarov, 'André Mandelstam (1869–1949)', 43 *Annuaire de l'Institut de Droit International* (1950), i – Session de Bath, at 482; G. Starodubcev, *Mezhdunarodno-pravovaja nauka rossijskoj emigratsii* (2000), at 152–153; as well as the short sketch of his life in Aust, 'André Mandelstam', in: B. Fassbender and H.P. Aust (eds), *Basistexte: Völkerrechtsdenken* (2012), at 116.

⁶ For notable exceptions see Burgers, 'André Mandelstam, Forgotten Pioneer of International Human Rights', in F. Coomans et al. (eds), *Rendering Justice to the Vulnerable. Liber Amicorum in Honour of Theo van Boven* (2000), at 69; Partsch, 'Die Armenierfrage und das Völkerrecht in der Zeit des Ersten Weltkrieges. Zum Wirken von André Mandelstam', in M. Dabag and K. Platt (eds), *Genozid und Moderne. Band 1: Strukturen kollektiver Gewalt im 20. Jahrhundert* (1998), at 338; Kévonian, 'Exilés politiques et avènement du "droit humain": La pensée juridique d'André Mandelstam (1869–1949)', 177–178 *Revue d'histoire de la Shoah* (2003) 244; Huhle, 'Von Armenien zu einer internationalen Menschenrechtserklärung: André Mandelstam und die Entwicklung menschenrechtlichen Völkerrechts', *Europa Ethnica*, forthcoming (an advance version is available at: www.menschenrechte.org).

⁷ For this narrative see C. Tomuschat, *Human Rights Between Idealism and Realism* (2nd edn, 2008), at 17 ff (with a brief discussion of the New York Declaration at 21 ff); for a differentiated view on the legacy of the interwar period see also Koskeniemi, 'History of International Law, World War I to World War II', in R. Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law* (2012), iv, at 925, paras 38–39.

around the time of World War I. Mandelstam, who later described himself as a ‘liberal Russian’,⁸ in fact seemed to profit greatly from the Liberal Revolution which took place in Russia in early 1917. The provisional government which emerged from this revolution decided to promote him to the rank of the Principal Legal Advisor of the Ministry of Foreign Affairs. However, Mandelstam was prevented from taking up his position in St Petersburg by the Bolshevik revolution. Mandelstam stayed in exile and settled down in Paris. From then onwards, there has been considerable uncertainty about many aspects of Mandelstam’s life. There are good reasons to believe that at some time during World War II Mandelstam lived in the United States, as he published a number of articles in émigré journals published in the US.⁹ With respect to his death, which took place on 27 January 1949 – just six weeks after the adoption of the Universal Declaration of Human Rights – some assume that he died in the United States,¹⁰ whereas his obituary in the *Annuaire* of the *Institut de droit international* mentions that he died in Paris.¹¹ Also in other respects, his biography awaits further archival research which it was not possible to carry out in the framework of this brief article. For instance, it is a matter of speculation whether he had to fear imminent persecution by the Bolsheviks but, as it transpires from his later writings, he was deeply critical of the Bolshevik revolution from the start and apparently had made up his mind that he could not risk a return to Russia.¹² Depending on whether, and if so when, he left Paris for the United States, it can also be wondered whether he had to endure the German occupation of Paris during World War II. Being of Jewish origin, he would have had reason to fear prosecution.¹³ In any case, his scholarly activity seems to have lapsed after the publication of a last book in 1937 on the Abyssinian question,¹⁴ with the exception of a number of smaller contributions in the Russian language published in non-specialist émigré publications.¹⁵ At the same time, it does not appear that Mandelstam lost all interest in questions of international law, as he participated in the 1948 meeting of the *Institut de droit international* in Lausanne.

Returning to the situation in 1917, it may be said that the end of the Russian Empire profoundly changed Mandelstam’s life. While he had already published a

⁸ Mandelstam, *supra* note 4, at v.

⁹ Starodubcev, *supra* note 5, at 153.

¹⁰ *Ibid.*

¹¹ Makarov, *supra* note 5, at 482. Further support for the assumption that he died in Paris may be adduced from the 1947 and 1948 directory of membership of the *Institut* which lists his address in Neuilly: see *Annuaire de l’Institut de Droit International* (1947), at xvii.

¹² Mandelstam, ‘La protection internationale des droits de l’homme’, 38 *Recueil des Cours* (1931–IV) 125, at 216.

¹³ He also advised the Lithuanian government on questions of minority law which brought him into conflict with the Third Reich: see Bruns, ‘Die Memelfrage’, 6 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (1936) 645.

¹⁴ A. Mandelstam, *Le conflit italo-éthiopien devant la Société des Nations* (1937). This book received quite a controversial reception, as is evidenced by the review by Rousseau in the 44 *Revue générale de droit international public* (1937) 260: ‘malgré le grand talent de son auteur, le livre de M. M. ne nous a pas convaincu. Dans son souci d’impartialité, ce plaidoyer pour l’agresseur néglige par trop la victime’.

¹⁵ Starodubcev, *supra* note 5, at 153.

number of books and articles before and during his tenure as a diplomat,¹⁶ he now finally turned into a prolific writer and became an active member of the internationalist scene in Paris. He lectured repeatedly for the Academy of International Law in The Hague and also once at the Geneva Graduate Institute. In the interwar period, Paris was an especially fertile ground for the conceptual re-thinking of international law, as becomes evident from the presence there of a number of other writers of international law such as Georges Scelle, Alejandro Álvarez, and Nicolas Politis.¹⁷ A particular emanation of this internationalist spirit was the *Académie diplomatique internationale* which was founded in Paris in 1926 and in which Mandelstam played a prominent role. According to its self-description, it 'was founded in the 1920s along with the Royal Institute of International Affairs (Chatham House) and the Council on Foreign Relations in New York as one of the first institutes devoted to the sustained exploration of world affairs'.¹⁸ Mandelstam repeatedly lectured at the Academy and was also involved in a project which led to a petition to the League of Nations to develop an international mechanism for the protection of human rights.¹⁹

At the same time, interwar Paris was a centre of the Russian emigration. Mandelstam was a key figure in this scene. He published regularly in émigré journals and was an active board member of a newly founded Russian Society for the League of Nations.²⁰ Also noteworthy is the foundation of a Russian institute for legal and historical studies in 1920, which aspired to educate the 'Russian youth' as long as the Bolshevik regime had not collapsed. Baron Nolde, Mandelstam's predecessor as legal counsel for the Russian Foreign Ministry, was among the professors of this institute, whereas Mandelstam became a member of a larger board of advisors.²¹ These are just two examples of a wealth of connections between former Russian diplomats and other Russian scholars, often of Jewish origin, who resided in Paris. It is reported, for instance, that Mandelstam became advisor to the former Russian ambassador in Constantinople, Baron de Giers.²²

It was not only the fact of being driven into exile which was a characteristic feature of Mandelstam's work and life. The dissolution of the Ottoman Empire and the ensuing and accompanying convulsions also had a lasting impact on him and indeed provided the foundation for his future professional identity. Soon after the end of his diplomatic career, Mandelstam started to publish academic works on the future of the Ottoman Empire.²³ It is very clear what his driving force was in this regard: the

¹⁶ Including a widely noted doctoral dissertation in the field of private international law: see *Les Conférences de La Haye sur la codification du droit international privé*, 2 vols in Russian (1900).

¹⁷ See, for instance, N. Politis, *Les nouvelles tendances du droit international* (1927); G. Scelle, *Précis de droit des gens: Principes et systématique*, 2 vols (1932/1934).

¹⁸ www.academiediplomatique.org/en/pag8-History.html (last visited 9 May 2013).

¹⁹ Séances et travaux de l'ADI, No. 4, 1932, Discours de M.A.-F. Frangulis, available at: <http://proxy.siteo.com.s3.amazonaws.com/adi2.siteo.com/file/dh.pdf> (last visited 9 May 2013); see further M.E. Keck and K. Sikkink, *Activists Beyond Borders. Advocacy Networks in International Politics* (1998), at 81 ff; P. Lauren, *The Evolution of International Human Rights – Visions Seen* (1998), at 111.

²⁰ Starodubcev; *supra* note 5, at 91; see also Kévonian, 'Les juristes juifs russes en France et l'action internationale dans les années vingt', 34 *Les Belles Lettres – Archives Juives* (2001/02) 72, at 73, 78.

²¹ Starodubcev, *supra* note 5, at 90–91.

²² Kévonian, *supra* note 20, at 77–78.

²³ Mandelstam, *supra* note 4; Mandelstam, *La Société des Nations et les Puissances devant le Problème Arménien* (1926).

Armenian genocide in 1915 had shocked his conscience and led him to return, again and again, to the question why the European powers had not been able to intervene to stop the killing of approximately one million Armenians.²⁴

His publications in the immediate post-war phase have two particular characteristics. First, he showed a considerable amount of personal scorn for the Ottoman Empire and its ruling classes.²⁵ He questioned whether the Ottoman Empire belonged to the community of civilized nations and openly pleaded for the dissolution of the Empire which, so he argued, had forfeited its right to be a member of the concert of nations.²⁶

Secondly, he devoted particular attention to the new regime of minority protection as it emerged after the end of World War I.²⁷ This regime was characterized by several features. It consisted mainly of three groups of sources for the obligation to protect minorities: special minority treaties, particular sections in several peace treaties, and unilateral declarations made towards the Council of the League of Nations.²⁸ The scope of this system of minority protection was limited. It applied only to certain states. The substantive obligations were threefold and can be distinguished on the basis that some of the rights guaranteed in this system applied to all citizens of a state, some to all inhabitants of the state, and some merely to minorities. Mandelstam criticized the fact that this system violated the equality of states under international law, especially given that the minority protection system provided for the protection of all citizens and inhabitants of the affected states. Why should its scope of application be limited only to a number of states? Why should it not apply to all states on an equal basis?²⁹

Mandelstam's legal worldview certainly militated for the generalization of the rights set out in the various instruments of minority protection. In a number of his publications from 1917 until the end of the 1920s, Mandelstam sets out his understanding of state sovereignty. In these texts, he argues against an absolutist concept of sovereignty – a position which he associates with German authors in the Hegelian tradition. Mandelstam is rather influenced by currents of the literature which emphasize the relativity of sovereignty and its orientation towards the fulfilment of social needs.³⁰

3 New York 1929: André Mandelstam as Academic Activist

Based on this relative notion of sovereignty and troubled by the selectivity of the regime of minority protection, it was only a small step for Mandelstam to argue for the

²⁴ Burgers, *supra* note 6, at 71.

²⁵ See, e.g., Mandelstam, *supra* note 23, at 4: '[l]e peuple turc était, au moment de la conquête de Constantinople, une nation purement militaire, totalement étrangère à la civilisation.' Previously in *Le Sort de l'Empire Ottoman* (*supra* note 4), he wrote of a tribunal of civilization against the Ottoman empire, at ix.

²⁶ Mandelstam, *supra* note 4, at 567 ff.

²⁷ Mandelstam, 'La protection des minorités', 1 *Recueil des Cours* (1923) 363.

²⁸ For a brief overview see Meijknecht, 'Minority Protection System between World War I and World War II', in R. Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law* (2012), vii, at 270.

²⁹ Mandelstam, 'Der internationale Schutz der Menschenrechte und die New-Yorker Erklärung des Instituts für Völkerrecht', 2 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (1931) 335, at 346–350.

³⁰ See, for instance, Mandelstam, *supra* note 27, at 383–388.

existence of an international law of human rights. Accordingly, right from the beginning of his life in exile, the generalization of the protection of individual rights which were included in the system of minority protection established after the end of World War I became a recurring theme of Mandelstam's work.³¹ He took this step in a number of different institutional fora, the most important of which was the *Institut de droit international*.³² In the interwar period, the *Institut* already looked back on a long tradition and was the international academic body with the highest prestige in the field.³³ Mandelstam had been an associate since 1904 and became a full member in 1921. At the 1921 session, a first attempt to recognize obligations of states *vis-à-vis* individuals was launched by the French international lawyer Albert de Lapradelle, who had tabled a project on a *Déclaration des Droits et Devoirs des Nations* amongst which he had included obligations of states to respect a number of fundamental rights of individuals and groups.³⁴ While this proposal was not accepted by the *Institut*, Mandelstam successfully initiated a project which was planned to deal jointly with questions of minority protection as well as individual rights under international law and became Rapporteur of the commission set up for this project.

His work for the *Institut de droit international* culminated in the adoption of the 1929 Declaration on the 'Universal Rights of Man' by the *Institut* at its New York session.³⁵ The road towards the adoption of this declaration was quite rocky in places. The commission's mandate underwent a number of changes over the years. At the 1925 session in The Hague, for instance, it was decided that the commission of the *Institut* should focus on minority protection.³⁶ A detailed report on minority protection presented to the *Institut* by Mandelstam in that year went unnoticed and was never discussed by the *Institut*.³⁷ At the meeting in Stockholm 1928, Mandelstam tabled an additional report and convinced the *Institut* to divide the initial topic into two, thus dealing with both minority protection and human rights, albeit leading to two different outcomes and, most importantly, concentrating first on the issue of human rights protection.³⁸

³¹ Mandelstam, 'La généralisation de la protection internationale des droits de l'homme', XI *Revue de droit international et de législation comparée*, 3me série (1930) 297 and 698.

³² He was also involved in the work of the *Académie diplomatique internationale* on the matter, see above in section 2, text accompanying note 18.

³³ On its founding period and its institutional ethos see M. Koskeniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870–1960* (2002), at 39 ff; see also generally on the *Institut* Macalister-Smith, 'Institut de Droit international', in R. Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law* (2012), v, at 219.

³⁴ See further Mosler, 'Das Institut de Droit International und die völkerrechtliche Stellung der menschlichen Person', in W. Wengler (ed.), *Justitia et Pace. Festschrift zum 100jährigen Bestehen des Institut de Droit International* (1974), at 77, 80.

³⁵ *Déclaration des droits internationaux de l'Homme*, *Annuaire de l'Institut de Droit International*, Session de New York, ii (1929), at 298–300.

³⁶ *Annuaire de l'Institut de Droit International*, Session de la Haye (1925), at 538.

³⁷ Dix-Neuvième Commission, 'La protection internationale des minorités – Rapport de M. André Mandelstam', in *ibid.*, at 246–392.

³⁸ 'Rapport supplémentaire', *Annuaire de l'Institut de Droit International*, Session de Stockholm (1928), at 275–311.

The 1929 declaration, which is reproduced as an annex to this article, featured a preamble and six substantive paragraphs. The preamble put particular emphasis on the ‘legal conscience of the civilized world’ which would demand the recognition (*la reconnaissance*) of rights to individuals which were unattainable by states. It also refers to the ‘great number of constitutions’ in which individual rights would be inscribed, in particular of American and French provenance. It makes express mention of the 14th amendment to the US Constitution as well as the jurisprudence of the US Supreme Court on the non-discriminatory basis of application of civil rights. The substantive part of the declaration is fairly short, insofar as it includes only six provisions. Guaranteed are the rights to life, liberty, and property as well as to equal protection of the law without discrimination on the basis of nationality, sex, race, language, or religion (Article 1), the freedom of religion (Article 2) as well as the right to choose one’s own language (Article 3). Furthermore, Article 4 includes a ban on states discriminating against their own nationals on the basis of sex, race, language, or religion, while another Article stipulates that the equality thus provided for needs to be effective and not just nominal (Article 5). A final provision envisages that states have no right to withdraw their nationality from their citizens in order to circumvent the protection they owe to their nationals (Article 6).³⁹

The list of rights thus to be protected is clearly inspired by the treaties and declarations of the minority protection system of the inter-war era.⁴⁰ It also incorporates elements of the jurisprudence of the Permanent Court of International Justice which had determined that the rights set out in the minority treaties would need to be protected effectively.⁴¹ The declaration is thus a faithful implementation of Mandelstam’s agenda to generalize the minority protection system. In hindsight, it appears as quite a big step to press for the adoption of a general declaration of human rights at the international level. After all, we are accustomed to viewing the inter-war period as being characterized by the focus on minority protection.

Mandelstam, however, attempted to lure states into accepting general human rights standards to circumvent their lack of acceptance of a generally applicable regime of minority protection. At the sixth Assembly meeting of the League of Nations in 1925, Lithuania and Poland had argued for such a generalizing reform. This proposal faltered in the light of strong objections from a number of states, most notably France, which insisted that there were no minorities in the French Republic (whose independence and sovereignty were traditionally conceived to be ‘indivisible’).⁴² This state of affairs prompted Mandelstam, who was at first an ardent supporter of the Lithuanian and Polish proposals, to reconsider how this opposition might be overcome. Eventually, he believed the move to human rights to be more acceptable to states. After all, with the

³⁹ For a commentary on the individual provisions see Mandelstam, ‘La déclaration des droits internationaux de l’homme adoptée par l’Institut de Droit International’, V *Revue de Droit International* (1930) 59.

⁴⁰ Mandelstam, *supra* note 12, at 207; see also Huhle, *supra* note 6, at 21 of the advance version.

⁴¹ Cf. PCIJ, *Question Concerning the Acquisition of Polish Nationality*, Advisory Opinion of 15 Sept. 1923, Series B, No. 7, at 16–17. On the PCIJ and the minority protection system see further Brölmann, ‘The PCIJ and the International Rights of Individuals and Groups’, in C.J. Tams and M. Fitzmaurice (eds), *Legacies of the Permanent Court of International Justice* (2013), at 123.

⁴² See further Kévonian, *supra* note 6, at 269–270.

emphasis on human rights protection, states would not feel compelled to accept special rights for minorities which were said not to exist in the first place in the respective states. By making a detour via human rights protection, Mandelstam thought, states could eventually be tricked into accepting a more encompassing system of protection of minorities. The adoption of the New York declaration would have '*une influence heurreuse*' on the solution of the minority problem, Mandelstam believed:

One can hope that the states amongst which the fear of the formation of artificial minorities does not allow them to adhere to the generalisation of *minority* protection, will not see obstacles for the conclusion of a general convention declaring the inviolability of *human* rights.⁴³

Minority rights would be protected through human rights norms – a concept which was bound to become the state of the law after World War II with Article 27 of the International Covenant on Civil and Political Rights setting out certain special rights for minorities.⁴⁴

This strategy also shines through the institutional decisions of the *Institut*. As already noted, Mandelstam's project was originally meant to deal with minority protection and human rights jointly. The compromise solution of dividing the topic into two was meant to pave the way for first reaching a consensus on the question of human rights, before turning to the thornier question of minority protection.⁴⁵ As emerges from his academic writings, Mandelstam perceived the minority issue to be politically more charged,⁴⁶ especially for the reason that within the existing minority protection system only the genuine minority rights – as opposed to the rights of all inhabitants and citizens – were subject to a guarantee of the League.⁴⁷ According to Mandelstam, this was the main obstacle to the generalization of the minority protection system.⁴⁸ This institutional strategy succeeded only in part. Whereas the New York Declaration was adopted, the second part of the project was never brought to a conclusion after another supplementary report and a rather cursory discussion of the topic at the 1931 Cambridge session of the *Institut*.⁴⁹

While the New York Declaration did not produce immediate results in the form of a treaty or other forms of express recognition by states, it would be premature to dismiss it as irrelevant to the further development of international human rights.⁵⁰

⁴³ Mandelstam, *supra* note 12, at 229: '[o]n peut espérer que les États auxquels la crainte de la formation dans leur sein de minorités artificielles ne permet pas d'adhérer à la généralisation de la protection des minorités ne verront pas d'obstacles à la conclusion d'une convention générale proclamant l'invocabilité des droits de l'homme' (translation by the author).

⁴⁴ See on this development Tomuschat, 'Protection of Minorities under Article 27 of the International Covenant on Civil and Political Rights', in R. Bernhardt (ed.), *Völkerrecht als Rechtsordnung – Internationale Gerichtsbarkeit – Menschenrechte. Festschrift für Hermann Mosler* (1983), at 949.

⁴⁵ See *Annuaire de l'Institut de droit international* (1929), ii, at 111.

⁴⁶ Mandelstam, *supra* note 39, at 63: '*le problème brûlant des minorités*'.

⁴⁷ Mandelstam, *supra* note 31, at 298.

⁴⁸ *Ibid.*, at 302.

⁴⁹ See Mandelstam, 'Protection des Minorités – Rapport', Session de Cambridge, *Annuaire de l'Institut de Droit International* (1931), i, at 514–566; and the discussion in *ibid.*, ii, at 94–108; Mandelstam's last words on this project before the *Institut* were: '*M. Mandelstam demande le renvoi de la suite de l'échange de vues à une session ultérieure*': *ibid.*, at 108.

⁵⁰ For the view that Mandelstam's efforts were in vain see Mazower, 'The Strange Triumph of Human Rights', 47 *The Historical Journal* (2002) 379, at 381.

It is difficult to ascertain what impact and influence Mandelstam had on the human rights movement after World War II. Important protagonists of the movement knew his work and considered it to be important.⁵¹ A perusal of reference works on international law of the Cold War period also shows that, at least until the 1960s, Mandelstam's works were cited amongst other central pieces.⁵² Soon afterwards, references became sparse and Mandelstam's contribution started to fall into oblivion.⁵³

During his lifetime, Mandelstam did his best to promote the New York Declaration. He published widely in order to recount the development which led to the adoption of the Declaration, summarize its content, and place it in the greater context of the development of international law.⁵⁴ He was particularly adamant in stressing the importance of the Declaration as testimony to the end of absolute state sovereignty.⁵⁵ At the same time, he was well aware of its shortcomings. His initial drafts had been more encompassing in various respects, *inter alia* including a disclaimer that the list of rights included in the declaration would not be exhaustive.⁵⁶

The Declaration was criticized for two diametrically opposed reasons. For one group of critics, the Declaration was merely wishful thinking and lacked any basis as binding international law. To them, it was a step too far to press for the universal acceptance of human rights binding upon states.⁵⁷ For the other group, the Declaration did not go far enough. In particular, it was argued, its uncertain legal status and the lack of an enforcement mechanism were likely to reduce its practical relevance.⁵⁸

Mandelstam was of course aware of these problematic issues. To the former critics, he retorted that the Declaration included individual rights which were based on guarantees of individual rights in domestic legal systems which he then generalized and elevated to the international level⁵⁹ – an approach which mirrors closely the approach for finding general principles of law under Article 38(1)(c) of the Statute of the Permanent Court of International Justice. In addition, he pointed to Article 38(1)(d) and described the Declaration as an outcome of the work of the most highly qualified publicists in order to substantiate its legal importance.⁶⁰ By virtue of the *Institut's* prestige, it would

⁵¹ See, e.g., Sohn, 'How American International Lawyers Prepared for the San Francisco Bill of Rights', 89 *AJIL* (1995) 540, at 546–547; René Cassin was also aware of Mandelstam's efforts: see Burgers, 'The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century', 14 *Hmn Rts Q* (1992) 447, at 462.

⁵² See, e.g., Friesenhahn, 'Menschenrechte', in K. Strupp and H.-J. Schlochauer (eds), *Wörterbuch des Völkerrechts* (2nd edn, 1961), ii, at 503.

⁵³ Huhle, *supra* note 6, at 23 of the advance version.

⁵⁴ See the contributions referred to in notes 12, 29, 31, and 39 as well as *Les Droits Internationaux de l'Homme* (1931); 'Les dernières phases du mouvement pour la protection internationale des droits de l'homme', VIII *Revue de droit international* (1933) 469 and IX *Revue de droit international* (1934) 61.

⁵⁵ See Mandelstam, *supra* note 12, at 173 ff.

⁵⁶ Cf. Mandelstam, 'Rapport supplémentaire', *Annuaire de l'Institut de Droit international*, Session de Stockholm (1928), at 291 ff.

⁵⁷ J.H.W. Verzijl critically discussed the declaration in the Dutch publication *De Volkenbond* in 1934: see with further references Burgers, *supra* note 6, at 76.

⁵⁸ See the remarks by Wehberg, in *Annuaire de l'Institut de droit international* (1929), ii, at 114; see also his 'Observations', *Annuaire de l'Institut de droit international* (1928), at 312–316.

⁵⁹ Mandelstam, *supra* note 39, at 64.

⁶⁰ Mandelstam, *supra* note 29, at 375–376.

thus become an 'indirect source' of positive international law.⁶¹ The combination of the two arguments is noteworthy, insofar as it portrays an insecurity which still resonates today when the legal bases of universal human rights are discussed.⁶²

Mandelstam had already anticipated the second category of criticism in a 1928 article in the pacifist journal *Die Friedens-Warte* in which he had listed three steps which the development towards international human rights protection would need to take.⁶³ In his view, it was sensible to work first towards the establishment of a normative consensus by means of declarations, such as the one to be adopted by the *Institut*. The second step would then be the adoption of conventional instruments which would be followed by a third step, i.e., the development of a mechanism of sanctions. This, as has been highlighted by J.H. Burgers,⁶⁴ incidentally foreshadowed the approach which was taken after World War II, beginning with the adoption of the Universal Declaration of Human Rights by the UN General Assembly in 1948 and leading to the two Covenants of 1966 with their, albeit selective, possibilities for individual complaint procedures under the Optional Protocols. In 1929, Mandelstam was ambivalent about the idea of giving individuals standing to bring claims against states for human rights violations. He professed that he saw the potential for some abuse and was worried that states might constantly need to defend themselves before international institutions.⁶⁵ It is not entirely clear whether this was his genuine view, or whether it was merely a strategic move in order to dissuade potential opposition to the New York Declaration.

This question is intimately connected with the broader issue of the legal personality of individuals in general.⁶⁶ Mandelstam did not interpret the Declaration as setting out an immediate subjectivity of the individual at the international level. He equivocated on this matter, considering the subjectivity of individuals *vis-à-vis* their home state to be 'logically unthinkable'. At the same time, he referred to the increasing tendency to accord rights and obligations directly to individuals, irrespective of their nationality. This would lead, according to Mandelstam, to the creation of an 'own sphere' of individuals, eventually entailing also the possibility of defending this sphere against the state in front of organs of the 'entire humanity'.⁶⁷

4 Human Rights, Identity Politics, Imperial Legacies

Mandelstam's work offers us a particular story of how imperialism and its discontents impacted upon the development of international human rights. For Mandelstam, the

⁶¹ Mandelstam, *supra* note 39, at 60.

⁶² Cf. Simma and Alston, 'The Sources of Human Rights Law: Custom, Jus Cogens and General Principles', 12 *Australian Yrbk Int'l L* (1992) 82; see further on this discussion T. Kleinlein, *Konstitutionalisierung im Völkerrecht. Konstruktion und Elemente einer idealistischen Völkerrechtslehre* (2012), at 633 ff.

⁶³ Mandelstam, 'Das Problem der Menschen- und Bürgerrechte im "Institut de Droit International"', 28 *Die Friedens-Warte* (1928) 350.

⁶⁴ Burgers, *supra* note 6, at 74, 78.

⁶⁵ Mandelstam, *supra* note 29, at 371 ff.

⁶⁶ See on this question Peters, 'Das subjektive internationale Recht', 59 *Jahrbuch des Öffentlichen Rechts der Gegenwart, Neue Folge* (2011) 411, at 413–439.

⁶⁷ Mandelstam, *supra* note 29, at 371.

Russian interventions in the Ottoman Empire were important elements of international practice which could be used to argue for the emergence of an international law of human rights protection.⁶⁸ While these interventions may have been based on humanitarian motives, it is fair to say that they were also part of the general context of the ‘Eastern question’, i.e., how the traditional European powers positioned themselves towards an outsider which they admitted only in 1856 to the system of the *Droit public de l’Europe*.

The Russian Empire had concrete geopolitical interests in dealing with the Ottoman Empire. Mandelstam was, of course, very aware of this context. In fact, he devoted another lecture at the Hague Academy to the Russian policy of access to the Mediterranean Sea in the 20th century, subsequently also published as a monograph.⁶⁹ From this publication it emerges that it was a constant concern to block the Dardanelles, the Bosphorus, and the Black Sea to commercial and military ships of powers other than the Ottoman Empire and Russia. Only this would guarantee Russia’s security and its access to the Mediterranean Sea – an essential requirement for projecting Russian power in the Middle East.⁷⁰

This might seem to be unrelated to the politics of human rights. However, in his study – which is primarily concerned with diplomatic history and not with questions of international law – Mandelstam meticulously connects the Russian external policy in this regard with interior developments in the Ottoman Empire.⁷¹ The Armenian reform plan mentioned at the beginning of this article can thus be seen as an attempt to stabilize a faltering regime. Despite all conflicts with the Ottoman Empire, Mandelstam writes, its collapse was not in the interests of Russia. This would inevitably lead to greater conflicts about the division of the Empire between the European powers, as would the internationalization of the whole Ottoman Empire.⁷² While it should not be argued that Mandelstam’s turn to human rights was a mere epiphenomenon of Russian power politics, its policy on access to the Mediterranean Sea provides an important backdrop to this story.

A further and major characterizing feature of the relationship between the Ottoman Empire and the European powers was the system of capitulations given by the Ottoman authorities with a view to establishing a legal system for foreigners travelling and trading in the Ottoman territories. These capitulations were first perceived as a sign of Ottoman superiority over foreigners, as they did not establish permanent rights and could be withdrawn by the respective sultan at any time. Over time, however, they came to be seen as a symbol of a European imposition of standards on an entity which was not understood to belong to the family of civilized nations. In the 19th century, as Umut Özsu writes, ‘the kind of politico-economic intervention made

⁶⁸ See Mandelstam, *supra* note 23, at 3 ff; Mandelstam, *supra* note 29, at 344–346; see also Partsch, *supra* note 6, at 341.

⁶⁹ A. Mandelstam, *La politique russe d’accès à la méditerranée au XX^e siècle* (1935), previously published in 47 *RdC* (1934) 597.

⁷⁰ In historical perspective: see *ibid.*, at 5–23.

⁷¹ *Ibid.*, at 156–159.

⁷² *Ibid.*, at 25.

possible by the capitulations increasingly went hand in hand with diplomatic, and even military, intervention in the name of “humanity”.⁷³

As was already noted, these interventions were an important element of practice for Mandelstam’s doctrinal construction of the international law of human rights. Especially in his early writings, he was not at all reluctant to praise Russia for its interventions in the name of humanity,⁷⁴ sometimes in quite flamboyant and patriotic rhetoric.⁷⁵ Over the course of the years, he began to be more ambivalent in this regard.⁷⁶ In a 1931 article, he considered it to be ‘impossible’ to justify humanitarian interventions on the basis of a distinction between civilized and uncivilized peoples.⁷⁷

Nonetheless, his work shows a clear imprimatur of the Russian imperial legacy. In that sense, Mandelstam had an ‘imperial biography’.⁷⁸ This is noteworthy for two reasons: first, Russia’s place in the history of international law is not an entirely easy question in itself. As Lauri Mälksoo has argued, there are essentially two ways of looking at Russia’s encounters with Europe: one can either view Russia as a European country with its own specificities, or one can stress Russian uniqueness in the first place.⁷⁹ In short: Russia’s ‘Europeanness’ has always been a hotly debated question, and it is therefore of particular importance to see how Russian international lawyers such as André Mandelstam relied on the standards of civilization and applied them *vis-à-vis* other entities which were still further out at the margins of the international legal system of the time. In the light of Russia’s uncertain place in and its relationship with Europe, this was a precarious strategy. As sociologist Michael Mann has highlighted, the Russian and Ottoman Empires shared many characteristics, setting them apart from the other European Empires and placing them at the periphery of the European state system of the time.⁸⁰

Secondly, Mandelstam’s legacy is also an important element of the broader debate on the imperial(ist) origins and/or potential of international human rights law. This discussion has so far focused mostly on ‘Western’ influences and biases.⁸¹ Mandelstam’s work shows us that this is only part of the picture. Going back to his work offers us a

⁷³ Özsu, ‘Ottoman Empire’, in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (2012), at 429, 440.

⁷⁴ Mandelstam, *supra* note 23, at 3 ff.

⁷⁵ Mandelstam, *supra* note 4, at 461: ‘[c]omme Russe et comme homme, par l’amour que nous avons pour notre patrie et par toutes les fibres de notre être, nous sommes dans le camp de l’Entente’. On Mandelstam’s patriotism see also Kévonian, *supra* note 6, at 263.

⁷⁶ Mandelstam, *supra* note 63, at 354.

⁷⁷ Mandelstam, *supra* note 29, at 367–368: ‘Heutzutage aber erscheint es als unmöglich, eine permanente Humanitätsintervention auf einer Einteilung der Nationen in zivilisierte und nichtzivilisierte zu begründen, und deren Einteilung der einen oder anderen Gruppe zu überlassen.’ At 367 Mandelstam also acknowledges that the interventions in the Ottoman Empire could not be based on treaty rights, but rather emanated from the subjective concern of the powers involved.

⁷⁸ On this concept and its application to Fedor Martens, Mandelstam’s academic teacher, see M. Aust, ‘Völkerrechtstransfer im Zarenreich. Internationalismus und Imperium bei Fedor F. Martens’, 60(9) *Osteuropa* (2009) 113.

⁷⁹ See further Mälksoo, ‘Russia-Europe’, in Fassbender and Peters (eds), *supra* note 73, at 764.

⁸⁰ M. Mann, *The Dark Side of Democracy. Explaining Ethnic Cleansing* (2005), at 112.

⁸¹ See the seminal treatment of the origins of the European Convention on Human Rights by A.W.B. Simpson, *Human Rights and the End of Empire. Britain and the Genesis of the European Convention* (2001).

perspective on the origins of international human rights law which escapes the usual Western/others divide. Certainly, it needs to be taken into account that Mandelstam probably viewed himself also as member of a particular elite of international lawyers which was, at the time, predominantly European. The *Institut de Droit International* aspired to assemble a particular group of individuals whose motivations and ethos as international lawyers seem to have called for a necessary transcendence of particularist identities. This did not lead the members of the *Institut*, however, to adopt cosmopolitan approaches, or even to put particular emphasis on the question of self-determination of peoples governed by European powers in the colonial context.

Mandelstam clearly internalized the 'European internationalist' outlook of the discipline's mainstream. In his 1931 Hague lecture on human rights protection, he goes through various related developments which would, in his view, support his arguments for the development of international law towards a '*droit humain*'. Among these developments he counts the establishment of the mandate system under Article 22 of the League Covenant. Mandelstam regarded this institution to be a genuine step forward as compared to the previous system of protectorates. He took seriously the 'sacred trust of civilisation' and considered the individual Charters for the respective mandate territories to be '*véritables Constitutions internationales*'.⁸² Today, this may ring hollow and smack of imperialism.⁸³ However, in the context in which Mandelstam was working, it was somewhat consequential to view the establishment of the Mandate system as a further step towards the establishment of a 'new international law' which would be at the service of the individual and have institutions to enforce it against recalcitrant states.

The work and life of Mandelstam are illustrative of the oscillating roles of international lawyers. While the imperial roots of his thinking should caution us against turning him into a kind of a superhero of the human rights movement,⁸⁴ it should be acknowledged that in many respects he was ahead of his time. To a certain extent, he built upon valuable elements of a problematic international practice and re-arranged them into something new. Anti-Turkish sentiments were widespread at the time Mandelstam was writing,⁸⁵ and it occurred to very few international lawyers that there was a tension between their calls for respect of the (European) standards of civilization by the Ottoman Empire and the conduct of their respective nation states in reigning over their colonial possessions.⁸⁶ It is important to keep in mind the bias and one-sidedness of the humanitarian impulses of Mandelstam (and other international

⁸² Mandelstam, *supra* note 12, at 162–168.

⁸³ On the mandate system see A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005), at 115 ff.; see also M. Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (2009).

⁸⁴ Cf. Toufayan, 'Empathy, Humanity and the "Armenian Question" in the Internationalist Legal Imagination', 24 *Revue québécoise de droit international* (2011) 171, at 188–189; generally on the search for 'heros' of the human rights movement see Marks, 'Human Rights in Disastrous Times', in J. Crawford and M. Koskenniemi (eds), *The Cambridge Companion to International Law* (2012), at 309, 315.

⁸⁵ See, e.g., the statement by French Prime Minister Clemenceau: '*le Turc n'a fait qu'apporter la destruction partout il a vaincu*', cited after Mandelstam, *supra* note 25, at 24.

⁸⁶ Cf. Rodogno, *supra* note 1, at 11, 36–62.

lawyers who used similar arguments). One cannot fail but notice that the arguments which led Mandelstam to the construction of international human rights law were themselves tainted with considerable racism. At least, this holds true for his earlier writings. For example, he invoked a manifest economic and intellectual superiority of the Armenian population as compared to the 'Turkish and Kurdish elements' as a motive for Anti-Armenian Turkish policies.⁸⁷ In his later writings he was more tempered and tried to adopt a nuanced and distanced position.

In this connection, Mandelstam's personal trajectory from diplomat to scholar merits attention. As a diplomat, Mandelstam had to represent the views of his government, although it may be argued that international lawyers in the service of governments always have to obey the commands of two masters, at least if they take the ethos of being international lawyers seriously.⁸⁸ Already in his 1917 book on *Le sort de l'Empire Ottoman*, Mandelstam claimed that the eventual basis of international law needs to be found in a psychological manifestation of the 'human soul'.⁸⁹ After Mandelstam went into exile, he was liberated from concerns about particular loyalties to his government. He was still an ardent observer of what happened in the Soviet Union and was an outspoken critic of the political development there.⁹⁰ But his new identity as scholar turned him into an academic activist, a position which he possibly could not have fulfilled in his earlier professional capacity. For Mandelstam, it does not appear, however, as if this transition implied a complete break with his past. Rather, his experiences as a diplomat in Constantinople and his views on the Armenian genocide continued to inform his work and were arguably the driving force for his turn towards human rights. What thus emerges is a picture of continuity and change at the same time: while the professional roles of Mandelstam changed, his (published) worldview remained essentially the same.

In his short 1928 essay for *Die Friedens-Warte*, Mandelstam lost a few words on the institutional self-understanding of the *Institut* and the commission which was to table the draft for the subsequent New York Declaration:

When judging the draft of the Commission, one has to keep in mind that the Commission did not in any case want to present an ideal project on the protection of human rights to the *Institut*, but rather, according to its views, a cautious proposal which is in line with present international conditions and aspiring to pave the ground for future, more wide-ranging reforms. It is not very much which is suggested, but in a resolute manner.⁹¹

⁸⁷ Mandelstam, *supra* note 4, at 243: '[I]a politique turque vis-à-vis des Arméniens était celle d'une extermination lente de cet élément, considéré comme dangereux à cause de sa manifeste supériorité économique et intellectuelle sur les éléments turc et kurde'.

⁸⁸ Cf. the quotation from UN Secretary General Kofi Annan reproduced in Wood, 'Legal Advisers', in R. Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law* (2012), vi, at 772, para. 36.

⁸⁹ Mandelstam, *supra* note 4, at 456: '[I]a position que nous occupons personnellement dans la grande lutte entre les théories de la souveraineté du droit et celle de l'État résulte logiquement de notre adhésion à la doctrine psychologique du droit que nous acceptons. ... Le droit, comme la morale, est une manifestation de l'âme humaine.'

⁹⁰ Mandelstam, *supra* note 29, at 374.

⁹¹ Mandelstam, *supra* note 63, at 354: '[b]ei Beurteilung des Kommissionsentwurfes muß man also vor allem im Auge behalten, daß die Kommission dem Institut keineswegs eine ideale Formulierung des Schutzes der Menschenrechte, sondern eine nach ihrer Meinung vorsichtige, der heutigen internationalen Lage durchaus entsprechende Lösung vorschlägt, die späteren weitgehenden Reformen den Weg bahnen soll. Nicht allzu viel wird empfohlen, aber sehr entschieden' (translation by the author).

In retrospect, it is quite telling that Mandelstam considered his proposal to be rather modest. Its modesty may lie in its strategic approach, i.e., the three steps which Mandelstam had identified as being necessary before a binding and fully enforceable international human rights instrument could be conceivable. This may be an echo of Mandelstam's earlier experiences as a diplomat.⁹² Despite this pragmatism, the New York Declaration aspired to lead to major change in the international arena, prompting the President of the *Institut*, James Brown Scott, to exclaim that the Declaration was the '*constatation solennelle d'un nouvel esprit d'un Nouveau Monde*'.⁹³ For Mandelstam, the tireless supporter of the idea of human rights protection at the international level, it was only a first step.

Annex

Déclaration des droits internationaux de l'Homme

L'Institut de Droit International,

Considérant

que la conscience juridique du monde civilisée exige la reconnaissance à l'individu de droits soustraits à toute atteinte de la part de l'Etat,

que les déclarations des droits, inscrites dans un grand nombre de constitutions et notamment dans les constitutions américaines et françaises de la fin du XVIIIe siècle, n'ont pas seulement statué pour le citoyen, mais pour l'homme,

que le XVe amendement de la Constitution des Etats-Unis dispose qu'« aucun Etat ne privera quelque personne que ce soit de sa vie, sa liberté et sa propriété sans due procédure de droit, et ne dénierà à quelque personne que ce soit dans sa juridiction l'égalité protection des lois »,

que la Cour Suprême des Etats-Unis a décidé, à l'unanimité, que des termes de cet amendement, il résulte qu'il s'applique dans la juridiction des Etats-Unis « à toute personne sans distinction de race, de couleur ou de nationalité, et que l'égalité protection des lois est une garantie de la protection des lois égales »,

qu'il importe d'étendre au monde entier la reconnaissance internationale des droits de l'homme,

Proclame:

⁹² See also Partsch, *supra* note 6, at 344.

⁹³ James Brown Scott, 'La Déclaration internationale des Droits de l'Homme', V *Revue de Droit International* (1930), 79, at 99.

Article premier.

Il est du devoir de tout Etat de reconnaître à tout individu le droit égal à la vie, à la liberté, et à la propriété, et d'accorder à tous, sur son territoire, pleine et entière protection de ce droit, sans distinction de nationalité, de sexe, de race, de langue ou de religion.

Article 2.

Il est du devoir de tout Etat de reconnaître à tout individu le droit égal au libre exercice, tant public que privé, de toute foi, religion ou croyance, dont la pratique ne sera pas incompatible avec l'ordre public et les bonnes mœurs.

Article 3.

Il est du devoir de tout Etat de reconnaître à tout individu le droit égal au libre usage de la langue de son choix et à l'enseignement de celle-ci.

Article 4.

Aucun motif tiré, directement ou indirectement, de la différence de sexe, de race, de langue ou de religion n'autorise les Etats à refuser à aucun de leurs nationaux les droits privés et les droits publics, notamment l'admission aux établissements d'enseignement public, et l'exercice des différentes activités économiques, professions et industries.

Article 5.

L'égalité prévue ne devra pas être nominale mais effective. Elle exclut toute discrimination directe ou indirecte.

Article 6.

Aucun Etat n'aura le droit de retirer, sauf pour des motifs tirés de sa législation générale, sa nationalité à ceux que, pour des raisons de sexe, de race, de langue ou de religion il ne saurait priver des garanties prévues aux articles précédents.