CHAPTER II

GENERAL PROBLEMS

A. BURDEN OF PROOF

1. *General.* The general principle, which is adopted in determining whether or not a person is within the mandate of the Organisation, is that any person who applies for the recognition of a right must prove to the satisfaction of the authority granting it that he is entitled to it. The legal maxim is "*Actori incumbat probatio*". Thus an applicant must bring some evidence tending to shew that he is a *bona fide* refugee or displaced person within the mandate; it is not for the Organisation to prove that an applicant is within the mandate who chooses to maintain silence on his identity, or to give false or incomplete information thereon (1). Even where a person's presence in a particular place might be thought to raise a presumption in his favour, he must still be reasonably open and forthcoming (2). This policy must, however, be subject to the policy on false pretences as stated in Section *(b)* below.

2. The process of discovering whether an applicant is within the mandate is a cooperative venture between him and the Organisation. It is a logical impossibility to prove a negative, and thus an applicant cannot be expected to prove that he is *not* a war criminal or that he did *not* voluntarily assist the enemy forces. But the Organisation has few sources of information apart from that given by the applicant, who therefore has a duty sincerely to give the information required by the Organisation to elucidate the matter (3).

3. *Documents and other evidence.* It will be seen from the above that positive statements made by an applicant should where reasonably possible be supported by documentary evidence. If the applicant has no documents, then he should make an attempt to obtain them (4); if he has done so or if it is impossible to do so (5), and if his story is otherwise credible, he should be given the benefit of the doubt (10). The amount and type of evidence required in any particular case must be determined by the Eligibility Officer concerned; a sufficiently plausible story may be adequate (6), though some plausible stories, such as the burning of documents in the great air raids on Dresden, are sufficiently common to ring untrue. Therefore supporting evidence should be obtained where possible (7). Not only the applicant's history but also the reason for absence of the documents should be plausible (8).

4. Credence should not always be placed on copies of documents, even when they are certified true copies (9).

5. Original documents should be obtained where possible. This is a matter of some importance where determination of eligibility is connected with quasi-consular work and the Organisation is involved in the certification of civil status of refugees on the basis of documents or information emanating from their country of origin. If a refugee has a document with fingerprints, it is advisable for the Eligibility Officer to compare them with new fingerprints made on the spot.

6. Great attention should be paid to the necessity for registering the names of applipersons will eventually be issued with a travel document, their "mutilated" names can be cants and the names of their birthplaces correctly. Eligibility Officers should insist that an applicant always spells or writes his name in the original way of his country, and not

(1) *Geneva 1624 :* Petitioner originally claimed to be a stateless person of Armenian origin. He produced no documents proving his identity or nationality, stating that they had been stolen by Rumanian soldiers. On appeal, it appeared that he was born in Turkey and lived in Constantinople till 1940. On interview declared that he left Constantinople in 1940 for Rumania and that he left his documents in Rumania where he lived until 1944. Ruled not within the mandate.

(2) *Geneva 149 :* Petitioner, who was living in Jerusalem, claimed to be a Pole who had joined the Polish Forces in U.S.S.R., come with them to the Middle East and deserted. Very many Poles in fact had done the same, some had deserted during and after the war. He had, however, no identity or military documents nor any other support of his statements. In 1947, he was in prison in Palestine for an unknown reason. Ruled not within the mandate.

(3) *Geneva 342 :* Petitioner originally claimed to be a stateless person, born in Armenia. On appeal he admitted leaving U.S.S.R. (Crimea) in 1942 for Germany, and that he is an U.S.S.R. citizen. He produced no documents of any kind concerning his identity, citizenship, pre-war occupation or war-time activity. He gave no reason why he had no documents nor why he might have been stateless Ruled not within the mandate.

(4) *Geneva 403 :* Petitioner, formerly a Lithuanian peasant, was, according to sworn statements of two witnesses, drafted for labour service in Germany. He tried to get certificates from the Soviet Zone where he had been stationed during the war, but did not succeed in getting them. In the absence of any indication of voluntary assistance to the enemy forces, he was given the benefit of the doubt.

(5) *Geneva 187 :* Petitioner was a stateless person of Russian origin (Nansen) who was living in Yugoslavia and fled from that country in May 1945. It appeared from interview on appeal that the petitioner, as a Russian emigrant, could not obtain papers from Yugoslavia establishing that he worked there, as it is considered to be practically impossible to obtain a statement of this kind from Yugoslav firms. Petitioner submitted a sworn testimony that he worked in Belgrade from 1941 to 1945. Ruled within the mandate.

(6) *Geneva 413 :* Petitioner was a Soviet Citizen who worked as a common labourer on German farms after the liberation, though a skilled mechanic by profession. There was good reason to believe that he was a prisoner of war afraid of forcible repatriation. There was no evidence of forced labour or of voluntarily assisting the enemy forces. He was given the benefit of the doubt.

(7) *Geneva 430 :* Petitioner lived with his parents, Nansen refugees, in Yugoslavia before the war. He stated that he was transferred to Germany in September, 1944, where he worked on a railway. He produced no documents referring to that work because, he said, they were destroyed in an air-raid; his wife, however, has a document showing that she was imprisoned for being absent from compulsory work. Petitioner was given the benefit of the doubt.

(8) *Geneva 1263 :* Petitioner, a Lithuanian, was in 1947 divorced from her husband whose residence is unknown and who had refused to part with documents which would have provided evidence that she was entitled to IRO assistance. Her position was therefore examined separately, and she was found to be within the mandate.

(9) *Geneva 2195 :* Petitioner claimed to be a Polish Ukrainian hotel waiter who was evacuated from Krakow in 1940. Before the Board he declared that he had applied for work at the Arbeitsamt and was sent to Vienna with his wife. This did not tally with an "Überweisungsschein" which was delivered to him at Landeck (Tirol) on 15. 11. 1940 and which figures among his documents. Concerning his wartime activity he was first unable to produce any proof. In his appeal he alleged that he had found a certificate of employment from December 1940 to 15 February 1945 as labourer with the Donau Dampfschiffahrtsgesellschaft in Vienna. The certificate in question was a notarial copy of another notarial copy of a document with an illegible signature. Asked to produce the original document, petitioner claimed to have destroyed it. This destruction created a suspicion that the original was a forgery and that petitioner had destroyed it to avoid

detection. A copy certified by a notary merely proved that the actual words of the documents which was presented to the notary have been truthfully copied, but it carried no weight as to the authenticity of the seals and signatures ; only a visual examination of the original seals and signatures could give indications in this connection. The fact that, after having destroyed the original the first time without reason, he again destroyed the notarial copy when he had this document unnecessarily copied by another notary conveyed a suspicion that either the original document or the first copy had been tampered with or were false. Petitioner could, moreover, easily have obtained from his employers another original certificate. Petitioner was ruled to be not within the mandate.

like the authorities of many countries who often carelessly mutilate the names. As these the cause of misunderstandings and grave doubts about their genuine descent or nationality in their resettlement countries. Some examples are as follows: A Czech named *Tkac* wrongly written *Tkacz* (as the first is pronounced) could be taken for a Pole. A Czech woman named *Manokova* wrongly written *Manokowa* could be Russian. A Pole named *Karntewiecz* wrongly written *Karniewietsch* could be a Russian. A Lithuanian named *Turszas* wrongly written *Turszacz* could be a Pole. Similarily incorrect spelling of the names of towns and villages cause difficulties when checking them on a map.

7. *Sworn Statements.* Sworn statements or testimonies are not necessary; wise publicity designed to discourage their production is always in point, because of the expense they cause to the refugees and of their doubtful evidential value. Cases (4) and (5) above (Geneva 403 and 187) illustrate the rule that in the absence of original documents, sworn statements may be accepted as evidence. Many cases have occurred, however, of sworn statements ultimately proving false, and care should therefore be taken to see that the statement is consistent in itself and that the attestor's ability to make the statement is inherently probable (10). Where attestors are refugees who have been interviewed, their own CM.1 forms should be examined (11).

8. *Burden of proof for Exclusion Purposes.* Part II of Annex I to the IRO Constitution describes the persons who will not be the concern of the Organisation. (Detailed consideration of that Annex is given in Chapter VI.) It is clearly a logical impossibility for an applicant to prove the negative proposition that he is not a person who should be excluded. Equally it is a practical impossibility for the Organisation to prove that any applicant is in fact such a person, except in the rare cases where a person's name is for example found on a list of war criminals, apart from the evidence provided by the applicant himself. Thus if there is any reason to suppose that a person falls under Part II and if the applicant cannot give a plausible and convincing rebuttal, it must be assumed that he does in fact fall under Part II (12).

If, however, there is no *prima facie* indication that the applicant falls under Part II, then it is not up to him to bring forward any particular evidence (13), though it is helpful if he does (14). This means that in practice it is necessary for an Eligibility Officer to show that a person falls under Part II, but he has to use such evidence as the applicant gives him together with any evidence that can be obtained independently.

9. As regards exclusion on the ground of having voluntarily assisted the enemy forces, it is usually sufficient for an applicant to show that he did not join a pro-German force before the date when conscription was imposed (15). (See also Chapter VI.)

10. *New evidence on appeal.* When a decision that a person is not within the mandate brings forth an appeal and new evidence in the case, the decision should not be reconsidered by the administrative echelons. It should go on appeal to the Review Board, which, as indicated in several cases above, takes the new evidence into account. A negative decision in the first instance in such circumstances is no injustice, but provides an applicant with an opportunity adequately to present his case (16). Arrangements have been made between the Review Board and the Administration to deal with specially urgent cases.

B. FALSE PRETENCES

11. It is realised that many applicants, for IRO assistance, even *bona fide* refugees, are under various pressures to make false statements. In the first place there are the applicants who are not refugees at all but who make false statements in order to benefit from the Organisation's assistance (17). Then there are persons who may be refugees in the general sense of the term, but who belong to groups known not to be assisted by the Organisation, for example "Volksdeutsche" in Germany or who may know themselves to be

(10) *Geneva 155 :* Petitioner, a Rumanian from the Ukraine, claims to have been deported to Breslau in February 1943, from there to Vienna and thence to Klagenfurt. He brought no proof of his activities during the war. He produced a statement on oath by two witnesses concerning petitioner's activities from 1942 to 1946. On examination, it appeared that the witnesses, before signing the statement, had had it read to them by the notary; but as the statement was in German, which they did not understand, they did not know the text thereof. The witnesses also declared that they had not known petitioner before 1946. The statement was therefore not conclusive. Further, the petitioner had made no attempts to obtain any statements from his employers in Austria.

(11) *Geneva 1617 :* Petitioner claimed to be a stateless person of Russian origin who left U.S.S.R. in 1925. He brought an affidavit certifying that he lived in Kishinev (Bessarabia) from 1936 to 1943. One of the signatories of this affidavit had, however, only lived in Hermannstadt (Sibiu, Transylvania) which is more than 200 miles from Kishinev and it is most unlikely that he could ever have known petitioner. Petitioner also brought an affidavit on oath certifying that he was a joiner in Linz from October 1943 to October 1944 and that he was deported on the latter date. The affidavit was signed by two alleged eye-witnesses to the deportation, the first of whom declared in his CM. 1 form that he had been residing in Komaron (Hungary) from September 1943 to November 1944, and the second of whom, a Lithuanian refugee within the mandate, has never been in any of the places that he certifies for petitioner. The affidavits were therefore not accepted.

(12) *Geneva 6 :* The names of petitioner and his wife were found on EWZ list which raises presumption that they are either of German ethnic origin transferred to Germany or were collaborators. Petitioner claims that his name was put on the list without justification, but produces no evidence to support his claim. It was therefore presumed that such evidence did not exist.

(13) *Geneva 893 :* Petitioner had been excluded as a person of German ethnic origin transferred to Germany. He had no documents to disprove the presumption, but gave a consistent and plausible explanation for their absence. It was ruled that there was insufficient evidence of his German ethnic origin.

(14) *Geneva 537 :* Petitioner had been excluded as a person of German ethnic origin transferred to Germany. On appeal, she produced a statement from the Burgomaster of Ostseebad-Kuhlingsborn to the effect that she was recorded there as a stateless person in September 1941 and remained there till March 1946. The statement was an indication that the family did not enjoy German nationality.

(15) *Geneva 1973 :* Petitioner, a Latvian, had a blood-group scar indicating membership of the Latvian Legion. He produced evidence, however, that he was in civilian life in May, 1944, conscription having been imposed earlier. His statement that he was conscripted into the Latvian Legion was accepted.

(16) *Geneva 153 :* Petitioner was a stateless person of Russian origin (Nansen) who had been declared not within the mandate. The point at issue was his date of entry into Germany, petitioner in the first instance producing no documents to support his claim that he entered Germany only in May 1945. On appeal, petitioner produced a certificate that he worked in Oresac from 3rd March 1943 to 15th August 1944, and on interview he gave a detailed, plausible and acceptable account of his activities during the war in Yugoslavia.

(17) *Geneva 6923 :* Petitioner 57 years old alleged that he was a pre-war refugee from Russia, who had settled in Bulgaria in 1921 and had fled through Yugoslavia to Austria in May 1945. Upon interview Petitioner produced a Nansen passport (No. 00449) of which the photograph had undoubtedly been changed and the Review Board considered that this document had been forged. The Petitioner was found not to be within the mandate of the Organisation.

excluded by some provision, but be sufficiently near the border line of the mandate to try to enter by a false pretence (18).

12. On the other hand are the persons who erroneously but not unreasonably fear that the truth would do them harm. There have been many cases of Russian Soviet citizens — making false statements and producing forged documentary evidence that they are stateless "Nansen" refugees. The refugees have acted thus from a reasonable fear of forcible repatriation; even though there are no longer objective grounds for that fear, it often persists, and is to a great extent an indication of distrust of the Organisation and its Officers and the Governmental authorities of their countries of origin, which does not reflect on the integrity of the refugees and which can only be overcome by increased confidence. Cases of this sort do not only concern Russians (19). Production of a false document is not by itself adequate ground for declaring a person outside the mandate, (20) but it might have other consequences. Cases have occurred for example of persons producing false birth certificates (in connection with immigration quotas depending on place of birth) and marriage certificates. Thus a determination that a person is within the mandate does not warrant the accuracy of connected statements concerning age, place of birth, profession and so on; but when documents alleging such facts are found to be false the matter should be dealt with in whatever way is appropriate.

13. It often occurs that an applicant gives different information at different times. If he can shew that one of his stories is true, then it should be used as a basis for judging the case. His statement must, however, be either consistent or the inconsistencies explained (21). Most stories that are inconsistent seem to refer to war-time activities and thus often rouse a presumption of voluntary assistance to the enemy forces (22).

14. The policy to be adopted therefore is that, when the truth or a sufficient part of it is ascertainable, an applicant will be judged on it. That is to say that an applicant who, on the basis of the truth, would be within the mandate will be so judged: an applicant who would, on the same basis, be excluded should be judged not within the mandate: a false pretence will not, by itself, exclude anyone. When no clear picture of the applicant can be obtained, as a result of his incoherent, conflicting or false statements and pretences, then he will be ruled not within the mandate.

C. WHO IS A GENUINE, BONA FIDE AND DESERVING REFUGEE?

15. The definitions attached as Annex I to the IRO Constitution are the attempt to give precision to the Resolution adopted by the General Assembly of United Nations on 12 February 1946 (quoted as Annex III to the Constitution) and by the Economic and Social Council on 16 February 1946 (essentially the same). According to those Resolutions the main necessity was to distinguish between "genuine refugees and displaced persons" on the one hand and "war criminals, quislings and traitors" on the other. In addition to Part I and II, Annex I to the Constitution contains a series of General Principles, among which are the following:

"1. .....

(a) The main object of the Organisation will be to bring about a rapid and positive solution of the problem of *bona fide* refugees and displaced persons, which shall be just and equitable to all concerned.

.....

(f) ... it should equally be the concern of the Organisation to ensure that no *bona fide* and deserving refugee or displaced person is deprived of such assistance as it may be in a position to offer...

(18) *Geneva 1176 :* Petitioner a tailor, 40 years old, was born and lived in Lithuania till March 1941 when he had taken the opportunity of the E.W.Z. scheme to leave Lithuania for Germany with his family. He was resettled in Poland from March until September 1941 and then went to Germany. In August 1943 he had been authorised to go back to Lithuania with his whole family. Petitioner produced a certificate stating that he had been authorised only on medical grounds, but admitted himself that it was a false certificate. Petitioner was ruled not within the mandate, under the terms of Part II, 4 (a). Only people considered by the Germans as being of German ethnic origin and "genuine Umsiedler" being granted such facilities for return.

(19) *Geneva 353 :* Petitioner had been declared not within the mandate as a "Volksdeutsche" from Hungary. On interview he admitted that he had falsely registered with the Allies as a Volksdeutsche. On appeal he produced conclusive evidence in the form of at least 20 original birth and marriage certificates proving that his parents, grandparents and their forefathers were of non-Germanic origin : he himself speaks little German. He explained his registration as a "Volksdeutsche" as follows : when in September 1944, his home town was overrun by the Russians he fled to Budapest, and when Budapest was taken he fled to Austria, to territory under the control of the US Army, and found refuge in a DP camp. There, on hearing reports concerning the fate of Hungarians who had been repatriated, and fearing compulsory repatriation, he requested that he be transferred to a "Volksdeutsche" camp as the only means of avoiding repatriation. Fulfilling the necessary condition, petitioner was found within the mandate.

(20) *Geneva 1665 :* A curious case : petitioner was a former Russian, holder of a Nansen passport who had settled in Bulgaria in 1920 and lived there until September 1944 when he fled to Austria from fear of the approaching Russian Army. He had been declared, at first instance, outside the mandate for the production of a false document. On appeal, it was established that the document in question had been fabricated by the IRO interviewer, who persuaded petitioner that it was necessary in order to obtain IRO assistance and obtained 50 schillings in payment for the forgery. The action of the petitioner under the circumstances described and for reason of fear was ruled to have no bearing on his status. It was established by other indisputable documents that he had not voluntarily assisted the enemy forces, and fulfilling the necessary conditions he was declared to be within the mandate.

(21) *Geneva 958 :* Petitioner, who claimed to be a Rumanian from Bessarabia gave on three different occasions different information about his identity and activities during the war. During his first interrogation he gave himself as single, catholic and a factory owner who had left Rumania because his works had been requisitioned. During his third interview he described himself as married, orthodox and having escaped in 1944, to Vienna. In his appeal he writes about a secret arrival in Italy, which is untrue as he arrived in Italy on an allied Travel Permit. Among his documents there was an identity card delivered in Vienna in 1942 which he could not have had if he had only left Rumania in 1944. It was evident that petitioner was concealing the truth about his activities and was trying to obtain IRO assistance under false pretences. He produced no consistent or apparently truthful story and was ruled not within the mandate.

(22) *Geneva 937 :* Petitioner was a Rumanian who claims to have been deported in 1941 for forced labour in occupied Russia and later in Berlin. Petitioner's statements when questioned in the first instance, in his appeal and upon interview are all different. Petitioner admitted to having followed German troops whilst in the Todt Organisation, and this was considered to be a strong presumption that he was actually in the "Rumanian Legion" of fascist volunteers.

16. It is unfortunate that in some respects the definitions contained in Annex I are not as precise as could be wished and if read strictly do not cover all existing operational contingencies. For example, Part I, Section A, paragraph 2, can be read to include all Germans outside Germany, as they are, "as a result of events subsequent to the outbreak of the second world war" unable to avail themselves of the protection of the Government of their country of nationality. Similarly it has been necessary to limit the effect of Part I Section A, paragraph 4 to children belonging to groups in respect of which it may be presumed the IRO was established to provide assistance — otherwise nearly every orphan in the world who is outside his country of origin, would be within the mandate.

17. Thus to be within the mandate, a person must be someone of whom the words "refugee" or "displaced person" would be used in their normal acceptable sense (23), it being remembered that a person may be a refugee even though he holds a valid passport of his country of origin — some countries allow persons to leave their territories as refugees and some persons obtain valid passports by bribery or personal influence. (See also pp. 39 and 103). Similarly persons with no fixed abode, such as seamen, circus artists and theatrical performers, may be *bona fide* refugees, although they raise difficult issues when it is a matter of eligibility for resettlement and of paying for their firm establishment if they have not been firmly established elsewhere previously.

18. *Per contra*, one can say of an applicant that he is not a genuine refugee and therefore not within the mandate when, although not excluded by any particular constitutional provision, he is not specifically included either. For example, *inter alia*

(a) A stateless person living in Germany who has never been persecuted by the Nazis and who has never enjoyed refugee status (24).

(b) One of the miscellaneous unestablished aliens found in many countries. (25) (26) These should, however, be distinguished from "réfugiés *sur place*", persons who have lived as "normal" aliens in a country and who then find themselves (usually as a result of fundamental political change in their country of origin) unwilling to accept the protection of the (probably new) government of their country of origin (see p. 10). Such "réfugiés *sur place*" often require the status of refugees in order to prevent their forcible repatriation (if they cease to be self-supporting) or to regularise their personal status (if for example a consul refuses to renew their passport).

19. Further, it should be noted that many persons in Germany will try to use any argument, however flimsy, to leave the country (27).

D. DEPENDENTS

20. At no place in the IRO Constitution is there any mention of the dependents of persons who are within the mandate of the Organisation; the Constitution considers persons as falling within or not within the mandate according to how they as individuals are covered by its terms. Nevertheless, for reasons of equity and administrative convenience, it is necessary to regard families as being the basic units of the Organisation's concern when it is a matter of determining who is within the mandate.

21. The general rule is the following : members of a family will be considered to be within or not within the mandate according as their head of family is within or not within it, except that when a member falls under some constitutional provision not applicable to the head of the family, then that member will be considered on the merits of his own circumstances. By head of family is meant the individual normally recognised by the family as being its head. This person may be the eldest male or the eldest bread winner

(23) *Geneva 1880 :* Petitioner was a German woman who had been living in Java since 1928. After the invasion of the Netherlands, she was interned in June 1940 and transported to China in 1941 by the Allies where she spent some time in internment. She asked to be repatriated to Germany.

Petitioner could not be considered a displaced person, as she was not deported by the Axis powers. Finally petitioner was ruled to be not within the terms of paragraph 2 of Section A of Part I of Annex I of the Constitution. It was ruled that that paragraph could only apply to persons who, as well as meeting the ordinary IRO requirements, are genuinely refugees in the ordinary sense of the word—that is to say persons whose continued presence outside their country of origin is due to racial, religious or political opinions in their past or to racial, religious or political policies followed by the Government of that country. Petitioner was accordingly ruled not within the mandate.

(24) *Geneva 1284 :* Petitioner's family originated in Poland and Czechoslovakia, but was settled in Russia until 1912 when petitioner moved to Germany for purely economic reasons. Petitioner was regarded as firmly established in Germany except that he had not acquired German nationality. He was not a pre-war refugee in the sense of paragraph 1 (c) of Section A of Part I of Annex I to the IRO Constitution and was ruled not within the mandate.

(25) *Geneva 154 :* Petitioner was a Bulgarian who had gone to Austria in 1934 to work as a gardener and had remained there in his peace-time occupation ever since.

(26) *Geneva 936 :* Petitioner was a Hungarian who left his home in December 1944 because of the approach of the military front. He crossed into Austria in March 1945. In May 1945 he went to Italy where he had worked before 1939 as an hotel porter, and worked again in that capacity until his permit was withdrawn. Petitioner then applied to IRO for repatriation. Ruled not within the mandate.

(27) *Geneva 911 :* Petitioner, who was of Austrian origin, returned home to Silesia from Brazil in 1913, aged 10, with his parents. His father became a Polish citizen after World War I. Petitioner practiced as a dentist in Hannover, but wished to leave Germany, alleged that he was a Brazilian and claimed repatriation. During World War II, petitioner was treated as a German, was a member of the police and served in Holland as a police dentist. There was no evidence of Brazilian citizenship. Petitioner might have been, at one time, Brazilian *jure soli* as he was born in that country, but he could not shew that he was one at the time of application. Neither was Brazil his habitual residence. Ruled not within the mandate.

depending on circumstances. It should also be noted that the Eligibility Officer may have to designate an individual as head of the family in cases where the family has made an obviously not disinterested decision as to its head. The Eligibility Officer's discretion in designating the head of family will also be necessary in cases where for practical reasons, depending on the application of contribution of criteria, an apparently unified family unit should be split.

22. Thus when a family exists as a unit, a determination that the head of the family is within the mandate should normally extend to all the members of the unit. (28) If there is any suspicion that any member of a family group (other than the head) would be excluded under any provision (except paragraph 4) of Part II of Annex I to the Constitution, then that suspicious member should be interviewed separately and excluded if the suspicion is confirmed. The fact that a wife or other member of the family would, if taken alone, be found to belong to a category not assisted by the Organisation or be found otherwise not within the mandate (except by reason of falling under paragraphs 1, 2, 3, 5 and 6 of Part II) is not relevant (29). A German woman in Germany married to a refugee who is within the mandate, is within the mandate herself; she would not be, however, if she were, for example, a war criminal.

23. The reasons for this policy which extends constitutional principles as a privilege to some persons not otherwise covered by them and which means that dependents are not normally examined apart from the head of their family are that on social grounds it is the desire of the Organisation to reunite families or keep them united and that (particularly in respect of German wives) nationality becomes questionable after marriage to a refugee and that in consequence such wives should benefit from IRO protection. As a safeguard, evidence of the marriage must always be produced. Nevertheless, on occasions "concubinage" may be recognised as conferring "dependents' status" for eligibility purposes. For it to be so recognised there must be more than a *de facto* arrangement under which a man and woman live together. There must be clear evidence of an agreement to live as man and wife and of intent to preserve a stable arrangement. Good evidence is a religious ceremony (not recognised as establishing a legal status), the length of time the arrangement had already existed, public opinion that the persons concerned are living as man and wife and good grounds for the non-performance of civil ceremony. A "state of concubinage" so recognised will be regarded as valid for all IRO purposes, though it should be remembered that it will not necessarily be so regarded by the authorities of resettlement countries or the authorities of the country of temporary sojourn.

24. The above considerations apply when the head of a family is within the mandate. The matter is a little more difficult when he (or she) is not within the mandate. The reasons for the head of family not being within the mandate will in each case need to be examined.

(a) If the head of family is not a refugee, then in nearly every case the dependents will not be within the mandate. Exceptions may however be made on compassionate grounds when the dependents have suffered racial or other severe persecution (30), these cases are normally those of the Jewish wives of non-Jewish German husbands. It should be noted that nationality laws almost invariably cause a stateless woman to acquire her husband's citizenship on marriage.

(b) If the head of the family, although not a refugee, is a stateless person (and it should be remembered that stateless persons are not all within the mandate) then it is not unreasonable for a woman, within the mandate, marrying him, to remain the concern of the Organisation. Such a case would be unusual.

(c) If the head of the family is a refugee, but ceases to be the concern of the Organisation for one of the reasons mentioned in Annex I, Part I, Section D to the Constitution, then the position of the dependents should be examined afresh to determine whether the same circumstances do or do not apply to them.

(28) *Geneva 14 :* Petitioner was a Polish citizen from Lwow. Ruled that petitioner's husband having previously been declared within the mandate, her status follows that of the head of the family, since she does not fall under the exclusion clauses of paragraphs 1, 2, 3, 5 or 6 of Part II of Annex I to the Constitution.

(29) *Geneva 351 :* Petitioner was a German woman who on appeal produced conclusive evidence, in the form of a marriage certificate, that she was the wife of a refugee within the mandate. Ruled within the mandate also.

(30) *Geneva 4074 :* Petitioner aged 53, was German of Jewish origin, the wife of a non-Jewish German, and had never left Germany. She had suffered persecution by the Nazis, and her husband as a result of his refusal to divorce her had also suffered from Nazi reprisals. The husband, however, being neither a Jew, a foreigner nor a stateless person in Germany would not be within the mandate : the wife considered alone would be. Her case was considered separately and she was ruled within the mandate.

(d) If the head of the family is excluded by any paragraph of Part II, Annex I to the Constitution, then normally the dependents will also be excluded. Certain exceptions should be made, however, in respect of the different paragraphs of Part II and in these cases the eligibility of the dependents may be determined separately. For example, the dependents of war criminals, quislings and traitors should all be excluded as also should be the case with the dependents of persons excluded by the operation of paragraph 5 (persons in receipt of financial support and protection from their countries of nationality). On the other hand, there may be found cases in which a wife or family has taken no part in, and has not benefitted from, for example, the husband's persecution of civil populations (para. 2 *(a)*), the husband's voluntary assistance to enemy forces (para. 2 *(b)*), the husband's participation in terrorist organisations (para. 6 *(a)*) or even the husband's leadership or sponsorship of anti-repatriation movements (para. 6 *(b)*). Such cases will of course be rare and the facts must be examined with care. Similar cases, but in which exceptions may be more widely made and in which the dependents may be judged separately from the head of the family, are those in which the dependents are excluded under Part II paragraphs 3 (ordinary criminals extraditable by treaty) and 6 *(c)* (military or civil service of a foreign state). The separate consideration of the last group of dependents has been a general rule, for example, in the cases of the dependents of men in the Polish British forces. The last category of exceptions may be those of the dependents of persons excluded under Part II paragraph 4 (Volksdeutsche) normally of course the dependents of a Volksdeutsche man will have been members of a German minority and will, therefore, be excluded. Cases may arise, however, in which a Volksdeutsche man has married a non-Volksdeutsche woman who would otherwise be within the mandate, and where such a marriage has taken place after the time that the Volksdeutsche man left his ancestral home, then the dependent should be considered separately. This is particularly necessary because of the possibilities under the migration laws and practice of, for example, Canada, France and the United States for Volksdeutsche to emigrate to these countries under special arrangements.

(e) If the head of the family, a refugee or D.P. under Section A or B of Part I of Annex I to the Constitution, is not the concern of the Organisation by operation of Section C, then any dependents may be within the mandate if they are included under Sections A or B and are the concern of the Organisation under Section C.

25. It should be noted that this policy is only in point when the marriage or family exists as a "going concern". In other circumstances the status of individuals must be determined individually. Thus fiancees of refugees within the mandate are not *ipso facto* within the mandate, and where the marriage is broken for any reasons (as for example by the judicial separation of the spouses or intention to divorce (31), by the disappearance of one spouse (32), or movements of one spouse on a resettlement scheme (33) the "dependent" must be considered separately, whether the head of family is or is thought to be within the mandate or not.

26. However, in cases of temporary separation, caused by the wilful act of the applicant or the head of the family and in which the head of the family has already been determined as being not within the mandate, then the dependents will be excluded also (34).

27. The position of unaccompanied children who have not reached their 17th birthday is discussed in Chapter III below. A child who has passed his 17th birthday and who is not living with his parents or legal guardian is considered as an adult.

28. Cases of widows and divorcees are cases in which the marriage no longer exists; applicants will be treated as individuals (35).

29. Difficult cases are those in which non-refugee women, having been ruled within

(31) *Geneva 1243 :* Petitioner, a Pole, was wife of a German who had been found not within the mandate and had not appealed. Petitioner asked for a separate decision on the grounds that she was not living with her husband and intended to divorce him. She was living in camp with her parents instead of out-of-camp with her husband. The case was decided on its own merits, petitioner being found not within the mandate as having no valid objections to return to Poland.

(32) *Geneva 4231 :* Petitioner was a Hungarian woman who claimed that she left Hungary in May 1945 with her husband and that on arrival in Austria both were arrested by the British Authorities. Petitioner's husband was released after one day's detention, petitioner being kept in internment for 2¼ years. She alleged that on her release she was informed that her husband had been kidnapped and taken to Yugoslavia where he had died.

It was ruled that, whatever may have been the activities of her husband, petitioner's case should be considered separately. She failed to bring adequate evidence and was found to be not a refugee or displaced person.

(33) *Geneva 2202 :* Petitioner was a woman born in Hungary, the wife of a Hungarian ex-prisoner of war who had gone to England under the "Westward Ho!" scheme, Her case was taken separately from that of her husband, and she was found to be within the mandate.

(34) *Geneva 4505 :* Petitioner was a 27-year old Serbian man who was unable to appear for interview as he was undergoing a sentence of eight months imprisonment for theft. He had previously been determined not within the mandate, as having no valid objections to return to Yugoslavia. The decision was upheld on appeal, and it was ruled that petitioner's wife must be excluded also.

(35) *Geneva 113 :* Petitioner was a Ukrainian, widow of a man who in 1944, had applied for EWZ registration as a Volksdeutsche, as a consequence of which the family was transported to Germany in November 1944. There was no doubt that an application for naturalisation was made, but after her husband's death, being of Russian and not of German origin, petitioner did not renew the EWZ application after a lapse of one year. Petitioner's case was considered separately and apart from the German ethnic origin of her husband, and she was found to be within the mandate.

This case should be distinguished from

Geneva 1178 : in which petitioner was the widow of a former Lithuanian. Petitioner and her husband went to Germany under EWZ auspices ; her husband died in 1944; she produced evidence tending to shew that she was of Lithuanian and not of German ethnic origin. The Review Board, however, obtained evidence from the Office of Military Government for Germany in Berlin that both petitioner and her husband had applied for and been granted German citizenship. She was therefore found to be not within the mandate.

the mandate solely on account of marriage, then become widowed. No general rule governing all cases can be given, but the principle to be adopted, is that when the non-refugee woman has lost (perhaps by loss of nationality or by resettlement) the possibility of re-integration into her original community, she should remain within the mandate. If the woman has had children by the refugee, then it will in most cases be difficult or impossible for her and her children to revert to her original status; this might even be the position where the woman was not legally married, the children in consequence illegitimate, but the family had been deserted by (even perhaps by the repatriation of) the man. When it is possible for her to revert to her previous position, she should be encouraged and if necessary assisted to do so (36).

30. In some cases, the non-refugee woman will have children of a previous marriage; if they are young and accepted by the husband as part of his family they can be within the mandate; except, however, when they have been formally adopted, such children should be considered separately after their 17th birthday.

31. It should be remembered that these difficult cases raise intricate social problems in which legal considerations (for example, citizenship) are not unimportant. They will require sympathy, care and accuracy in treatment far out of proportion to their numbers.

E. COUNTRY OF NATIONALITY OR OF FORMER HABITUAL RESIDENCE

27. Except in the case of persons of Jewish origin or foreigners or stateless persons in Germany or Austria who were victims of Nazi persecution, a person cannot become a refugee or displaced person within the mandate of the Organisation unless he is "outside of his country of nationality or of former habitual residence". That phrase, and its omission in referring to certain persecuted persons in Germany and Austria, ensures that in normal circumstances a person cannot be considered a refugee or displaced person if he has never lived permanently in any country other than the one he is in now.

28. The phrases, "country of nationality or of former habitual residence", must normally be read as providing strict alternatives; in the case of persons with a clear citizenship, they will not be considered refugees or displaced persons unless they are outside their country of citizenship; in the case of stateless persons, they will need to be outside their country of former habitual residence; *former* habitual residence is their residence prior to their displacement as refugees or displaced persons.

29. There are certain exceptions to the general rule, which are mostly covered by the comments in section (C) above ("Who is a genuine, bona fide and deserving refugee?"). Persons living outside their country of nationality for reasons not connected with persecution or political opinions are not *ipso facto* refugees; thus a Chinese national normally living in Burma would not be within the mandate; if, however, he had been deported to China by the Japanese during the war, he could be, in spite of being within his country of nationality.

30. *Réfugiés sur place.* Similarly, some persons can be *bona fide* refugees although they have never been displaced; for example, a German who had lived for years in France, denationalised in 1938 for anti-Nazi activity, would have thus become a refugee; or a Pole living for years in Germany but now unwilling on political grounds to avail himself of the protection of the Polish Government could, other things equal, be a refugee within the mandate—the matter of the desirability of his resettlement out of Germany at international expense is, however, quite another matter. The fact that an applicant has been living in the same country for some years is not relevant to the question whether he is within the mandate; what is relevant is whether he is firmly established in it. Such

(36) *Geneva 1353 :* Petitioner, a German woman married a Ukrainian in July 1947. They were admitted to camp in August 1947 and her husband died a month later. Petitioner claimed that, having married a displaced person, she should acquire his status. She was ruled not within the mandate.

habitual residence will on the other hand affect the applicant's entitlement to the Organisation's services.

31. Thus by a "country of former habitual residence" is meant the country which a person left when he became a refugee or displaced person or the country to which, as a *réfugié sur place*, he refuses to return.

32. It remains to be noted that a person may have two countries of "former habitual residence". For example, a pre-war refugee (Nansen) of Russian origin living since 1925 in France but not naturalized is stateless; he has no country of nationality, but Russia is his country of former habitual residence so far as his status as a pre-war refugee is concerned. If he was then deported by the Germans to Germany during the war, France is his second country of former habitual residence.

33. It was the practice of Governments under the pre-war conventions to assimilate the status of the stateless children of statutory refugees to that of their parents. The children of stateless statutory refugees remain stateless in countries such as Germany and France where the *jus soli* does not apply. As a humanitarian extension of constitutional principle, the same practice should apply now where it is desirable for the welfare of the applicant. Thus the child, born in Germany, of "Nansen" refugees could, other things equal, be within the mandate, in spite of the fact that he has all his life lived in Germany and has no other habitual residence. It would need to be carefully examined, however, that such a person was not firmly established in Germany (which is most probable); further, if such a person was in the German Army, there is a strong presumption of voluntary assistance to the enemy forces; acquisition of German citizenship is another possibility.

F. DESERTERS

34. Desertion being under no circumstances an extraditable offence, it becomes relevant under IRO Constitution to the extent which it provides evidence of valid objections to repatriation, under Part I Section C of Annex I to the Constitution (see Chapter IV). Fear of punishment by itself is not a valid objection (37) and thus desertion merely from dislike of the rigours of military life will not provide grounds for valid objection. On the other hand a deserter will almost certainly be liable for punishment for his desertion, and this fact should not blind the Eligibility Officer to an otherwise valid objection (38). The fact of desertion may moreover be good evidence of a valid objection on political grounds (unwillingness to fight for opposed regime); desertion may also be evidence of a conscientious objection to fighting, and be thus an element substantiating a fear of persecution on religious grounds.

35. It should be borne in mind that even a deserter with valid objections is not necessarily within the mandate; he may be excluded under Part II, paragraph 6 *(c)* as a non-demobilised member in "the military or civil service of a foreign State" (39). Such for example would be the case of a Polish deserter from the British Forces who has not been demobilised even *in absentia*. On the other hand, a person is not "in the... service of a foreign state" if he is a member of or a deserter from the forces of his own state.

(37) *Geneva 4538 :* Petitioner was a 23-year old Hungarian who fled from his country in June 1946. He was called up for military service and claimed to have heard rumours that all young men in the army would be sent to Russia. Ruled that petitioner was not within the mandate, fear of punishment on the grounds of desertion not being a valid objection to repatriation.

(38) *Geneva 6535 :* Petitioner a Serb from Zabari, aged 21, having stated first that he had remained at home on his father's farm until December 1944 (CM/1 Form Italy) and later that he had served in the Chetnik youth Brigade from May, 1943, afterwards claimed to have joined the First Brigade Morava of Chetniks in May 1943 and to have fought with them until September 1944, when he returned home. He then joined the partisans and served with the Communist Army until February 1946 when he escaped to Italy.

Petitioner claimed that his life would have been in danger in Yugoslavia because he was an ex-Chetnik, but such claims cannot be accepted as Petitioner had lived in Yugoslavia and served after September 1944 for more than one year in Tito's Army where his Chetnik activity was fully known.

On the other hand, although Petitioner was certainly a deserter whose reasons for refusing repatriation were partly based on fear of punishment, the fundamental reason why he left his country was that he could no longer agree with the political regime. He statut these reasons when he was questioned for the first time and on that point he has never varied since. His explanations convinced the Board that he had genuine political objections, and the circumstances that he happened to be in the Army at the time when he found it impossible to continue living in Yugoslavia, should not have resulted in excluding him from assistance.

Petitioner was found to be within the mandate of the Organisation.

(39) *Geneva 1816 :* Petitioner was a Pole living in Beirut who had deserted from the "Anders" Polish Army under British Command. He had not been discharged, apparently because of the charge of desertion against him.

(*Note* that in some similar cases, the Poles concerned have been demobilised *in absentia*, and in such circumstances they could, *ceteris paribus*, be found to be within the mandate.)