

CHAPTER III

CONSTITUTION Annex I - Part I

Sections A and B

1. Section C of Chapter I above described the logical processes in determining who is the concern of the Organisation. In Sections A and B of Part I of Annex I to the Constitution, the terms "Refugees" and "Displaced Persons" are defined for the purposes of the Constitution. The first stages in the logical processes were therefore described as the ascertainment of whether an applicant comes within any of the categories of refugees or displaced persons defined in those Sections. Whatever his other circumstances, an applicant cannot be within the mandate unless he comes within one of those categories.

2. SECTION A — DEFINITION OF REFUGEES

VICTIMS. — 1. "Subject to the provisions of Sections C and D and of Part II of this Appendix the term "Refugee" applies to a person who has left or who is outside his country of nationality or former habitual residence, and who, whether or not he has retained his nationality, belongs to one of the following categories :

"(a) victims of the Nazi or Fascist regimes or of regimes which took part on their side in the Second World War, or of the quisling or similar regimes which assisted them against the United Nations, whether enjoying international status as refugees or not."

3. Victims are not only those who were actually victimised, but also those who were threatened with persecution or who would have been, had they remained in a Nazi or Fascist governed country. The reasons for persecution might be racial, religious, or political. However, the mere fact that a person has been interned in a concentration camp is not in itself sufficient reason to obtain IRO protection; many German common criminals were interned in concentration camps (where some served as "Blockälteste" and were even more savage than the guards themselves). A distinction should be drawn between the "victims of the Nazi or Fascist regimes" falling under this paragraph on the one hand, and on the other hand the "victims of Nazi persecution" falling under Section A paragraph 3 (see page 17). In this paragraph victimisation is to be regarded as any threat; membership of a threatened group or class is adequate. In paragraph 3 on the other hand the persecution should be an actual one directed at the individual in person.

4. The usual cases need no illustration. Sometimes more odd circumstances arise (1). It should be remembered that among the victims of the Nazi régimes were many persons of German ethnic origin; they are not excluded from the Organisations

(1) *Geneva 1937*: Petitioner was born in Bavaria of Austrian parents and lived in Munich until the age of 10. In 1930 he moved to Istanbul and established his home there, being employed by a member of the Turkish Foreign Office. Petitioner made several visits to Germany in the company of his employer, but in 1937 being in danger of arrest by the Gestapo he fled from Germany to Czechoslovakia whence he returned to Turkey. He had not been in Germany since. Whilst in Turkey he was called for military service by the Germans, and on refusal was served with deportation papers at the instance of the German Ambassador. He left Turkey, served during the war with allied intelligence services and being regarded as an Austrian he was after the war repatriated by the allies to Austria, where he made application to the Organisation. He asked to be repatriated to Turkey, and was ruled at first instance not within the mandate because of his German ethnic origin.

On appeal, his story, which was documented, was accepted as showing petitioner to be a genuine opponent of the Nazis who had been persecuted, and the first decision was reversed.

concern on account of their ethnic origin unless they fall under paragraph 4 of Part II of Annex I to the Constitution; that paragraph (see Chapter VI) does not exclude all persons of Germanic origin.

Rare cases from the Organisation's point of view which should, however, not be neglected are the victims of the Japanese (2).

5. SPANISH REPUBLICANS

"(b) Spanish Republicans and other victims of the Falangist regime in Spain, whether enjoying international status as refugees or not."

6. The mere fact of being a Spaniard outside Spain does not bring a person into this category (3) nor do all Spanish Republicans living abroad necessarily come into it. Only the victims of the Falangist regime are the concern of IRO. These are the supporters of the Spanish Republican Regime who fled into France or other countries during the Spanish Civil war or at a later date, political opponents of the Franco regime who have escaped from Spanish camps and prisons or the threat of them, and similar persons, irrespective of whether they enjoyed international status as refugees before 1940.

7. PRE-WAR REFUGEES

"(c) Persons who were considered "refugees" before the outbreak of the Second World War, for reasons of race, religion, nationality or political opinion."

8. This category includes the following groups of pre-war refugees, who emigrated before the Second World War for reasons of race, religion, nationality or political opinion, including so-called *réfugiés sur place*, i.e. persons who, having left their countries of origin for various purposes, decided to remain outside for reasons above, and thus were recognised as refugee :—

- (a) "Nansen" refugees—Russians, Armenians, Assyrians, Turks, Saarlanders, as defined in the Arrangements of 12 May 1926, 30 June 1928 and 30 June 1935.
- (b) Refugees from Germany, as defined in the Convention of 10 February 1938; refugees from Austria, as defined in the Additional Protocol of 14 September, 1939.
- (c) Refugees from Sudetenland, as defined in the Resolution of the Council of the League of Nations dated 19 Jan. 1939.
- (d) Any other refugees—whether *de jure* or *de facto* stateless who were refugees before the war although they did not belong to a recognised category of refugees and who have continued to be refugees in spite of the changed circumstances.

9. The definitions of the above categories of refugees as laid down in the various Arrangements, Conventions etc., together with advice on their identification, are given in Chapter VII.

10. All the above groups of Refugees having been the concern of the League of Nations High Commission and the Intergovernmental Committee on Refugees, now fall under the mandate of IRO. By arrangements and conventions developed by the League of Nations the refugees were placed under special regime. The responsibilities of the preceding organisations have fallen upon IRO which has assumed their charges *en bloc* with the exception of those individuals who fall under one of the exclusion clauses of Part I or II of Annex I of the IRO Constitution.

11. The citizenship status of children in countries where the principle of *ius sanguinis* is a general rule, is determined by the status of the head of the family. Children of a stateless father are usually stateless. If a girl possessing German nationality marries a stateless person she becomes stateless according with the German Reich and State Nationality

(2) *Geneva 178*: Petitioner was a former Hungarian. She had lived in Java for 20 years and was interned there by the Japanese in September 1943. She claims that her internment was due to her Jewish faith. The Review Board ruled her within the mandate, noting that it was for the Administration to decide what form of assistance (other than legal and political protection, to which she was entitled) she should receive.

(3) *Geneva 1388*: Petitioner was a Spaniard aged 27 who left his country in July 1947. He worked in France for two months and then went to Belgium. He claimed that he left Spain because he could not live under the Franco undemocratic regime, but did not explain why he also left France and came to Belgium, which country, at the time of appeal, he also wanted to leave in order to go to the Argentine. Petitioner claimed that he could not return to Spain because he would be accused of harbouring feelings hostile to the present regime, of being a deserter from the army and of having left the country illegally. He also stated that life was too difficult and expensive in Spain.

Ruled that petitioner did not show that he was a Spanish Republican or a victim of the Falangist regime. Not within the mandate.

Laws of July 27, 1913. The laws of other countries vary considerably in respect of the changes in status of their nationals by marrying foreigners. It was the practice under the League of Nations to regard the children of refugees of the above pre-war groups as assimilated to the refugee-status of their parents, unless the children acquired definite citizenship by the operation of *jus soli* or naturalisation. This practice is continued by IRO (see Chapter II (E)).

12. One of the major questions that arises about pre-war refugees is to determine when they cease to be the concern of the Organisation. It should be remembered (see Chapter II (E)) that the country of former habitual residence of a refugee is the country from which he moved as a refugee or to which, as a *réfugiés sur place*, he refuses to return. Thus a pre-war refugee does not cease to be the concern of the Organisation merely because he is living in a country where he has resided for years. He does, however, cease to be its concern when, inter alia, he acquires a new nationality or when he is otherwise firmly established. This matter is fully discussed in Chapter V below; the general rule is that a person, once a refugee, does not cease to be a refugee on the grounds that he is firmly established so long as he might require assistance to overcome disabilities resulting from his refugee status. Similarly a pre-war refugee who has lost his status under pre-war Convention or Arrangement by naturalisation may well be within the mandate as a result of a new displacement (4). A pre-war refugee who has lost his Conventional status by naturalisation does not necessarily reacquire that status on becoming again stateless—"Nansen" refugees do not but German and Austrian refugees do—; this, however, does not prevent such a person coming within the IRO mandate (5).

13. It should be noted that a pre-war refugee may be not within the mandate if the regime from which he fled has changed (6). This is because of the continued necessity of expressing valid objections, a necessity that continues whether or not the applicant is stateless, as the objections must be to return to country of nationality or of former habitual residence. Nevertheless it should be remembered (see Chapter IV, below) that a pre-war refugee who has by long residence elsewhere lost all ties with his home country may successfully plead "compelling family reasons" as his objection to return.

14. It is particularly necessary in the case of pre-war refugees to draw a distinction between the determination that a person is within the mandate and the administrative decision that he may be given certain services (7).

15. "2. Subject to the provisions of Sections C and D and of Part II of this Appendix regarding the exclusion of certain categories of persons, including war criminals, quislings and traitors, from the benefits of the Organisation, the term "refugee" also applies to a person, other than a displaced person as defined in Section B of this Annex, who is outside of his country of nationality or former habitual residence, and who, as a result of events subsequent to the outbreak of the Second World War, is unable or unwilling to avail himself of the protection of the Government his country of nationality or former nationality."

16. It has been a general practice in international relations to grant "asylum" to political refugees, and to resist attempts by their governments to obtain their surrender from the country where they had found refuge. Treaties concerning the extradition of criminals provide that only those persons who are accused of having committed crimes specifically mentioned in the treaty shall be surrendered. Therefore persons accused of acts—and in some cases crimes—which are merely political, cannot be surrendered.

17. This category of political refugees or dissidents comprises not only persons who have left their country because they disagreed with the political regime in power (8), or because of fear of persecution (9), but also persons who, after having left their country

(4) *Geneva 110*: Petitioner was an ex-officer of the Imperial Russian Army who had held a "Nansen" certificate until 1940 when he obtained Polish citizenship. During the recent war he was deported to Germany to work in a cellulose factory. Ruled within the mandate.

(5) *Geneva 411*: Petitioner was a pre-war refugee, formerly established and naturalised in Estonia. Ruled that he be considered stateless, and within the mandate.

(6) *Geneva 366*: Petitioner was a pre-war Italian refugee who had lived in France since 1929 and now wanted to migrate to Venezuela. Ruled that he could not be considered within the mandate as the Fascist Government of Italy no longer existed.

(7) *Circular Letter 95/1/NAN of 6 October 1948 from HQ Geneva*: "In the British Zone of Germany where an estimated 10,000 Nansen refugees are living, the majority who have applied to date have been found to fall within the mandate of the Organisation. The only services, however, which they have been granted are those of legal protection. On the other hand a number of Nansen refugees who were situated in the British Sector of Berlin were also found to be within the mandate of the Organisation, but because of the circumstances of their cases, legal protection, care and maintenance and resettlement services were extended to them."

(8) *Geneva 1029*: Petitioner was a Hungarian, 33 years of age, who had studied law at Budapest University. In 1945, after hostilities, he was employed by Budapest Police Headquarters in the Intelligence section, and because of his knowledge of Russian was transferred to the Prime Minister's Office as Liaison Officer to the Russian Section of the Allied Control Commission. When the Prime Minister, Nagy, left Hungary on 14 May 1947 he requested a passport for petitioner who succeeded in following him month later, going to Italy where he remained.

Petitioner had left Hungary as a political emigre without fear of persecution; he was found not to be excluded from IRO concern and to have valid objections to repatriation. Ruled within the mandate.

(9) *Geneva 485*: Petitioner was a Pole who was formerly a forced labourer in Germany. On his liberation by Polish troops, he returned to Poland. Being an opponent of the Communist regime, he states, he was imprisoned by the political police in Katowice in July 1947. He escaped from prison and entered Germany illegally in October 1947. He bore signs of ill-treatment corroborating his story that he had been beaten by the Polish police. Ruled within the mandate.

for other reasons, have found, whilst staying abroad, that they would be incapable of adapting themselves to the political conditions at home. Such are, for instance, persons who originally left their country of their own free will (10), soldiers who were taken prisoners of war (11), persons who left for economic reasons or who were evacuated etc. (12), who may have subsequently decided to remain abroad because of political objections that have arisen after leaving their country of origin. Persons who were deported for slave labour or displaced, may also come under this category, if during their stay abroad, political objections against returning home have arisen in their mind (13) (see also Chapter II, Section E, paragraph 30).

18. It is evident that a person may come under this paragraph without having been a victim of persecution by Nazi and similar regimes. Political opponents of regimes which are in power in their country come under this category.

19. To come under the provisions of Paragraph 2, a person must be either unable or unwilling to avail himself of the protection of his government. (For the meaning of the word "protection" see Chapter V.) A person is "unable to avail himself of the protection of his government" when his government refuses to recognise him as a citizen or when it refuses to accept him on national territory (14). Part I Section A (2) begins with the words, "Subject to the provisions of Section C..." It is obvious that Section C does not apply to persons who are unable to return but only to persons who are unwilling to return home.

20. It goes without saying that a person who fears to return to his country because he would be punished there for desertion or crime is not "unable" to return.

21. A person is "unwilling to avail himself of the protection of his government" when he is out of sympathy with the regime, and refuses to return home. It is evident that the objections which he holds against the Government must be very strong if they can induce him to become a stateless person deprived of government protection, legal right of residence, and legal status. The conditions under which refugees and displaced persons will become the concern of the organisation (adequate information and valid objections) are explained in Section C hereafter.

22. The words "as a result of events subsequent to the outbreak of the second world war" refer to events which have happened after 3 September 1939 such as changes in the regime of a country, changes in the map of Europe, transfer of population, acts of civil and military authorities, surrender of combatants, in other words, all factors which have affected the country of origin or the person of the refugee since the outbreak of World War II.

23. Thus a Soviet citizen who has left the Soviet Union at any time (before, during or since the recent war) may come under the provision of this clause and be within the mandate if he otherwise fulfils the Constitutional provisions and provided any events have occurred since 3 September 1939 to affect his view of the Soviet Union (15). Such events may have affected his view by a process of accretion whose individual stages may have been almost imperceptible. (Soviet citizens may of course come within other provisions, for example Section B which is described below).

24. The question whether the reasons for the unwillingness or the inability must have existed *before a certain date* is one which need not be considered under the present IRO policy. No time limit after which "events subsequent to the outbreak" would cease to be effective has been set up. Date lines previously imposed by UNRRA or by Governmental or occupational authorities have no bearing on IRO status. Post war events, such as the transfer of territory by Peace Treaty, can for example be invoked under this clause (16).

25. "3. Subject to the Provisions of Section D and of Part II of this appendix, the term "refugee" also applies to persons who, having resided in Germany or Austria and being of Jewish origin or foreigners or stateless persons,

(10) *Geneva 1790*: Petitioner was a Latvian who had been in the Latvian Consular Service before the war. In 1940, on the Soviet occupation of Latvia, she refused to continue service because many former consular officers had been arrested, and took her discharge in Germany. There was no conclusive evidence of assistance to the enemy forces, petitioner expressed valid objections to repatriation and was ruled within the mandate.

(11) In addition to many cases of members of the Royal Yugoslav Army, there are more usual ones, for example *Geneva 1066*, where petitioner was an Albanian who joined the Albanian nationalists in 1941 to fight the Germans and Italians. He was imprisoned by the Germans. Within the mandate.

(12) *Geneva 2154*: Petitioner, a mechanic, was born in Hungary. In December, 1944, he was evacuated with the other employees and material of the factory to Austria where he was remained since. He expressed valid objections to repatriation and was ruled within the mandate.

(13) *Geneva 914*: Petitioner was a Serb who had suffered at the hands of the Ustachi during the war and had been taken by the Germans for forced labour. He expressed valid objections to repatriation and was ruled within the mandate.

(14) *Geneva 4336*: Petitioner was born in Graz (Austria) in 1915. His father who came from Venezia Giulia had Austrian citizenship and after the Treaty of St. Germaine did not obtain any other. In 1920 the family moved to Zagreb (Yugoslavia) and the father became an officer in the Yugoslav Army. He was recognised as Yugoslav, but learned in 1936 that he was not a Yugoslav citizen in law. In 1939 he, his wife and his minor children became naturalised Yugoslav citizens, but petitioner who attained his majority in 1936 was not included. Petitioner has been rejected as a citizen by the Yugoslav, Italian and Austrian authorities. Being in Austria, he was ruled to be outside his country of former habitual residence (Yugoslavia) and unable to avail himself of any governmental protection. Within the mandate.

(15) *Geneva 78*: Petitioner was a citizen of U.S.S.R. who had been a high official of the staff of the Russian Military Administration in Berlin from the middle of 1945 until his flight in 1947. He had assumed a false name and claimed Estonian citizenship which on interview he admitted to be false also. His objections to repatriation were adjudged valid and he was ruled to be within the mandate.

(16) *Geneva 963*: Petitioner in Italy was a Slovene from the area of Venezia Giulia transferred from Italy to Yugoslavia under the terms of the recent Peace Treaty. He was formerly an Italian, but as he was not Italian-speaking has become a Yugoslav citizen by the operation of the Peace Treaty. He substantiated his valid objections against repatriation and was ruled within the mandate.

were victims of Nazi persecution and were detained in, or were obliged to flee from, and were subsequently returned to one of those countries as a result of enemy action, or of war circumstances, and have not yet been firmly established therein."

26. This provision refers to persons who :

- (a) have resided in Germany and Austria,
- (b) are residing in Germany or Austria at the time of application,
- (c) are of Jewish origin, foreigners or stateless persons. (In this connection "foreigners" refers to persons who are not Germans in Germany.)
- (d) were victims of Nazi persecution,
- (e) have not yet been firmly resettled.

27. It confers upon persons who have been the victims of actual persecution, the right of refusal to continue living in the country where they suffered, even if they have no other "valid objections" against living there.

28. It is evident that this clause is an exception to the general rule insofar as it recognises as refugees a number of persons who are not outside their country of origin or who have returned or been repatriated, and therefore it should be interpreted in a narrow sense, i.e. not extended by analogy to further cases. It should be applied strictly (17).

29. All persons of Jewish origin of any nationality including German and Austrian (18), foreigners of any nationality (other than German) and stateless persons (19) are included under this clause. It should be noted in this connection that the term "Jew" is not restricted to persons defined as Jews by the Nuremberg laws but to any person partly Jewish, who is sufficiently Jewish to have been persecuted on that account and who can make plausible that he has suffered persecution (20). Non-Jews of German or Austrian citizenship are, however, not normally covered by the clause, whatever the persecution (21). Exceptions may occur on grounds of equity in respect of the non-Jewish widows of Jews who have been persecuted (22) though they would not be made if the widow were firmly established (23). A widower is more likely to be firmly established, and exception to the general rule should not normally be made in this case (24).

30. The actual form of persecution is immaterial—the clause is not limited to the survivors of concentration camps (25). The persecution must, however, have been actual persecution resulting in an actual pursuit of or personal threat to the individual concerned. This clause is, however, not applicable to anyone firmly settled in Germany or Austria (26) nor in general to a person who has been repatriated since the end of the war to Germany and Austria and now wishes to leave again, unless the existing wish to leave is related to the previous persecution and is not merely due to existing economic difficulties. The degree of firm establishment which would prevent this clause bringing a person within the mandate is difficult to lay down in theory. In general it can be said that a person who became unestablished as a result of Nazi persecution and who has not now achieved a tolerable livelihood should be regarded as not being firmly established for this purpose, but the facts of each case will need careful examination and each case should be dealt with on its merits.

31. It should be particularly noted that German or Austrian victims of persecution still in Germany or Austria are not within the mandate of IRO if they are neither Jews, foreigners nor stateless persons. They may, however, in deserving cases be assisted by certain voluntary agencies using funds obtained from German reparations and administered by IRO. The eligibility of persons for assistance from reparations funds is defined in the Common Plan adopted by the Five Power Conference on 14 June 1946; the instructions on the application of the Common Plan contain the following clauses on the eligibility under it of victims of Nazi persecution :—

(17) *Geneva 392* : Petitioner was in Germany, a German national, whose mother was a Jewess. He had been obliged to give up his employment as an opera singer in 1937 on account of the Nuremberg laws. He was not otherwise persecuted, because, as he stated, nobody knew he was a half-Jew. He had four children, all married and established. He did not wish to emigrate. It was ruled that the petitioner being a half Jew, half persecuted and half established was not a case to warrant exceptional treatment.

(18) *Geneva 710* : Petitioner was a German Jewish actress in Germany. She had been deprived of work during the Nazi régime, her brother had been arrested and had died during the evacuation of Dachau. Ruled within the mandate.

(19)(i) *Geneva 707* : Petitioner was a stateless person, holder of a grey Fremdenpass, in Germany where he had previously lived. He brought proof of two years imprisonment for political reasons. Ruled within the mandate.

(19)(ii) *Geneva 10623* : Petitioner was 40 years old, married, with one child, born a German in Germany and not of Jewish origin. He had left Germany in 1936 following a violent quarrel during which he had expressed anti-Nazi sentiments to an SS-officer. He went to France and joined the Foreign Legion. In 1941 the Germans successfully demanded the delivery of all Legionaries, of German origin and petitioner had been brought to Germany, condemned to 12 years imprisonment, his sentence being commuted to forced labour under police supervision. Accused of sabotage, he was drafted into a disciplinary battalion of the Wehrmacht, sent to Russia, where he had deserted and returned to Germany. Under German law, petitioner had lost his German citizenship on a result of his service in the Foreign Legion. Petitioner was found to be a persecuted stateless person in Germany against whom no reason for exclusion would lie and who was not firmly established in Germany. Within the mandate.

(20) *Geneva B 43* : One Petitioner was the non-Jewish wife of an Austrian Jew who had been obliged to flee to England in 1938 and who had now gone to Australia. Petitioner had refused to divorce her husband, had been obliged to flee from Austria to Italy and now wished to join her husband. Although she had returned to Austria, she was ruled within the mandate as the dependent of a person who had been persecuted. (This should be noted as an exception to the rule on dependents under which wives are considered separately when actually separated from their husbands).

The second petitioner was the daughter of the first petitioner, and was ruled within the mandate as a half Jew. The fact that she was Roman Catholic by religion was immaterial.

(21) *Geneva 4114* : Petitioner was a non-Jewish German born in Berlin who had always lived in Germany. He brought proof of persecution including imprisonment, but was ruled not within the mandate.

(22) *Geneva 4071* : Petitioner was the non-Jewish widow of a German Jew who had been arrested by the Nazis and had disappeared. She had a son of eighteen years, but was not firmly established in Germany and did not wish to stay there. Within the mandate.

(23) *Geneva 4156* : Petitioner was the non-Jewish widow of a German Jew who had died in Auschwitz. She had a son who had been condemned by the Nazis to three months in a labour camp and a daughter who had not been allowed by the Nazis to attend university. Nevertheless she continued to live in Germany where she had property and her children had finished their schooling : she lived with her old and infirm mother and was ruled to be manifestly firmly established. Not within the mandate.

(24) *Geneva 4122* : Petitioner was a non-Jewish German whose Jewish wife had been persecuted to death by the Nazis : he himself had also been persecuted. Not within the mandate.

(25) *Geneva 4309* : Petitioner, born in 1913, was a German whose father was a Jew but whose mother was not. He claimed that after 1936 he was not allowed to carry on the family export business outside Germany, nor allowed to leave Germany. He claimed that under the Nuremberg Laws he lost his rights as a German citizen, that he

was excluded from military service and that only through the influence of non-Jewish friends was the business continued until February 1944. At that time petitioner was denounced as a Jew, his business closed and he was forced to take a job as a truck driver. He then learned that he was to be seized by the Gestapo for sending to Buchenwald, fled to Austria and hid in the mountains. Within the mandate.

(26) *Geneva 4164*: Petitioner was a Jewess married to a non-Jewish German. She produced evidence of persecution at the hands of the Nazis, but was found to be not within the mandate as neither she nor her husband had any intention of leaving Germany.

"True victims of Nazi persecution and their immediate families and dependents in the following classes :

1. Refugees from Nazi Germany or Austria who require aid and cannot be returned to their countries within a reasonable time because of prevailing conditions.

2. German and Austrian nationals now resident in Germany or Austria in exceptional cases in which it is reasonable on grounds of humanity to assist such persons to emigrate and providing they emigrate to other countries within a reasonable period."

32. 4. "The term 'refugee' also applies to unaccompanied children who are war orphans or whose parents have disappeared and who are outside their countries of origin. Such children, 16 years of age or under, shall be given all possible assistance, including normally, assistance in repatriation in the case of those whose nationality can be determined." (See also Provisional Order 33.1.)

33. The expression "Unaccompanied Children" means children who fulfil the six following conditions. They must be :

- (a) 16 years of age or under, *i.e.* a child is outside the definition of "Unaccompanied Children" from the date of his 17th birthday.
- (b) Outside their countries of origin or of that of their parents.
- (c) Orphans or children whose parents have disappeared or who have been abandoned or whose parents are unattainable.
- (d) Not provided with a legal guardian¹; or children whose guardian has disappeared or abandoned them, or who is unattainable.
- (e) Not accompanied by a close relative (adult brother, sister, uncle, aunt, or grandparents).
- (f) Children in respect of whom there exists a presumption that they belong to one of the categories of refugees or displaced persons in respect of whom IRO has been established.

34. Unaccompanied children are within the mandate irrespective of any other conditions or requirements; the mere fact that they are unaccompanied children, as defined above, is enough to make them within the mandate; sections C and D of Part I as well as Part II of Annex I to the Constitution are, for example, irrelevant. It has thus been necessary to make condition (f) above; the categories of refugees or displaced persons in respect of whom IRO has been established are those described in Section A, paragraph 1, 2 and 3 and in Section B of Part I of Annex I to the Constitution (*i.e.* victims of the Nazis, Falangists and similar regimes, pre-war refugees, persons displaced by the Nazis and similar regimes, political dissidents and others unable to avail themselves of governmental protection).

35. When the age of a child cannot be ascertained, the opinion of a Medical Officer will be sought.

¹ It may be found that some children of non-German origin have been provided, as a result of Nazi legislation or practice, with German guardians, the purpose of Nazi action in this respect being to Germanise the children. In such cases, although the guardianship is presumably legal, the existence of a guardian of this sort should be disregarded so far as the children otherwise falling in this paragraph are concerned.

36. The nationality of a child will be presumed to be as follows :

- (a) A child of legally married parents will be presumed to possess the nationality of his father.
- (b) A child of unmarried parents will be presumed to possess the nationality of his mother.
- (c) When the nationality of his parents is unknown the child will be presumed to be of undetermined nationality unless his nationality can be otherwise determined.

Unaccompanied children are eligible for :

- (a) repatriation if their nationality can be determined,
- (b) any other form of assistance.

37. Unaccompanied minors over 16 years of age—*i.e.* those who have attained their 17th birthday—should be treated as adults.

38. SECTION B—DEFINITION OF DISPLACED PERSONS

"The term "displaced person" applies to a person who, as a result of the actions of the authorities of the regimes mentioned in Part I, Section A, paragraph 1 (a) of this Annex has been deported from or has been obliged to leave his country of nationality or of former habitual residence, such as persons who were compelled to undertake forced labour or who were deported for racial, religious or political reasons. Displaced persons will only fall within the mandate of the Organisation subject to the provisions of Sections C and D of Part I and to the provisions of Part II of this Annex. If the reasons for their displacement have ceased to exist, they should be repatriated as soon as possible in accordance with Article 2, paragraph 1 (a) of this Constitution, and subject to the provision of paragraph (c) subparagraphs (ii) and (iii) of the General Assembly resolution of 12 February 1946 regarding the problem of refugees (Annex III)."

39. The problem of displaced persons is a result of the Second World War. The above category is restricted to include persons who left their countries of nationality or habitual residence forcibly, or under compulsion, threat, or duress of the Nazi, Fascist or similar regimes, and for forced labour or for racial, religious or political reasons.

40. All those who do not come under the definition of Section B are not Displaced Persons. A displaced person should normally return to his country when the reasons for his displacement were those mentioned above, since it may be presumed that such reasons have ceased to exist. If, however, a displaced person refuses to be repatriated, he may remain within the mandate of the IRO (and thus be resettled or otherwise assisted, as appropriate) providing his reasons for refusing to be repatriated constitute "valid objections" such as are described in Section C of Part I of Annex I to the Constitution (27) (See Chapter IV, below). If a displaced person refuses repatriation for reasons which are judged invalid then he is free to choose his own mode of action, but is not to be considered within the mandate.

41. A person's movements subsequent to his displacement do not affect his status as a displaced person (28), nor, of course, does it matter whether he was displaced.

(27) *Geneva 132* : Petitioner was a Ukrainian of Polish citizenship who had lived in Lemberg and Zakopane until 1944 when he was forced to work on railway works. The works were transferred to Oppeln (Germany) in October 1944 with their whole staff. In February 1945 petitioner was transferred to Radldorf Camp. Petitioner was ruled to be a displaced person and to have expressed as his objection to repatriation a fear of persecution which he had substantiated on interview : within the mandate.

(28) *Geneva, B. 125* : Petitioner was a Ukrainian who had been deported by the Germans in March 1942 for forced labour to Roumania and from there to Austria. He had finally been sent to France for trench-digging, but had fled, joined the French partisans and had been in action against the Germans. On being forcibly repatriated to the Ukraine in September 1944, petitioner had again fled, reported to the French Police, had been sent to the International Camp in Marseilles and from there to Naples as a presumed prisoner of war because he could not prove his participation in the French resistance. In December 1947, petitioner had obtained a certificate establishing his service with the Forces Françaises Indépendantes.

Petitioner was ruled to be a displaced person with valid objections against repatriation and within the mandate.

SECTION C — CONDITIONS UNDER WHICH "REFUGEES" AND
"DISPLACED PERSONS" WILL BECOME THE CONCERN
OF THE ORGANISATION

In the case of all the above categories of persons mentioned in Section A paragraphs 1 (a) and 2 of the Annex persons will become the concern of the Organisation in the event of the Resolution adopted by the Executive and Council (pursuant to its February 1946) if they can be repatriated and the help of the Organisation is required in order to provide for their repatriation or if they have definitely in complete freedom and after receiving full knowledge of the facts, including adequate information from the Government of their country of nationality or former habitual residence, expressed valid objections to repatriation to their country.

Persons may become the concern of the Organisation in one of two circumstances. One way is provided for in Article 1 of the Annex. Persons who are mentioned in the Annex in the context of treatment of refugees and displaced persons who are entitled to repatriation (1) and in respect of whom the help of the Organisation is required (2) shall be those who have expressed valid objections to repatriation. It is not open unless the individual concerned has expressed valid objections to repatriation to regard him as a displaced person. It should be remembered that a person may be a refugee or displaced person according to Section A or B of the Annex (1) and (2) and be repatriated. This is because it would not be true to say that all persons willing to be repatriated because the concern of the Organisation (1).

The above information must be made available to the Government of their country in the order.

(4) Where information — The following shall normally be considered "adequate information" for purposes of the Annex in the context of treatment of refugees and displaced persons concerned, submitted to them directly by representatives of the Government of their country, who shall be given every facility for visiting camps and suitable centres of refugees and displaced persons in order to give such information before their repatriation.