CHAPTER V

CONSTITUTION Annex I - Part I

Section D

CIRCUMSTANCES IN WHICH REFUGEES AND DISPLACED PERSONS WILL CEASE TO BE THE CONCERN OF THE ORGANISATION

1. The clauses of this Section refer to persons who have previously been determined to be the concern of the Organisation.

2. "Section D. Refugees or Displaced Persons will cease to be the concern of the Organisation : *(a)* when they have returned to the countries of their nationality in United Nations territory, unless their former habitual residence to which they wish to return is outside their country of nationality."

3. A person who has returned to his country of nationality ceases to be the concern of IRO because he is then presumed to come under the protection of his Government, whose business it is to re-establish him within the country.

4. It should be clearly understood that the fact that a person has so repatriated does not prevent him again becoming a refugee within the mandate if he leaves the country to which he has been repatriated and expresses valid objections to return (1).

5. A person may have returned to his country of nationality in spite of the fact that his former residence—where he wished to return—was situated in a country other than that of his nationality : he may then be in need of international assistance for transportation to the country of his former habitual residence. In this case, if he objects to remaining in his country of origin, it may be said that he remains within the mandate. For example, a Czech national, who had his former habitual residence in Esthonia (whither he could not obtain permission to return) and who did not wish to remain in Czechoslovakia whither he had been repatriated (because he was an ex-Austrian who could not speak Czech) would not cease to be the concern of the Organisation merely because he was in his country of nationality.

6. The phrase "in United Nations territory" should be construed as meaning "other than Germany and Austria". The phrase was inserted in the immediate post-war period when it was assumed that former persecutees returning to ex-enemy countries would or might require protection. A refugee from Germany or Austria would after repatriation remain the concern of the Organisation until he were firmly re-established in Germany or Austria.

7. It should be remembered, however, that it is not the general rule for the Organisation to resettle from Germany and Austria, people who have been repatriated to these countries. Furthermore, the situation in these countries being what it is, a person who has been repatriated to them and has been firmly re-established therein would not re-

(1) *Geneva 17 :* Petitioner who was forced to work from 1941 to 1944 first in Czechoslovakia and then in Germany, produced a well documented employment record (Arbeitsbuch 254/810). She was allowed to continue her forced employment in Pilsen, Czechoslovakia on 22. 9. 44 where she stayed till Oct. 1945 when she returned home and took up employment in Chudenice from April to December 1946, and thence in her home town from January to August 1947.

She claimed to have failed in her attempt at re-establishment because of difficulties with the new regime and to have had conflicts with the local members of the Communist Party in conducting the business of the firm which she represented. She said that the political circumstances resulting in fear of persecution induced her to return to Germany in August 1947.

It appeared clear to the Board that her repatriation had not been consummated and was, therefore, not a reason for exclusion. Her valid objections were definitely expressed and substantiated by further political developments. Within the mandate.

acquire refuge status if he left these countries as, ex-hypothesi, it is for all practical purposes impossible for him to express valid objections to being again repatriated.

8. "Section D... *(b)* when they have acquired a new nationality."

9. The presumption is that a person who has acquired a new nationality has become firmly established in his new country, that he enjoys governmental protection and that he is, therefore, not in need of international assistance. Thus a pre-war refugee who, formerly stateless, was subsequently naturalised in France, is to be treated as a Frenchman, and a refugee within the mandate who is resettled in, say, Brazil would cease to be the concern of the Organisation on acquisition of Brazilian citizenship. The same applies to a refugee woman who acquires a new nationality by marriage, unless, of course her husband is within the mandate.

10. It is clear, however, that a refugee who at any time takes (or has taken) a new nationality may become again a refugee if he leaves his country of (new) nationality or habitual residence and expresses valid objections to returning. Eligibility Officers should take care therefore not to apply this clause so as to exclude, for example, a former Nansen refugee who had been naturalised in Lithuania (his country of refuge before World War II) and who, having fled before the Soviet occupation into Germany, does not, for political reasons, want to return to Lithuania. If his objection is valid, he would be the concern of IRO, being outside his country of nationality, he would in fact, be treated as a Lithuanian. Similarly, if a pre-1917 Russian had become a Nansen refugee and at a later date had availed himself of the offer of Soviet citizenship (2), it would, of course, be possible for such a person to become again a refugee if he, being outside his country of nationality, fulfilled the usual conditions. *A fortiori*, a stateless person who had acquired a new nationality and subsequently lost it would not be under the protection of any government and might be the concern of IRO.

11. "Section D... *(c)* When they have, in the determination of the Organisation, become otherwise firmly established."

12. The word "otherwise" means "otherwise than in Section D *(a)* and *(b)* above", *i.e.* otherwise than by repatriation or naturalisation.

13. The general rule is that a person is not regarded as "otherwise firmly established" so long as he suffers disabilities—legal or material—as the result of his refugee status.

14. A distinction should be drawn between on the one hand economic and social establishment and on the other hand the firm establishment which results in a refugee ceasing to be the concern of the Organisation. The latter makes a refugee no longer within the mandate—he ceases for all purposes to be a refugee; the former may—probably would—result in an administrative decision on limitation of the services to be given to the person concerned—there would be no reason to accept him in a camp or maintain him nor would he be transported elsewhere at the charge of the Organisation—but he would remain within the mandate of the Organisation, and would be eligible for legal and political protection.

15. Thus if a refugee has married and raised a family in a country, acquired property there or set up a business concern or found a stable occupation, these are indications that he is economically established, though no clear proof (3). and he would find it difficult to establish a claim for continued financial assistance. He would, however, remain within the mandate and be qualified for IRO protection so long as he was without protection of any government. It is possible, therefore, for a stateless person (in law or in fact) who has been resettled in a new country to remain under IRO protection until he has acquired a new nationality.

16. It is, however, possible for a person to become "otherwise firmly established" before he acquires a new nationality. The position varies from country to country

(2) *Geneva 2113 :* Petitioner, a former Russian, left Soviet Russia in 1931, aged 13, with his parents, to live in China, where he remained with Nansen status. In 1946 he applied for repatriation and obtained a Soviet passport with the necessary visas and papers in September of that year. At the same time his wife fell ill, spent six weeks in hospital, and the repatriation had to be postponed until her recovery. This recovery was slow, and was completed only in 1948, when petitioner in his turn fell ill with T. B. He applied to the U.S.S.R. Consulate for assistance to meet the cost of his hospitalisation and was referred to the Soviets Residents Association in Shanghai. That association agreed to advance the costs on condition that petitioner would refund the money after his recovery; this, petitioner refused, and applied to IRO to meet the costs.

It was considered by the Review Board that petitioner having expressed the desire to return to Soviet Russia, and taken the necessary steps to be repatriated by his own Government, reacquired Soviet citizenship which he lost in 1931, and having shown that he neither feared persecution nor had political objections against the regime was not within the mandate.

Furthermore, as petitioner was neither unwilling nor unable to avail himself of the protection of his Government, he was not considered a refugee. The circumstances that his Government refused to meet the expenses of his medical treatment were irrelevant to the determination.

(3) *Geneva 4499 :* The petitioner, who was stateless, left the Ukraine, alone, in 1919 as an anti-Communist dissident. He held a Nansen passport and had a Fremdenpass extended until 1945. He had subsequently married a German who had become stateless on her marriage. When interviewed by the Board, petitioner, who was a Professor of Art in the Deutsche Akademie in Berlin during the whole of the war, convinced the Board that he had valid objections to repatriation and that he was never firmly established in the country of former habitual residence. Found within the mandate.

depending on immigration laws, and the actual need of protection. In the United States, for instance, where the legal immigrant acquires upon his landing sufficient right for his firm establishment, and, upon receipt of "first papers" a considerable extension of his rights, the need of protection will hardly arise. In some other countries acquisition of nationality is an extremely difficult matter, and international protection may be required for a considerable length of time especially if the laws of the country are an important obstacle to the exercise of human rights or the performance of legal acts by a foreigner.

17. A refugee or Displaced Person who has not been resettled and wishes to emigrate will remain the concern of IRO even though he may have a satisfactory employment or a home in the country of temporary residence. It is not in the interests of the organisation or of refugees themselves to discourage their efforts of self-support, but it is for the refugee to decide whether he wishes to remain in the country of temporary residence.

18. It is, of course, irrelevant whether the firm establishment is the result of the efforts of the refugee himself, of the IRO or of any other Organisation.

19. "Section D... *(d)* When they have unreasonably refused to accept the proposals of the Organisation for their resettlement or repatriation.

(e) When they are making no substantial effort towards earning their living when it is possible for them to do so, or when they are exploiting the assistance of the Organisation."

20. The purpose of these two clauses is to avoid the formation of a "class" of social parasites living in idleness which would become a permanent financial liability of the Organisation.

21. Unreasonable refusal to be repatriated is a refusal without "valid objections".

22. It is recognised that the individual refugee is entitled to a certain freedom of choice as between repatriation, resettlement or settlement in the local economy. It is the responsibility of the Organisation, in consultation with the refugee, to assist the refugee at the earliest possible moment in making his choice as between these three alternatives. This choice cannot, however, be made in the abstract. The decision as to whether a refugee will choose resettlement, depends to a great extent on the actual opportunities offered to him. Here again it is the responsibility of the Organisation to make known to the refugee in a realistic fashion the opportunities for resettlement open to him. In like manner, the refugee has an obligation once these opportunities have been disclosed to him, to choose to apply either for one of the resettlement opportunities, or for repatriation. Refugees who do not elect to apply for repatriation or resettlement should proceed to make their plans for their future in the local economy.

23. The major categories affected by clause *(d)* are persons who move or are sent from countries of settlement (whether back to their country of refuge or elsewhere), persons who withdraw their consent after volunteering for a resettlement scheme and persons who are not cooperating with the Organisation in attempting to make practical plans for re-establishment. As regards clause *(e)* the assistance of the Organisation is exploited when it is given to a refugee who does not require assistance or who needlessly puts himself in a position to require it; as for "earning their living" it is obvious that a person cannot be earning his living unless he can pay for his maintenance—he may be earning his pocket-money, but that is another matter.

24. In each case, the objective is to avoid the unnecessary spending of international funds but to continue the protection of *bona fide* refugees as long as that is needed. The normal way to prevent exploitation is to discontinue or not give the assistance that is being or would be exploited; thus for example, if a refugee could have maintained himself in his country of resettlement he should not normally be maintained by IRO on his unreasonable return from it, and a person who has volunteered for a resettlement scheme and who on the eve of his departure unreasonably refuses to go should be made ineligible for further resettlement opportunities.

25. It is important to regard refugees as ordinary human beings with ordinary faults and failings, among which are indecision and irresponsibility. Individuals should not lose their status as refugees within the mandate on account of such failings, which should however not be given self-expression at taxpayers' expense. Nevertheless, the behaviour of a person in these matters can provide evidence that he is in effect a migrant malingerer and not a real refugee at all; as such he should not be the concern of the Organisation.

26. In the following extreme cases a person will be declared to be excluded from the concern of the Organisation :

(a) when he is returned or deported from his country of resettlement because of grave misconduct there :
(b) when he moves from his country of resettlement after breaking a contract of work (due to which he went there in the first place) without having given himself the opportunity of deciding whether or not conditions are adequate (4) :
(c) when he displays such grave and extreme irresponsibility as to indicate that he is in effect not a refugee at all nor worthy of any assistance.

27. When the circumstances imply nothing derogatory to the refugee no limitation will be made on services to be given him. For example :

(a) the desire of a refuge to rejoin his family must always be considered reasonable (5) :
(b) it is legitimate for a refugee to withdraw his consent to move on a resettlement scheme if he has good family reasons for delaying his departure (6) or if events have occurred beyond his control that would reasonably have such an effect.

28. Otherwise, however, in order to ensure that the welfare of *bona fide* refugees is not jeopardised by the anti-social actions of others in trying to exploit the Organisation or disrupt its machinery, the decisions will be taken to deprive such anti-social persons of care and maintenance or of resettlement at IRO expense. Such will occur for example :

(a) when a person returned from a resettlement country to his country of previous refuge with no extenuating reasons; the decision taken in these cases should follow the advice of the IRO mission in the resettlement country.
(b) when the person has volunteered for a resettlement scheme on which, at the last moment, he refuses to go for no sound reason after the Organisation has incurred expense on his behalf.
(c) when he is taking no active steps to further his own repatriation or resettlement or re-establishment in the local economy, it being possible for him to do so.

29. An analogous problem is raised by persons who unreasonably refuse to move to another camp on the closure of the camp in which they are residing : and by persons who unreasonably refuse to move from one country or area to go before a resettlement selection mission, although because of the absence of such a mission there is no reasonable chance of being resettled, if they do not so move. Such persons must be told that the Organisation can only help them if in their turn they take account of its operational necessities of which it is the only judge. Thus a person unreasonably refusing to move with his camp automatically excludes himself from maintenance, and a person unreasonably refusing to move so as to have the chance of being selected automatically deprives himself of the opportunity of resettlement. Such action on the part of the individual should be formally confirmed by the Organisation declaring the individual ineligible for the service concerned.

(4) (a) *Geneva 5345:* Petitioner an Esthonian, 21 years of age, left home in August 1944 and went by ship to Kiel. He was then drafted into the Luftwaffe, taken prisoner-of-war in Belgium and was released in May 1946.

In April 1947 Petitioner accepted the resettlement scheme for work in the Belgium coal mines. He signed what he knew to be a two year contract, but after 11 months claimed that his health broke and he was unable to continue. After his return to Germany in April 1948 a report dated 3rd May, 1948 from Brussels stated, however, that Petitioner was fit for work, but that he had unreasonably refused to continue.

Petitioner who asserted that living conditions in Belgium were very bad, but that the food was satisfactory, himself appeared to be in good health and all medical records agreed on his fitness. Although as a foreign worker he claimed to have been given the heaviest and most dangerous work and was not permitted to choose the mine in which to work, it was not believed that he acted in good faith and it was felt that he had ceased, as a result, to be the concern of IRO.

Not within the mandate.

(4) (b) *Geneva 11666:* Petitioner a Ukrainian from Poland, 24 years of age, left his home in Poland and was taken by the Germans in September 1942 for forced labour near Leipzig. He worked there for a farmer until 1945 when the Americans arrived and has since lived in several camps. Although Petitioner had no evidence for this period, his account was plausible, and it was felt that he should be given the benefit of the doubt.

On 25th July, 1947 Petitioner had signed a two year contract for work in the Belgium mines, but during January the following year he became ill. He reported to the medical officer and was prescribed a course of treatment for four weeks. In February 1948 he returned to work for 5 weeks but found himself unable to continue because it was too difficult. He was given 8 days leave and travelled to Brussels to see the IRO representative and asked for lighter work, but he was informed there was nothing else. He was later returned to Germany by IRO transport and a Doctor's report of 15th January, 1948 issued in Belgium proved that he had a lung infection.

It was believed the Petitioner did not deliberately break his contract, but that on the contrary, he had acted in good faith. He was a genuine displaced person who had not ceased to be the concern of IRO.

Within the mandate of the Organisation.

(5) *Geneva 1260:* Petitioner, a Pole from Gdynia, shortly after his marriage, in 1943, was conscripted for forced labour and sent to France in the Organisation Todt. In June 1944, he was found there by the Allies and mobilised into the Polish Army. In August 1947, he refused resettlement with the Polish Corps and requested to be sent to Germany, where he proceeded to search for his wife in the Russian Zone (Marriage Certificate dated 1st October, 1943 was produced at the Appeal).

His refusal to resettle before having found his wife was not considered unreasonable and petitioner was found to be a refugee who had not ceased to be the concern of the Organisation.

(6) *Geneva 4265:* Petitioner, a Ukrainian railwayman, formerly from Poland had been evacuated with his family from the front-line to Germany, to work there as a labourer, and was considered to be a displaced person. In 1947 he was offered emigration to Brazil with his family; they were medically examined, accepted and all formalities were fulfilled. A few days before their intended departure, petitioner was informed that his daughter, who had a three months old child, would not be allowed to emigrate until the latter had reached the age of six months. Petitioner's refusal to emigrate leaving his daughter behind was not considered an unreasonable refusal to avail himself of the proposals of the Organisation. The daughter's pregnancy had not been concealed and it was the emigration authorities, not the petitioner, who were at fault for having overlooked the fact that IRO or other regulations would not allow emigration in the circumstances. Petitioner was found to be within the mandate.