CHAPTER VI

CONSTITUTION Annex I - Part II

PERSONS WHO WILL NOT BE THE CONCERN OF THE ORGANISATION

1. "1. War criminals, quislings and traitors."

2. In the terms of the Resolution adopted by the General Assembly on 12 February 1946 :

" The General Assembly...
considers that no action taken as a result of this Resolution shall be of such a character as to interfere in any way with the surrender and punishment of war criminals, quislings, and traitors, in conformity with present or future international arrangements or agreements."

3. In addition the General Assembly on 15 December 1946, recommended :
" to all Governments concerned that they take urgent and adequate measures to effect a careful screening of all Displaced Persons, refugees, prisoners of war and persons of similar status with a view to identifying all war criminals, quislings and traitors."

4. Furthermore, at the second part of the First Session of the Preparatory Commission, Resolution No. 8 was adopted, which urged the governments and authorities concerned to implement the General Assembly Resolution mentioned above.

5. WAR CRIMINALS.
By international law, the expression "War Criminals" applies at the present time to persons who have committed :

(a) Crimes against peace (*i.e.* those who have planned aggressive war).
(b) Violations of the accepted rules of warfare (*i.e.* murder of prisoners, murder of hostages and other crimes of which there is a list of about 20).
(c) Crimes against humanity (*e.g.* internment of civilians in inhuman conditions, extermination of Jews in gas chambers, etc) (1).

6. Obviously, any person who has been convicted as a war criminal by a Court of Justice is *ipso facto* not within the mandate. The expression "war criminals" is, however, sometimes applied to persons who are merely "accused" or "suspected" of having committed war crimes. War crimes which have been committed during the war amount to hundreds of thousands, and the United Nations War Crimes Commission in London has, to date, placed upon its lists about 32,000 names of persons against whom a *prima facie* case has been found to exist. These lists concern mostly Germans (including Austrians) but also Hungarians, Bulgarians, Italians, Roumanians, Albanians and Japanese, and also a small number of persons of allied nationality who were accomplices or principals who had—or had not—taken service with the German Army or administration, and who may—or may not—have acquired enemy nationality. Only a small part of the accused have been found, most of them are still at large. It would be a flagrant

(1) *Geneva 2218:* Petitioner, a Slovene, had been declared ineligible by the Review Board in July 1948 for lack of valid objections. In September, 1948, he was reinterviewed, having applied for a reconsideration of his case on the grounds "that he was desperate because he could not emigrate to Canada, repatriation was impossible because he would be mercilessly treated by his "torturers", economic and social conditions in Europe were such that one could not live an ordered life there and his mother who was in Yugoslavia wrote that he would do better to emigrate overseas than to return home".

His case having been specially recommended by the Chairman of the Slovene Committee in Spital camps, as deserving benevolent consideration, the Review Board more closely investigated the case of petitioner.

First, it was verified from the lists of the Special Commission on Refugees that his name was on neither the "white" nor "grey lists", but was shown on the "black" list under 21.

Secondly, the Board obtained from a reliable source the following information concerning petitioner :

("*Crimes description.*

Slovene, born on 2 July 1926, member of the "Quisling Militia Dombranci" at Poljo, now in the British Zone of Austria.

On 3 January 1944, he participated in arresting and ill-treating Marida JELNIKA. She had been arrested and put to a so-called "Smaraki Bunker" where she had been held for one day. Afterwards, she had been brutally beaten and also ill-treated at the bridge near Tomacevo, so that she had to be given medical assistance at Ljubljana's hospital.

On 23 November, 1943, he participated in arresting Alvina SNOJ, who had been taken into custody at POLJE where she was brutally ill-treated and on 4 December 1943 sent to the concentration camp of Auschwitz where she died under inhuman conditions on 17 January, 1944.

On 31 December, 1942, he with the other members of the "Domobranci", arrested Antonija GREGOREC. After her arrest she was taken into custody at POLJE where she was interrogated. After 63 days of ill-treatment and torture she was released under the guarantee of three witnesses, and she had to report to the police station every day for about six months.

In view of the crimes committed by the accused Vladimir AVSIC, he has been declared a traitor and war criminal by the Yugoslav War Crimes Commission").

In view of this information the Board found petitioner was excluded under Part II, 1 and 2 (a).

breach of the IRO Constitution if these people were to receive assistance, so long as the government which accused them has not cleared them of the charges which have been brought against them.

7. However, IRO is not equipped to conduct criminal investigation; moreover it would be impossible to expect from Eligibility Officers in the Field that, in respect of each applicant, they should consult the bulky UNWCC lists and other lists of wanted persons, to ascertain whether his name figures on them. This would cause delay and unduly hamper the proceedings.

8. Any Eligibility Officer in the Field who has doubts concerning the criminal activity of an applicant should refer the case to the IRO Headquarters of the Zone (where there is a set of these lists) or to the authorities of the country where he is residing, where the necessary checking and identifying can be done.

9. It is true that it was agreed in Moscow on 23 April 1947 (Agreement of the Council of Foreign Ministers) that "any war criminals found in Displaced Persons Camps are to be turned over under guard to the Military Command of the countries concerned upon due request, and upon production of satisfactory evidence that the individuals whose transfer is requested are in fact war criminals". However, this does not mean that IRO should arrest even war criminals, far less surrender them, except when IRO has been expressly given authority to do so. The local governmental or occupational authorities concerned should be informed of their presence, and it is for them to arrest any war criminals who might be found in Displaced Persons Camps.

10. If the applicant is identified as one whose name is on the UNWCC lists he is not within the mandate. He may be informed verbally of the reasons why he is disqualified but the reason for refusing status of being within the mandate should be stated on the "notification of being not within the mandate form as "Not the concern of IRO—Part II, (1)", without further comment.

11. It should be mentioned that Soviet Russia was never a member of UNWCC and that war criminals wanted by USSR are on special lists. Information on the subject of war criminals and suspects may also be obtained from the Central Registry of War Criminals and Security Suspects (CROWCASS) in Berlin, at USA Headquarters.

12. QUISLINGS AND TRAITORS.

Quislings are generally understood to be persons who, while occupying high public office, have committed acts which amount to treason under the laws of their respective countries of origin, and in so doing, have acted in that office under the direction of—or in coordination with—the enemy. In other words, quislings are leaders or key men of governments or semi-governmental organisations which were in sympathy with and actually helped the Nazis (2).

13. The responsibility for determining which persons are to be regarded as Quislings and Traitors rests with the various governments concerned. Some of these people have been in the limelight and are generally well known by name; many of them escaped into neutral countries at the end of the war (*e.g.* Spain). In case of doubt the Eligibility Officer should inform the local governmental or occupational authorities of the presence of the applicant, and obtain information as to whether his name figures on the lists of persons wanted for indictment or trial. If his name does not figure on those lists, it may be presumed that the person is not a quisling. If on the contrary, his name does figure on those lists he should be declared not within the mandate—the reason for rejection stated on the notification of being not within the mandate should be "Not the concern of IRO—Part II (1)", without further written comment.

14. The same applies to traitors, who are those persons who have been charged with or convicted for high treason. It may be noted incidentally that mere desertion from the forces is not treason.

15. IRO should comply only with requests from the sovereign power in the area of operation for surrender of an alleged war criminal, quisling, traitor or collaborator. Any IRO officer actually arresting any person on request of another power would be

(2) *Geneva 4184.* Petitioner, a Serb, was Minister of Justice and Agriculture in the Nedic Government of Yugoslavia from August 1941 to October 1944. On acceptance of that post he was released by the German military authorities from the German camp where he was prisoner of war. Formerly he had been a Minister in the Cabinets of Radic and Stoyadinovic. He claimed that since the end of the war he had been approached several times by emissaries of Marshal Tito to return to Yugoslavia, but he refused because he would not help to consolidate a regime of which he disapproved.

When heard by the Board, he pointed out that the formation of the Nedic Government was unavoidable. It had been constituted after 4½ months of German occupation on request of all Serbian parties only to prevent wholesale extermination of the Serbian people. Moreover, if it had been constituted, Serbia would have been divided up into five parts between Bulgaria, Hungary, Croatia, Albania and Germany. The 308,000 refugees problem (of which 80,000 were unaccompanied children) also had to be solved.

From the whole of the information available to the Board at the time, the conclusion was drawn that, although the account presented by the petitioner and his colleagues was sincere and truthful, although the members of the Nedic Government had been primarily moved by humanitarian motives, and although they might have had in view only the interest of their people, and their conduct might have been considered honourable by many Serbs, it was not possible in the determination of I.R.O. eligibility to take into account the intention, but only the actual effects of a given policy, *i.e.* in this case the fact that it resulted in actual assistance to the enemy, voluntarily given. There was no doubt that :

1. Petitioner and his colleagues had taken part in a "quisling" government, *i.e.* a government whose creation was sponsored by the enemy.
2. Their policy had actually resulted in the assistance to the enemy and they served the German cause well and truly.
3. They had accepted their posts freely, without any compulsion or duress.

In respect of the petitioner himself the Board was of the opinion that, in the same way as would have been Nedic himself, he must be excluded from I.R.O. assistance as "quisling". Petitioner was found to be not within the mandate. (Part II 1. Quislings.)

himself liable for prosecution. The business of arresting and surrendering war criminals belongs entirely to the governments and occupational authorities whom IRO may only assist by informing them of the presence of such persons except when IRO has been expressly authorised to do otherwise.

16. "2. Any other persons who can be shewn :

"*(a)* to have assisted the enemy in persecuting civil populations of countries, Members of the United Nations;"

17. The guiding rules laid down in respect of war criminals apply also to the above; their names are usually included in the United Nations War Crimes Commission's lists.

18. When a person, not on the above lists, is generally considered by his countrymen as having been guilty of persecution, and the Eligibility Officer has no reason to doubt their good faith, he will do well, after having collected all available information on the case, to withhold his decision until he has contacted either the occupation or governmental authorities, or his regional headquarters.

19. The "enemy" means the Governments that were at war with the United Nations, and the puppet or quisling Governments set up or sponsored by the enemy. Countries that changed sides are enemy countries until the date when they ceased to fight the allies (3).

20. "2. Any other persons who can be shewn :

(b) to have voluntarily assisted the enemy forces since the outbreak of the Second World War in their operations against the United Nations."

21. In this paragraph the word "voluntarily", *i.e.* the intentional element, is the crux of the matter.

22. "Enemy forces" are the Armed Forces (including foreign legions or units fighting on the enemy's side), occupation authorities (civil and military), police, para-military and auxiliary organisations.

23. Such assistance to the enemy forces may have been strictly military or administrative or economic, but it must have been voluntary, and given deliberately and of their own free will by the persons concerned, with the specific purpose of aiding the enemy in their military operations against the Allies.

24. Military assistance includes, for example, voluntary enlistment in the German Army or in other Forces which were designed to help the German Army. Persons who have been conscripted, (*e.g.* Balts, Poles, Luxemburgers, Alsatians etc.) are not to be considered as having voluntarily helped the enemy, even if they fought in his forces.

25. Similarly, members of the armies of satellite states (*e.g.* of Hungary and Roumania), except very high officers in policy-making positions are not to be construed as having "voluntarily assisted the enemy forces;" they must be regarded as either conscripts or good patriots acting under governmental direction unless it appears that they undertook special service indicating their pro-Nazi (4) (rather than merely generalised wartime pro-German) outlook. This is particularly the case with persons who continued a peacetime (even if military) occupation (5).

26. As the dates upon which conscription was enforced in the various countries are known, it may be possible for the Eligibility Officer to obtain information concerning the date at which the applicant took service, and so determine whether he was a volunteer. But neither conscription nor voluntary enlistment are by themselves sufficient proof of attitude towards the enemy.

27. Even voluntary enlistment is not always complete evidence of desire to help the enemy. Compulsory enlistment has been in many instances camouflaged by the Germans under the term "voluntary". This was done either directly, or else indirectly, *i.e.*, by suppressing rations, by threats, or other methods destined to veil, under a cloak of legality, acts which were contrary to international law. In such cases of "voluntary"

(3) *Geneva 3607:* Petitioner, who was born in the Banat of Hungarian parents, a watchmaker by profession, was working at his craft until 1938 when he began his military service and was retained in the Roumanian Army until 1943. He claimed that as a skilled technician his services were indispensable to his Commanding Officer and he was, therefore, inscribed on the Volksdeutsche list to enable him to remain at his craft. However, later in that year he, among others was ordered to remove his Roumanian uniform and as a civilian was transported to Lublin in Poland via Berlin. There the personnel were distributed to various units and he found himself attached to the Waffen SS. His duties in Lublin were as Ordnance technician in a camp containing mixed nationalities, but predominantly Russians. After convalescence spent in Roumania following wounds from an air attack, he was transferred to Ravensbruck where he resumed his duties, and was eventually taken prisoner of war by the British and released in Germany. There he found conditions unsuitable for earning a living and came to Austria in March 1948.

Petitioner was made eligible at his first interrogation on the basis of false statements. From information subsequently acquired from official sources, it was ascertained that Petitioner's background was as related during his interview with the Board. Petitioner was fully documented for emigration to Brazil.

Petitioner is excluded as a Volksdeutsche under Part II 4 *(a)* and under Part II 2 *(b)*.

(4) *Geneva 5668:* Petitioner, an electro-technician, was born in Hungary and was mobilised in 1939 in the Hungarian army. He claimed that in 1941 he was assigned to the Gendarmerie, but was engaged only in anti-criminal activities. In 1945 he was evacuated by the Germans to Austria. He was excluded in the first instance under Part II 2 *(b)*. When heard by the Board, petitioner claimed he was not a professional soldier although in his appeal he quoted the Constitution and a Geneva Order to exculpate his war time activity.

Petitioner was unwilling to return to Hungary because he feared punishment for having served in the Gendarmerie and stated he was opposed to the regime on ideological grounds. It was accepted that Petitioner voluntarily joined the Gendarmerie which was a career service and to which was entrusted the escort of Jewish transports, etc.

The service he rendered was considered voluntary service to the enemy and petitioner was excluded under Part II, 2 *(b)*.

(5) *Geneva 5625:* Petitioner, a Surveyor by profession, was born in Hungary and was employed in the cartographic Institute, and in 1938 when the Institute came under the War Ministry, he was given the rank of Captain and continued his activities until 1945. He was evacuated with the personnel and equipment of the Institute by the Germans to Austria and obtained the rank of Major. Petitioner was made ineligible under Part II 2 *(b)* in the first instance.

When heard by the Board, Petitioner submitted documents which showed that he had been a pre-war employee of the Institute, that he had had no front line service and had continued his occupation until evacuated by order. He was unwilling to return to Hungary because he stated that he had had experience of Communism during the Bela Kun Rebellion. He was vehement in his opposition to the system and convinced the Board that his objections to repatriation were valid. Such service as he rendered in the cartographic Institute was not considered as voluntary assistance. Within the mandate.

enlistment, however, the assistance to the enemy shall be presumed to have been voluntary, and the applicant must therefore disprove the voluntary nature of his enlistment.

28. On the other hand, if a person, having been conscripted into the Wehrmacht, has voluntarily elected to serve in one of the Organisations specifically designed to uphold the Nazi regime, then he should be regarded with suspicion as such service might indicate, in the case of non-Germans, some specifically pro-German and pro-Nazi loyalty to German activity. Such Organisations are, for example, the S.S. Units, the Gestapo and specially dangerous military formations such as the Commandos, paratroops, submarines and certain Luftwaffe sections.

29. The motive underlying an act of assistance to the enemy forces is irrelevant; if a person in fact assisted the enemy forces and did so voluntarily he must be assumed to have been responsible for the reasonable and probable results of his acts; an allegation that he was not pro-German so much as anti-Communist is, even if true, entirely beside the point. (But note below, where the force of economic circumstances may remove the voluntary nature of economic assistance.)

30. Administrative assistance is that which was given by members of the local administration to the occupying enemy with the specific intent of helping him to win the war. As this is punishable in most countries, it is to be assumed that those who have not been charged with such offences have not committed them. Mere continuance of normal and peaceful duties should, as a rule, not be considered as voluntary assistance.

31. Economic assistance could include any help in the economic field given to the enemy forces. Strictly speaking, anyone who has sold anything to the enemy in the occupied countries has given them economic assistance, and this has given rise in many cases to indiscriminate, arbitrary and unfair action. Between the chief of an armaments factory who willingly worked for the enemy to his utmost capacity and the humble labourer who was compelled to work for him to feed his family, a line had to be drawn somewhere, but immediately after the liberation the criteria were neither uniform nor faultless. The word "collaboration" was sometimes applied where no intention of helping the enemy really existed, to industrialists who had kept their factories going at a loss with the sole purpose of reducing the output or of avoiding major disaster, closing of the works and subsequent deportation of the out-of-work labourers, or to labourers who had worked under compulsion or threat to themselves or their families. So far as the IRO is concerned, however, even economic assistance must have been aid to the enemy forces in their operations in order to fall into this clause; it is largely but not exclusively armament manufacture. The mere fact that a person voluntarily came into Germany from another occupied country to earn his living, should not be construed as "voluntary assistance".

32. In considering such assistance, utmost care should be exercised. Each case should be judged upon its merits; the age, sex, degree of education and intelligence of the applicant, his rank or social condition, the amount of pressure to which he was subjected and his physical and mental ability to resist such pressure are all factors which should be taken into consideration. In cases of substantial assistance, voluntarily given with the intention of helping the enemy the Eligibility Officer should inform the occupational or governmental authorities with a request that they should elicit, from the government concerned, information as to whether it has brought—or intends to bring—charges against these people with a view to indictment or trial. According to the answer received the Eligibility Officer shall accept or reject the application. In cases of rejection, the reason given on the notification of being not within the mandate should be—"Part II, (2) *(b)*", without further written comment.

33. "3. Ordinary criminals who are extraditable by treaty."

34. When a crime has been committed and the criminal is abroad, the government who intends to try him requests his extradition. The crimes that usually come under extradition treaties are crimes such as murder, poisoning, rape, arson, forgery, issuing

of counterfeit money, forgery, theft, misappropriation, [illegible], robbery, burglary, bigamy, assault, grave fraud, and slave-dealing. A person in respect of whom a request for extradition has been accepted together with adequate evidence of guilt is not within the mandate. The exception is not an automatic one, as there are political offences.

35. Should a case arise where the Eligibility Officer has reasonable grounds to believe that a person applying for assistance may be wanted for extradition, he should communicate with the governmental or occupational authorities and withhold his decision until the matter is cleared.

36. Since the majority of crimes are excluded by categories in the country of asylum, the use of this clause is restricted. In the absence of any other mention of criminals (except war criminals) in the Definition, a refugee is not precluded from being within the mandate by criminal acts except in those extreme cases in which one can say to a serious degree that he is not a bona fide refugee at all. Therefore, in dealing with criminals only the question of admissibility to services normally arises.

37. In this matter it is difficult to lay down a hard and fast rule. In the case of habitual criminals in camps who, it is considered, constitute a menace to good order and to the public morals, it may be necessary to see that they are outside the scope of services affecting other camp inhabitants, by the denial of care and maintenance. On the other hand, a person who has committed one crime of a grave nature should not necessarily be denied such assistance since by continuing him with normal vocational training services he may be aided towards rehabilitation himself into a useful member of the community.

38. It should be emphasized that there is a difference both in substance and in degree in the various crimes which a given person may have committed. The action in respect of a criminal should not exceed, in particular, the punishment which is meted out to such person by due process of law. Nor should the action of the Organization be in the nature of a sanction; it is designed to ensure that its assistance is not convicted, and that other persons in the care of the Organization are not injured or harmed.

39. If the problem of criminals becomes widespread, it may in the future become necessary to give widespread publicity to the fact that their serious crimes will be shewn on their official documents and through the exercise of the selection functions of resettlement countries. This even a emigrant is not entertained, it is left to the discretion of Chiefs of Missions to scrutinize the records in any case where a convicted serious crime is brought to the notice of any selecting mission interested in the case. It is pointed out, however, that it would not assist the solution of the refugee problem if we were to deprive petty offenders, of whom there are a number in all normal communities, of the opportunity of resettlement either by declaring the individuals no longer our concern or by unnecessarily highlighting of the criminal situation.

40. "4. Persons of German ethnic origin, whether German nationals or members of German minorities in other countries, who:

(a) have been or may be transferred to Germany from other countries,

(b) have been, during the Second World War, evacuated from Germany to other countries,

(c) have fled from, or into Germany, or from their places of residence into countries other than Germany in order to avoid falling into the hands of allied armies."

41. The expression "Persons of German ethnic origin" etc., means persons belonging to German minorities who have remained a separate ethnical group, maintaining their germanic customs, language, and characteristics.

42. These German minorities have been, in many cases, established for hundreds

of counterfeit money, perjury, theft, bankruptcy, receiving stolen goods, embezzlement, bigamy, assault, grave injury, malicious destruction etc. A person in respect of whom a request for extradition has been submitted together with adequate evidence of guilt is not within the mandate. Desertion is not an extraditable offence; neither are political offences.

35. Should a case arise where the Eligibility Officer has serious reasons to believe that a person applying for assistance is or may be wanted for extradition, he should contact the governmental or occupational authorities and withhold his decision until the case is cleared.

36. Since the majority of crimes are committed by refugees in the country of haven, the use of this clause is restricted. In the absence of any other mention of criminals (except war criminals) in the Definitions, status of being within the mandate is not affected by criminal acts except in those extreme cases in which one can say of a serious criminal that he is not a *bona fide* refugee at all. Therefore, in dealing with criminals only the question of admissibility to services normally arises.

37. In this matter it is difficult to lay down a hard and fast rule. In the case of habitual criminals in camps who, it is considered, constitute a menace to good order and to the public morals, it may be necessary to see that they are denied the opportunity of affecting other camp inhabitants by the denial of care and maintenance. On the other hand, a person who has committed one crime of no great importance should not normally be denied such assistance since by extending him welfare and vocational training services, he may be aided towards rehabilitating himself into a useful member of the community.

38. It should be emphasised that there is a difference both in substance and in degree in the various crimes which a given person may have committed. Any action in respect of a criminal should not exceed in harshness the punishment which is meted out to such person by due process of law. Nor should the action of the Organisation be in the nature of a sanction : it is defensive, *i.e.* to see that its assistance is not exploited and that other persons in the care of the Organisation are not injured or harmed.

39. If the problem of criminals becomes widespread, it may in the future become necessary to give widespread publicity to all refugees to the fact that serious crimes will be shewn on their official documents and brought to the attention of the selection missions of resettlement countries. But even if criminality is not widespread, it is within the discretion of Chiefs of Missions to see that the record of any refugee having committed a serious crime is brought to the notice of any selection mission interested in the case. It is pointed out, however, that it would not assist the solution of the refugee problem if we were to deprive petty offenders, of whom there are a number in all normal communities, of the opportunity of resettlement either by declaring the individuals no longer our concern or by unnecessary frightening of the selection missions.

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(c) have fled from, or into Germany, or from their places of residence into countries other than Germany in order to avoid falling into the hands of allied armies."

41. The expression "Persons of German Ethnic Origin" etc., means persons belonging to German minorities who have remained a separate ethnical group, maintaining their germanic customs, language, and characteristics.

42. These German minorities have been, in many cases, established for hundreds

of years. Their existence was exploited after Hitler's acquisition of power and they were encouraged to become Fifth Columnists or advanced units of future invasions. Members of these minorities became known as Volksdeutsche, insofar as they had consistently maintained their original customs and traditions and had continued to use the German language. This name became popular as a result of Nazi propaganda and was given to them to contrast their situation with the Reichsdeutsche or Germans living in Germany proper. It should be remembered of course that many members of these minorities married local people of non-Germanic origin, so that none of these minority groups have remained purely German.

43. In 1939, 1940, and 1941 many "Volksdeutsche" were moved from their countries of long habitual residence in Eastern Europe to Germany and areas under German occupation. These movements were made pursuant to agreements between the German Government and other Governments, notably the Italian, Rumanian and Soviet Governments. During the last two years of the recent war, many members of the "Volksdeutsche" groups in Eastern Europe moved westwards, fleeing with or evacuated by the retreating German armies. After the war, there were large expulsions of "Volksdeutsche" minorities, especially from Czechoslovakia, Hungary, Poland and Yugoslavia; the expulsions from Czechoslovakia, Hungary and Poland were to some extent regulated by the Potsdam Agreement in 1945. The great bulk of the "Volksdeutsche" transferred, evacuated or expelled during or after the war is in Germany; they number over 7 million. Nearly 300,000 are in Austria. Much smaller groups remain uprooted in other countries, for example a group of over 15,000 men in Czechoslovakia whose families were expelled into Germany. Small movements continue of "Volksdeutsche" from Czechoslovakia and Yugoslavia into Austria and Germany.

44. When in May 1946, it was proposed to create a Refugee Organisation, it was proposed that all "Germans" be disqualified. However as the discussion proceeded it appeared necessary to define precisely the meaning of the word "German". That is why the Constitution provides that not all "persons of German origin etc." are outside the mandate but only those who fall under one of the three specified categories. This clause has, however, given rise to much dispute as to its interpretation.

45. In view of the consequent uncertainty, the Director-General has ruled that one specific class of Germans should not be regarded as being within the scope of the Organisation's operations although individuals in it are to all appearances refugees. This class consists of the small numbers of Germans (and Austrians) who have left Germany (or Austria) since the war and many of whom allege political reasons or reasons of persecution for returning to the Russian occupied Zones.

46. Sub-paragraph *(a)* "have been or may be transferred to Germany from other countries" has been the subject of the following administrative rulings :—

(a) All Volksdeutsche in Germany are to be regarded as being assimilated to the category of those who have been transferred under a German Resettlement scheme (6), forcibly moved by the German army (7), even deported by the Germans other than as Volksdeutsche (8), moved under the ordinary post-war arrangements or after forced labour in Russia (9) or by other means (10).

(b) The status of all Volksdeutsche not in Germany cannot be decided so far as this clause is concerned : unless they are excluded under some other clause, they are to be regarded as "In suspense". Volksdeutsche conscripted into the German army should not be excluded as having voluntarily assisted the enemy forces (11) they may, however, be "in suspense" as Volksdeutsche (12).

47. The other clauses rarely arise :

"*(b)* who have been, during the Second World War, evacuated from Germany to other countries;"

(6) *Geneva 3935:* Petitioner who came to Germany under the Umsiedler scheme in 1941 returned to Lithuania in 1943 and fled again in 1944. On interview, his story that he was only employed as a hired hand in Germany, that he crossed the frontier illegally when he returned and that he did not get his property back in Lithuania was believed until his papers were checked through. The notes of the first interview revealed that on that occasion he had told a different story, having stated that he had been sent back in 1943. Other discrepancies were remarked, notably concerning the receipt of an Umsiedlerausweis and it was therefore assumed that, benefitting from the Umsiedler scheme, he had at least regarded himself and was regarded as a Volksdeutsche, if he did not, in fact, take out German citizenship. Not the concern of IRO.

(7) *Geneva 3817:* Petitioner, a member of the German speaking minority in the Banat, was evacuated by the German army in 1944, shortly before the Rumanian capitulation, when his home town became a front line area. He claimed his family came originally from Alsace-Lorraine. At the time that they moved to Banat, however, Alsace was under Prussian domination, the population consisting of a high percentage of pure Germans as it did now. Petitioner's first language was German and he was considered as a member of a German minority and excluded under para. 4 *(a)* of Part II.

(8) *Geneva 3859:* Petitioner, who possessed Polish citizenship before the war and served in the Polish army in 1939, stated that he was conscripted into the Wehrmacht in 1940 after the fall of Poland. He lived with his father, an Austrian (German element), and mother, Ukrainian, in the Polish Ukraine before the war, and on the fall of Poland fled to the Western provinces from where he was taken to work in Germany. He worked in Marienbad and then in Wolfsburg where he was first registered as a Volksdeutsche in a camp and had obtained accommodation for himself and his family, who had come to Germany to join him, in the town, having registered as a German. He was considered as a member of a minority of German ethnic origin who had been transferred to Germany and not the concern of the Organisation. (Part II, para. 4 *(a)*.)

(9) *Geneva 3820:* Petitioner who served in the Rumanian Army and was demobilised in Rumania, was deported as a Volksdeutsche to Russia for forced labour in 1945. He was discharged in Frankfurt/Oder in 1946 by the Russian authorities. He was considered of German ethnic origin and not the concern of the Organisation, under Part II, 4 *(a)*.

(10) *Geneva 3982:* Petitioner, a German left Germany with his Austrian wife after World War I and settled in Ethiopia. In 1924, after continual quarrels with the German Legation, he and his wife renounced their German citizenship and he stated they took Abyssinian nationality; on replacement of the Legation staff they revoked this nationality and reacquired German citizenship. However, after further quarrels with the Legation, they once more revoked German citizenship and for the second time, became Abyssinian nationals.

On the Italian occupation, petitioner claimed he was regarded as being stateless, having refused to accept Italian citizenship under a decree that all white nationals of Ethiopia must become Italian.

After the Italians were driven from Abyssinia by the British forces, petitioner and his wife were offered the opportunity of being evacuated to South Africa. However they alleged bad treatment by the British authorities and stated that they therefore asked to be sent to Italy, which they were with other Italian refugees of non-military age.

Although petitioner produced a Fremdenpass he was considered as a person of German ethnic origin who had been transferred to Germany. Unlike many of his nationality resident in foreign countries he had the opportunity of being treated as a refugee by the allies and awaiting the end of the war in security. He chose to take the infinitely more precarious course of returning to Germany via Italy. Not the concern of the Organisation —(Part II—4 *(a)*).

(11) *Geneva 1983:* Petitioner, of German extraction, was, prior to the war, citizen of the Free State of Danzig. In June, 1940 he was conscripted into the Wehrmacht, served until the end of the war and was taken prisoner by the Allies. Petitioner was

considered a refugee under Section A. 1. of Part I of the Constitution. After the incorporation of Danzig into the Reich, all able bodied citizens of German extraction were conscripted into the Wehrmacht, and his services could not therefore be construed as voluntary.

Article IX B of the Potsdam Conference statement placed Danzig under the administration of Poland and article XIII defined all persons of German extraction within Poland as transferable. It appeared therefore that all Danzigers of German ethnic origin (*i.e.* over 90%) were transferable within the meaning of Part II, 4 (a) of the IRO Constitution.

(12) *Geneva BA 505 :* Petitioner, a Volksdeutsche from Banat, was forced as a Volksdeutsche to serve as civilian employee (interpreter) to the Wehrmacht. Such services, from a Volksdeutsche, was not voluntary assistance but the petitioner is excluded under Part II, 4 (a).

One of the principal purposes of Hitlerism war to evict anti nazi landowners and farmers from the conquered countries and to replace them by German Nazi minded families. This plan for the transfer of populations was conducted under the supervision of the "Reichsamt für die Festigung des Deutschtums", especially in Poland and in Alsace, but also elsewhere. Members of German families who were thus transferred abroap during World War II are ineligible for IRO assistance, even if they should succeed in establishing that they have acquired citizenship in their new home.

"*(c)* who . . . have fled from, or into Germany, or from their places of residence into countries other than Germany in order to avoid falling into the hands of Allied Armies."

This provision is made in order to exclude certain persons who perhaps cannot be proved to be War Criminals, Quislings and Traitors, nor to fall under 2 *(a)*, *(b)* of Part II, but in respect of whom there is some indication that their flight was "to avoid falling into the hands of Allied Armies"; such persons are outside the mandate, whether German nationals or members of German minorities. The direction in which they fled, *i.e.* towards Germany or away from Germany is immaterial, as the crux of the matter lies in the *purpose*. Mere flight, due to panic, before an advancing army, does not result in a person being made outside the mandate who might be otherwise within the mandate. Whereas the applicant himself is not likely to confess the real purpose of his flight, his interrogation may lead to suspicions, which, if they are founded on reasonable grounds, would justify the Eligibility Officer in declaring him not within the mandate.

48. It should be noted that, in order to be counted as Volksdeutsche and therefore coming under the operation of this clause, a person must have been a member of a German minority—German ethnic origin by itself is not enough (13). The actual German minority need not necessarily have been in Europe (14). Although Hungarian minorities (for example in Czechoslovakia) were transferred under the Potsdam Agreement, members of them do not fall under the operation of this clause and may be within the mandate (15). It should be noted that the clause is mandatory—even deserving cases of anti-Nazis come under it (16).

49. The major difficulty is to determine whether or not an applicant is of German ethnic origin. There must in the first place be some evidence of German ethnic origin (17). A person cannot be considered as of German ethnic origin without some clear indication. In this matter the whole background of the applicant is important, not only his family name, but also his first name, the language customarily spoken at home, the school attended and in many cases the religion (18). It should be remembered that the fact that an applicant is married to a Volksdeutsche woman is irrelevant (19); especially if the marriage took place after the war (20). Similarily, the geographical ancestral origin of the applicant is irrelevant. Some clear Volksdeutsche, for example, stem from families originating in Alsace Lorraine (21), and others from Austria (22). In each case it must be remembered that ethnic origin is a somewhat different conception from ancestral location. Similarily, it should be noted that the fact of at one time being an Austrian citizen is not by itself evidence either of German origin or of membership of a German minority (23).

50. War time activities may, in certain circumstances, be evidence of membership of a German minority (24) just as may be the applicant's general background and behaviour (25). It may, of course, be evidence to the contrary (26).

51. Some German army units, for instance, the Prinz Eugen Division, were well known as Volksdeutsche units. Membership of them would normally raise a presumption that the member was a Volksdeutsche (27). Transfer to Germany other than for forced labour raises the same presumption (28) as does signing the German Volksliste (29). Similarily, expulsion from, for example, Czechoslovakia after the war raises the same

(13) *Geneva 123:* Petitioner, a Ukrainian, lived on her farm, which had been put under the collective system, in Ukraine (Kammenetz Poolsk) until 1944, when she was deported to Germany with all the other inhabitants of the village after it had been set on fire. Petitioner, whose maiden name was Rode, admitted being of German origin, but said her family had been established for several centuries in Poland. She knew no German and remembered that her grandparents spoke no German; her own family did not belong to a German minority and her husband's family was purely Russian; her husband and children were orthodox, although she, herself, was Lutheran.

In Germany she had worked on heavy manual labour as an Ostarbeiter. There was no indication that the applicant's name was identical with Beresowski (No. 232 on EWZ list). In these circumstances the registration could not be taken as decisive and there was no indication of voluntary assistance to the enemy.

Her first husband had been a Tzarist policeman, and was constantly molested by the NKVD and she had been threatened with deportation to Siberia.

Petitioner was found to be a displaced person who expressed fear of persecution substantiated upon interview. Her objections against repatriation were therefore accepted as valid. Within the mandate.

(14) *Geneva 2004:* Petitioner, a Guatemalan subject of German origin, was transferred by the US authorities to Germany in 1942. He wished to return to Guatemala and to avail himself of the Organisation's assistance to get to Paris in order to appear before the Guatemalan Minister there. Excluded under Part II, 4.

(15) *Geneva 68:* Petitioner, a former Czechoslovak citizen of Hungarian ethnic origin, lived in Slovakia, as was proved by documents which he produced on appeal. His father, Akos Wieland, came from a family established in Slovakia (former Hungary) for 400 years; his mother Marie Anna Czaki was of true Hungarian stock. Petitioner lost his Czech nationality by the decree of 2 August 1945 because of his Hungarian origin and his property was confiscated the same year for the same reason.

Petitioner, who had been a large landowner, had valid objections against repatriation which he substantiated upon interview. He had already lost his property and his refusal against repatriation was certainly not caused by the hope of gaining economic advantages from emigration. Within the mandate.

(16) *Geneva 349:* Petitioner, an exceptionally deserving case, was an anti-nazi who had tried to escape from the German army to join the Allies in 1942 in Roumania and had been sentenced to death by a German Court Martial. After being pardonned, he had helped allied prisoners of war, and had finally passed over to the allied lines and cooperated with the US troops in the psychological warfare branch of the 8th Army.

Petitioner had high testimonials and many letters of gratitude from US soldiers whom he had helped. Nevertheless he was a German national in Austria who might be transferred to Germany and as such was excluded from IRO assistance by para. 4 *(a)* of Part II of the Constitution.

(17) *Geneva 4703:* Petitioner, a Ukrainian from Soviet Russia, whose parents emigrated to Poland in 1929, worked in Poland until 1943 when he left for Pommarania and was sent to Mariber in April, 1944. Petitioner claimed to have been conscripted for this work in Mariber by the Arbeitsamt, but there was no evidence that he had been treated as a forced labourer. On the other hand, there were no indications that petitioner had voluntarily assisted the enemy forces.

Petitioner had been declared ineligible as a Volksdeutsche from Poland and his CM/1 form indicated that he was of German ethnic origin. On appeal, and on interview, however, the Board felt that there were not sufficient indications of German ethnic origin to identify petitioner as a Volksdeutsche.

(18) *Geneva 3998:* Petitioner, a Polish born Pole, has been found ineligible in first instance on the presumption that she was a Volksdeutsche on account of her name and religion. The family appeared to have derived no benefit from the German rule and it was stated that petitioner's father had lost his job and had been re-employed in a junior

position. Petitioner who had attended Polish schools, and spoke Polish as her first language, could not be considered a member of a German minority in spite of her name and religion.

Her brother had served in the Wehrmacht in Italy, but this was no firm indication of German origin if he had been conscripted in the later stages of the war, because certain units in Italy (such as the 149 Regt) had contained a high percentage of Eastern European nations. The brother was now in England (demobilisation from Anders Army). Within the mandate.

(19) *Geneva 468 :* Petitioner was a Yugoslav from Croatia, of Slav descent, whose wife's family, of German origin, had lived in Yugoslavia for more than two hundred years. The status of the husband, as head of the family, would determine that of his dependents.

Petitioner's flight before the advancing Soviet troops in 1944 had been caused by a natural desire to safeguard his family, and strong political objections. Within the mandate.

(20) *Geneva 127 :* Petitioner, a Lithuanian of Russian origin, had lived in U.S.S.R. until 1938 when he had fled to Lithuania because his father had been arrested as a suspected Trotskyist. He worked on a farm in Lithuania until February 1944, when he had been forcibly deported to Germany to work for the Arbeitsamt.

In 1947 he had married a Polish Volksdeutsche called Angela Schmidt whose name has been found on the EWZ list. This circumstance was not relevant in respect of petitioner as the registration had been made in 1944, before the marriage.

There was no evidence of German ethnic origin, nor of voluntary assistance to the enemy. Within the mandate.

(21) *Geneva 3857 :* Petitioner, who claimed that his family originated in Alsace Lorraine, was a member of the German speaking minority of German ethnic origin in the Rumanian Banat. He had been brought to work in Vienna in 1943 and was eventually transferred to Germany. Not within the mandate.

(22) *Geneva 3904 :* Petitioner, who had been evacuated by the German army in 1944, was a member of a German speaking minority of German ethnic origin, although it might well be that his claim, that his family originally came from Austria, was true. Not the concern of IRO.

(23) *Geneva 362 :* Petitioner was a Yugoslav national from Slovenia, both of whose parents were Slovenes, their ancestors having lived in Slovenia from time immemorial. Like most older Slovenes, they had been citizens of the Austrian monarchy until the time of the treaty of St. Germain-en-Laye (1920) : Although originally Austrian, petitioner was a member of the local community in Slovenia, and not a member of any minority or dissident group. (It should be noted that the major part of the Slovenian population was originally comprised of ex-Austrians). Within the mandate.

(24) *Geneva 315 :* Petitioner, a Czechoslovak of Slovak descent on his father's side was born in Klagenfurt and was educated there. His mother was from Klagenfurt and, after the war, in 1945, he fled there to his grandfather's home.

During the war petitioner obtained permission to travel to Berlin and obtained an engagement with a cinema firm there; during the three years there he was given full facilities to travel to Czechoslovakia where he spent his leaves, and he was never submitted to forced labour. There was a strong presumption that petitioner, who is partly of German origin, belonged to the German minority in Slovakia. Not the concern of the Organisation.

(25) *Geneva 359 :* Petitioner who had held Czech citizenship in 1939 was of undetermined nationality. Having been born Austrian, he had later applied for Austrian citizenship but did not complete this application because he considered there was no future for him in that country as the Austrian petrol industry with which he was connected was now in Russian hands. He therefore wanted to emigrate.

Petitioner, who had lived in Vienna before 1938, had left that city for Prague because he had married a Jewess whom he had eventually divorced. In Prague he was Sales Manager of Shell Ltd. and claimed to have been sent by the Germans to Hamburg in

1939 where he remained in the "Rhenania Ossag Co." (a subsidiary company of the German Shell Group) until 1946. There were no signs of forced labour, but of preferential treatment which Czechs rarely enjoyed.

Petitioner was educated (1913-1921) in the Sudetenland and had a "Heimatschein" dated 1938 from Neutitschein in Sudetenland.

It was concluded from his case history that he was a member of a German minority and thus not the concern of the Organisation.

(26) *Geneva 461 :* Petitioner a Polish national, who obtained Polish citizenship in 1935, was German born in Berlin of a German father and a Polish mother; though of German origin, he was not a German national and there was no evidence that he belonged to a German minority. He was educated by his mother, who was divorced, in Poland. He was a Polish scout and served in the Polish Army. He was acknowledged as a Pole, married a Polish girl, belonged to the Roman Catholic faith, never had any contacts with or sympathies for the German minority, and was finally treated as a Pole by the Germans, persecuted as such and deported to Germany for forced labour. Within the mandate.

(27) *Geneva 4006 :* Petitioner, who lived in Yugoslavia until 1944 stated that he was then conscripted into the SS Prinz Eugen Division. This Division, which had a very unsavoury reputation in the Balkans, was composed almost entirely of Volksdeutsche from the Danube basin. His service with this Division created a strong presumption that petitioner was of German ethnic origin and in the absence of evidence to the contrary he was regarded as not the concern of the Organisation.

(28) *Geneva 1322 :* Petitioner, aged 68, a person of unspecified nationality, formerly Rumanian and Hungarian, of Felseviso (Marmaros), claimed that he did not work from 1939 to 1947, neither had he any documents or evidence showing his identity, nationality or work. He admitted to having been transferred to Upper Silesia in January 1940, and it was obvious that he and his wife (née Pauline Fuhner) had availed themselves of the facilities given to Volksdeutsche to obtain resettlement in Germany. Although he applied to the Organisation for repatriation only, since his transfer had not been due to forcible deportation, but had been effected because of his German ethnic origin, he is not the concern of the Organisation.

(29) *Geneva 1706 :* Petitioner was a Polish citizen, born in the Lwow district of the Austro-Hungarian Empire, ceded to Poland in 1918 and later incorporated into USSR. The family name Hoffmann as well as petitioner's mother's maiden name Lehner suggested German origin.

According to a military service certificate, he was mobilised in the Polish Army in 1939. He was taken POW but fled to that part of Poland which was occupied by Soviet Troops. Though he was not ill-treated, his personal observations during that period determined his negative attitude towards the Soviet Regime. He admitted having signed a Volksliste in Spring 1943, but claimed that it was done under duress. He told a plausible story—forced because of German name—but did not furnish any evidence that it was so in his case.

Petitioner was regarded as a Volksdeutsche from Poland, residing in Germany. Not within the mandate.

presumption, but it must be remembered that there were exceptions and that some members of the German minority were not expelled (30).

52. In general, however, the fact that applicant had gone to Germany as a resettler on one of the Nazi sponsored schemes during the first years of the war is the best evidence of his German ethnic origin (31), and this evidence is particularly useful if it is supported (32). There may, however, be some cases of persons who came as settlers to Germany whose names were on the EWZ lists or who came as Umsiedlers, who nevertheless cannot be regarded as of German ethnic origin. For example, there is occasionally confusion as to whether the actual applicant is identical with the person whose name appears on the EWZ list (33), or other mistakes (34). It appears that some persons had their names included on the EWZ lists without their knowledge (35) or sometimes a man's wife might have made application, the husband not being in any way involved (36). It seems that in some cases compulsion to register for transfer to Germany was used (37). Such mistaken registrations must, however, be considered as rare and examined with care. Allegations of this sort could easily be verified by making reference to the Berlin Documents Centre. It should be borne in mind that a number of such allegations have been found after making such reference, to be false. There are, however, a large number of genuine cases in which persons of ethnic origin other than German used the German resettlement machinery in order to escape from a communist regime which they had reason to fear (38). Such persons who applied for resettlement in Germany would, however, be excluded from the concern of the Organisation of they became German citizens and remained in Germany (39). A person of non-German ethnic origin who, under these circumstances took German citizenship and who is not now in Germany, could, however, hardly be considered to be within the mandate insofar as he would be unable to express valid objections to repatriation to Germany.

53. The acquisition of German citizenship should be neglected in the case of someone otherwise not of German ethnic origin, but who was in extreme youth at the time of application (40).

54. Occasional cases occur of persons who have registered as Volksdeutsche since the war in order to avoid repatriation. Such registration is not to be taken as proof of German ethnic origin (41) by itself. It should be noted that under Section 1 of Article 116 of the Bonn Constitution, persons of German origin admitted at any time as refugees to the German Reich as it existed on 31 December 1937 are German nationals. Thus after the promulgation of the Bonn Constitution all Volksdeutsche in Germany will be *de jure* German citizens and therefore cannot be within the mandate of IRO.

55. "5. Persons who are in receipt of financial support and protection from their country of nationality, unless their country of nationality requests international assistance for them."

56. This rule provides that a person is not the concern of IRO if he is in receipt of both financial support and protection from the country of nationality. "Financial support" means regular cash allowances or maintenance. "Protection" implies not only the delivery of passports or certificates of nationality, but full diplomatic protection and assistance in the manner that a government usually extends to its nationals. It is evident that such persons are not political refugees, and therefore would not qualify under the provisions of Part I of the Constitution; the object of this exclusion clause is to make it quite clear that persons are not considered refugees or displaced persons merely because they are under the protection of, but not receiving financial support from, a Government. The support must emanate from the Government of the country of the refugee. Aid from private individuals, members of his family, or from benevolent institutions does not cause an applicant to be ruled outside the mandate; whether such aid may be taken into account when it comes to granting a specified kind of service, or determining the amount

(30) *Geneva 2203:* Petitioner, a Slovak, claimed to be of undetermined nationality and to have been evacuated from Slovakia with his family on April 1st, 1945. He had, in the first instance, been declared to be under Part II 4 (*a*) and appealed against that decision because he claimed he was not of German ethnic origin.

Petitioner, who spoke German perfectly, was the son of Michael Tetz and Johanna Klopf and husband of Aloisia Naumann; the latter did not speak one word of Czech. He was a journalist who wrote Articles in German; and was on the "Grenzbote", a German newspaper printed in Czechoslovakia, until the end of the war. He argued that the decision was wrong because his parents were still living in Czechoslovakia and this would not have been the case if they had been Volksdeutsche.

It was possible that petitioner's parents did live in Czechoslovakia and did not come under President Benes' decree of 2 August 1945. This might be because although Volksdeutsche, they had, in 1945, reported officially as Czechs (para. I, art. iii) or because they had for another reason, been allowed to retain Czech nationality (para. 2 (i)), or they had been declared politically reliable (para. I, art. iv).

However, petitioner's whole background pointed to German ethnic origin; he had not attempted to return to Czechoslovakia between 1945 and February 1948, nor had he applied for retention of Czech nationality, and in these circumstances, until he could bring proof to the contrary, he was presumed to be of German ethnic origin. Not within the mandate.

(31) *Geneva 378:* Petitioner, an Estonian, was evacuated from his home in Tarty on 20 August 1944, by boat to Gotenhaven (Gydnia) and was sent from there to Cotbus. He had studied medicine and worked as an assistant physician in German hospitals. Petitioner's name as well as his wife's were on the EWZ list, and when questioned upon interview, he could give no explanation. He spoke German fluently, belonged to the Evangelic Confession and was not sent to slave labour in Germany. It was therefore assumed that he was considered as Volksdeutsche and accepted as such on the EWZ registration. Not within the mandate.

(32) *Geneva 505:* Petitioner came to Germany in 1941 under the Hitler-Ribbentrop agreement and remained there throughout the war. He was nearly 80 years of age. His son was made ineligible on the grounds of German ethnic origin because he had also come to Germany, and had then returned to Lithuania to his own home in 1942. His story was more than unsatisfactory because he contradicted himself, having stated on his CM-1 form that he was an independent saddler and in his appeal that he had worked for various farmers as a labourer. He held Umsiedler documents and in the absence of any evidence to the contrary, he was considered as of German ethnic origin. The father had not returned to Lithuania, presumably because he was too old.

Bearing in mind that the purpose of the scheme was to find recruits for labour, settlement in annexed territories and for the armed forces, it was considered unlikely that the German repatriation Mission would have accepted petitioner aged eighty with his wife and three other female dependents had he not had some strong claims to repatriation on racial grounds.

In view of his son's record and his own emigration to Germany and in absence of any evidence to the contrary, it was concluded that the Petitioner was of German ethnic origin and excluded under Part II 4 (*a*).

(33) *Geneva 399:* Petitioner, a Ukrainian, whose father and grandfather were Ukrainian and mother Polish, married a Russian in 1940; the latter was killed by a German soldier in 1941. Documentary evidence was submitted that she had been doing forced labour in Germany since Sept. 1943 and there was no evidence of any privileged treatment.

She had been evicted by IRO in Oct. 1947 on the ground of having been registered on EWZ list under No. 360. She strongly denied any application or even knowledge of the fact. Verification of the list revealed that both the name and the family name on the list are spelt differently. Moreover, no other information appeared on the list besides the name. Considering the uncertainty whether she was actually registered and in view

of the evidence of the origin and employment, there is no reason for exclusion. She has expressed valid objections.

(34) *Geneva 150*: Petitioner, a Pole, was deported from Stanislaw in May 1943 a few months after her husband's deportation; he later disappeared during an air raid. She could give no explanation why her name was on the EWZ list. She denied ever having contacted the EWZ commission, or having German ethnic origin; her maiden name, Lopuszanska was purely Polish, she had no German background and only learnt German since being deported from Poland. There was no evidence in the case file that petitioner had acquired German nationality, nor that she was a member of a German minority. In Germany she had worked in a cigarette factory and later on a farm. Her two brothers were in the Polish Corps of the British Army; one had been killed in action at Monte Cassino, the other was still in England. There was no evidence of voluntary assistance to the enemy. Within the mandate.

(35) *Geneva 97*: The interview revealed that the petitioner had been put on the EWZ list without his knowledge. Evidence that the petitioner was regarded as Ukrainian and was treated as an Ostarbeiter was sufficient proof that he was not a Volksdeutsche. He had not applied for German citizenship and had gained no advantages from the fact that his name was on the list. Under such circumstances it was considered the EWZ registration did not constitute a reason for exclusion. Within the mandate.

(36) *Geneva 1730*: Petitioner, a Lithuanian, had left his country in January, 1941, through fear of Soviet persecution. He claimed his name had been included on the EWZ list as a result of the application of his wife who was regarded as a German because they lived in the Memelgebiet. After working in Danzig, he was sent to the Herman Goring works in Brunswick where he worked for 120 Marks per month until 1943, when he was conscripted into a Labour Corps which later became a military detachment. His wife had remained in Brunswick, and had not been subject to forced labour because she had two young children. Petitioner had received 30 marks per month in the Labour Corps and his wife had received an allowance during that time through the Burgomeister.

He admitted the inclusion of his name on the EWZ lists, and gave a straightforward account of his wartime activity in Germany. There was no conclusive evidence of voluntary assistance to the enemy forces, nor of German ethnic origin. Within the mandate.

(37) *Geneva 104*: Petitioner was a Polish national, whose maternal grandfather was a German. The rest of her ancestry, and her husband, were of Slav ethnic origin. Her maiden name was CHROMECKA. In 1940 she had been arrested by the Gestapo as a suspected Jewess, but had been released when she brought evidence to the contrary. The Gestapo had then compelled her to sign the EWZ list.

In 1944, she been forcibly deported to Germany and although she admitted that she was a Volksdeutsche it could not be said that she came under the exclusion clause of para. 4, Part II. The fact that her maternal grandfather was a German (married to a Polish woman) was not sufficient to exclude her. She neither spoke German nor belonged to a German minority and her religion was Roman Catholic. She had not obtained German naturalisation and claimed that she still retained her Polish nationality. (Petitioner was declared not within the mandate, *but merely* from lack of valid objections.)

(38) *Geneva 383*: Petitioner, a Lithuanian, had previously served in the Lithuanian Army and had belonged to a notorious anti-communist Organisation. After the occupation of his country he had been summoned several times and had been examined by NKVD, and had been finally discharged and placed on the list of persons to be deported to Siberia, as was testified by the Lithuanian Committee in Germany.

Petitioner admitted remote German ancestry dating back several hundred years, but he did not belong to any German minority and was a genuine Lithuanian whose family had for many generations dropped the German language and customs. He further admitted having approached the German Repatriation Committee (EWZ) to be sent to Germany as a Lithuanian Protestant but with the sole purpose of avoiding

deportation to Siberia. The hard manual work which he had been made to perform in Germany for a low salary indicated that he had not benefitted by his transfer to Germany and that his registration on the EWZ lists had not been made with the intention of voluntarily assisting the enemy; nor had it been followed by any application for German citizenship. Within the mandate.

(39) *Geneva 103 :* Petitioner, an Esthonian, a pharmacist by profession, had escaped from his country in March 1941, when it was invaded and members of his family had been arrested and deported; as he could not go to Sweden he had no other alternative than to go to Germany. He had contacted the EWZ Commission and had reported that he was a "Nachumsiedler" (returning emigrant). In Germany he had obtained work as an assistant pharmacist, at Fils Biburg (near Landshut). The duties which he had performed were a continuation of his peace time duties, and had not been carried out with the purpose of assisting the enemy against the allies.

There was also evidence that when ordered in March 1943 to take over, as a custodian, the administration of a Polish pharmacy in Kattowice, belonging to an enemy of Germany, he had refused to do so, and had returned after a few weeks to his work at Fils Biburg.

Nevertheless, the EWZ documentation indicated that petitioner and his wife has applied for German nationality and it was certain that petitioner had voluntarily registered with the Einwanderungszentrale as a "German Repatriate"; he had obtained comparatively light work in Germany, had been offered at least one opportunity as a "Treuhänder", he and his wife spoke fluent German and they had been transferred to Germany from Esthonia. They were therefore considered as persons of German ethnic origin. Not within the mandate.

(40) *Geneva 128 :* Petitioner, a young Esthonian girl, had been brought by her father to Germany in 1941. He had died in Schwab Hall in 1942. At that time, when she was 16 years old, the EWZ formalities which had probably been begun by her father had been fulfilled by petitioner and she had accepted the EWZ registration and citizenship in May 1942. Her acceptance of German citizenship at that age could not be considered as voluntary and there was no evidence of voluntary assistance to the enemy. Within the mandate.

(41) *Geneva 353 :* Petitioner a Hungarian of true Hungarian stock produced conclusive evidence in the form of at least 20 original birth and marriage certificates proving that both his parents, grandparents and their forefathers were of non-Germanic origin and himself spoke little German.

He admitted, however, that after the collapse of Germany he had registered with the allies as a Volksdeutsche and explained this as follows :

When in September 1944 his home town of Koloszvar had been overrun by the Russians he had fled to Budapest; when that town had been taken he had fled to Austria, in territory under the control of the US Army and had found refuge in a displaced persons camp. There, having heard reports concerning the fate of Hungrians who had been repatriated, and having feared compulsory repatriation, he had requested to be transferred to a Volksdeutsche camp, as the only means of avoiding repatriation. Within the mandate.

of assistance is another matter. A person, given assistance in cash by a private institution, may receive legal protection, and even additional assistance in cash from IRO.

57. Refugees and Displaced Persons who support themselves by private employment are not *ipso facto* excluded. On the contrary, useful employment is encouraged by IRO policy and Constitution.

58. Released prisoners-of-war who have not been repatriated are, as a rule, not in receipt of support and protection from their Governments.

59. Refugees and Displaced Persons, although receiving financial support and protection from their home Government, may, however, still be within the terms of the Constitution before declaring them to be within the mandate.

60. It is appropriate here to consider the effect on refugee status of holding a national passport.

61. The holder of a national passport will be presumed to be availing himself of the protection of his Government. But the presumption may be rebutted in various circumstances. For example, it may be that the Government is not extending any comprehensive or normal protection to him or the passport may have been issued before he became unwilling to avail himself of the protection of his Government; or he may shew that he needs the passport as a travel document and cannot travel otherwise (some Governments only allow immigration on national passports : some Governments do not issue the London travel document). (See also pp. 9 and 103.)

62. If it is determined that a person included under Part I, Section A or B is in fact in receipt of Governmental protection, he will not be the concern of the Organisation if he is also receiving assistance from that Government. Nor will he become the concern of the Organisation under Part I, Section C unless if he objects to repatriation, he expresses objections other than political ones : that is, he may be the concern of the Organisation if his objections are based on religious or racial grounds or are compelling family reasons based on previous persecution, or if he is willing to be repatriated.

63. "6. Persons who, since the end of hostilities in the second world war :

(a) have participated in any Organisation having as one of its purposes the overthrow by armed force of the Government of their country of origin, being a member of the United Nations, or the overthrown by armed force of the Government of any member of the United Nations, or have participated in any terrorist organisation."

64. It is natural for dissidents and political refugees to adopt a hostile attitude towards the governments with which they disagree and to form organisations or associations of persons who share their ideas, but so long as the organisation to which they belong does not aim at overthrowing their government by armed force, they are not excluded from the concern of IRO. From this follows that whereas mere membership or financial support, however small, given to an organisation whose purpose is to overthrow a government,—member of United Nations—*by armed force* suffices to debar a person from being the concern of IRO (42), membership or participation in any organisation aiming at the overthrow of a government *by legal and peaceful methods* is not a cause of exclusion. It is obvious that neither the organisations which aim at overthrowing governments by force nor terrorist organisations will openly admit the purpose which they have in view. If an Eligibility Officer has reasons to suspect that an applicant has participated in such organisation, he should refer the case to the legal or security services of the Zone before taking a decision. "IRGUN" is an example of a terrorist organisation.

65. "6. Persons who, since the end of hostilities in the second world war : . . .

(42) *Geneva 4495* : Petitioner, a Yugoslav and former Brussels Student served as a Captain in the army of his country from 1937 until April 1941. He was then taken prisoner of war and brought to Germany where he was imprisoned between April 1941 and June 1942; then he was released for ill health. In July 1942 he answered the call of Mihailovic and became a Lt.-Col. in the capacity of Chief of the Belgrade staff of Col. Alex Mihailovic.

On 2nd January 1947, he came to Austria, having until this date continued underground resistance against the present Yugoslav Government.

In January 1947 he had had to flee because he had been in danger of being detected by the Police. In Austria he admitted to having maintained contacts with the Yugoslav underground movement. His past activities and his wish to remain in Austria for the time being created a serious suspicion that he was participating in an Organisation having as one of its purposes the overthrow by armed force of the Government of his country of origin. Not within the mandate.

(b) have become leaders of movements hostile to the Government of their country of origin being a member of the United Nations or sponsors of movements encouraging refugees not to return to their country of origin."

66. It follows that :—

(a) Only actual leaders, (*i.e.* key men who exercise a determining influence on the policy of the movement and not mere subordinates or followers) are excluded (43). It is true that Section I *(f)* of the general principles of Annex I mentions that the assistance of IRO should not be exploited in order to encourage subversive or hostile activities directed against any of the United Nations. However, this is merely a general principle which is implemented and narrowed down by the precise wording of Part II, 6 *(b)*, according to which only the leaders are excluded. Such leaders, even if they ceased to participate in the hostile movement some time after the end of the war, still remain ineligible.

(b) Movements hostile to governments who are not members of the United Nations do not come under the exclusion clause 6 *(b)*.

Sponsors of movements encouraging refugees not to return to their country of origin are outside the mandate (44). One of the primary purposes of IRO is repatriation and any leaders of movements organised with a view to obstructing this policy cannot, for obvious reasons, receive assistance (45). Furthermore, where pressure has been accompanied by threats or physical violence, the case should be immediately brought to the notice of the local authorities, with a view to disciplinary action against the offenders.

67. "6. Persons who, since the end of hostilities in the second world war . . .

(c) at the time of application for assistance are in the military or civil service of a foreign state."

68. The reason for this provision is that it was felt that persons who have enlisted in the Forces of Governments other than that of their country of origin (*e.g.* General Anders' Corps) and who, after fighting the common enemy have not been demobilised, should be maintained by the government which they have served rather than by the international community.

69. However, it will be noted that the relevant time is that at which the application is made, and that this provision has no retroactive effect; any person who, in the past has belonged to the above said military formations and who has ceased to do so, is not disqualified, and the same applies if the formation has ceased to be in the service of the foreign state.

70. The above clause does not apply to civil employees of the military Government of the Army of Occupation, or of the German or Austrian authorities, who are receiving normal wages under employment laws. Nor are labourers employed by a foreign governmental agency excluded under this paragraph which refers expressly to "service" (military or civil) and not to hired help, etc.

(43) *Geneva 4492:* Petitioner, a Yugoslav Slovene, who left Slovenia for Croatia in 1941, claimed to have been active in politics and to have been a prominent member of Macek's peasant party. He claimed to have been imprisoned by the Gestapo in 1942 and said that this was because his party had refused to collaborate with the Germans. He had been, however, also imprisoned by the Yugoslav authorities for some time in 1945, and had escaped from prison in November of that year to Austria.

He was known to have broadcast propaganda speeches to the Croat people several times during the war; it was obvious that such speeches could not have been delivered unless they had been approved by the Germans.

In camp, petitioner was Chairman of the Slovene National Group. He was also the President of the International "Bauern Union for Europe". His activities in camp indicated that these organisations were hostile to the government of Yugoslavia and that they contributed towards encouraging refugees not to return to their countries of origin. Not within the mandate.

(44) *Geneva 4545:* Petitioner, a 34 year old Croat cobbler of Belovar (N. Croatia) left his country in 1939 after his military service, to seek better opportunities in France. After one year there he went to Corinthia to work on the land and had lived there until 1945, from which time he was in the DP camp of Spittal-on-Dreva.

He stated that each time a member of the Yugoslav Repatriation Commission visited the camp he had political discussions with him. He had listened-in with attention to the speeches which were broadcast to persuade Yugoslavs to accept repatriation, and described them as "lies". He had been advised several times by members of the Yugoslav Repatriation Commission that he should abstain from dissuading would be repatriates from returning to their country; each time he answered that he was free to say what he liked. He stated all this in writing in his petition for review of this case. He even boasted of having "made the camp too hot to live in" for one Novak, who, because he intended to repatriate, was compelled to go and live out of camp until his departure in February, 1948. Finally, petitioner claimed that he was opposed to "lies and fables" and that he considered it his duty to "enlighten" his compatriots on the present situation in Yugoslavia, although he could obviously know nothing about it since he left that country in 1938.

Petitioner's activity was in direct opposition to the main object of the Organisation which was to assist and encourage in every way possible the early return of refugees to their country of origin (Constitution—Preamble, para. 1).

By his action he has proved that he was a sponsor of a movement encouraging refugees not to return to their country of origin. Not within the mandate.

(45) *Geneva 1323:* On March 4, 1948, petitioner, a Yugoslav Chetnik, was tried in a Military Government Court on the charges of 1) intentionally causing injuries (by throwing stones) on 24. 2. 48 in Mannesmann Camp Hameln, at a Yugoslav Officer visiting the camp; 2) acts prejudicial to the interests of a member of the Allied Forces (the above said Yugoslav Officer).

He was acquitted on the first charge; and on the second, was sentenced to one month's imprisonment.

There was no evidence that petitioner was actually the leader of the aggressive reception given to the Jugoslav Officer. However, that reception was actually an act of open hostility towards the Government of a country which was a member of the United Nations, and petitioner's act, of injuring or attempting to injure the Officer by an act of physical violence was much more serious than any platonic leadership of a political movement.

Moreover, petitioner's object had been to obstruct the action of the Yugoslav Liaison Officer who had come to give information referred to in Section C, 1 *(b)* of the Definitions to the inmates of the camp, and in doing so petitioner had actually prevented refugees from obtaining such information as might have induced them to return to their country of origin. Not within the mandate.