

FREEDOM OF MOVEMENT AND THE TRAVEL DOCUMENT

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International mobility is inextricably related to the use of a passport. Generally, every state requires a person to present some basic indicia of his national background when he is standing at its frontier seeking entry. The reasons behind this policy vary according to the dictates of the national policy of each State.¹ With regard to foreigners, each State has the right to admit anyone for any purpose. A blanket refusal to admit all nationals or a particular group of individuals from a particular State could be regarded as an unfriendly act² and invites a reciprocal policy.³

Passports are typically recognized as a matter of comity without assurances being asked for, or given, by members of the international community.⁴ Since the end of the Second World War,

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1. The various reasons were the subject of an extensive study. *Inglés, Study of Discrimination in Respect of the Right of Everyone to Leave any Country, Including His Own, and to Return to His Country*, U.N. Doc. E/CN.4.Sub.2/229/Rev.1 at 18 (1963) [hereinafter cited as *Inglés Report*]. The passport has also been used as an instrument of foreign policy. See Turack, *Selected Aspects of International and Municipal Law Governing Passports*, 12 WM. & MARY L. REV. 805, 809-11 (1971).

2. It will be recalled that in 1913, the United States terminated its 1832 Treaty of Commerce and Navigation with Russia, Dec. 18, 1832, 8 Stat. 444, T.S. 299. This resulted due to Russia's persistent affront in refusing to recognize U.S. passports presented by former Russian subjects who had become naturalized American citizens, or prevention of entry on the basis of the bearer's religion and race. 3 J. MOORE, *DIGEST OF INTERNATIONAL LAW* 986-92 (1906). See also 3 G. HACKWORTH, *DIGEST OF INTERNATIONAL LAW* 640-41 (1942) and *The Passport Question Between the United States and Russia*, 6 AM. J. INT'L L. 186 (1912).

3. For example, Afghanistan recognizes the foreigner's right to enter, travel within, and leave the country on "the principle of reciprocity, in accordance with international law. . . ." U.N. Doc. E/CN.4/1042/Add. 1, at 2 (1971).

4. Refusal of certain Arab States to admit holders of British passports because of their religious persuasion was regarded by Lauterpacht as being a breach of international courtesy rather than a failure to observe international comity. Lauterpacht, *The Contemporary Practice of the United Kingdom in the Field of International Law—Survey and Comment*, 5 INT'L & COMP. L.Q. 429, 430 (1956).

a number of universal and regional international organizations have sought greater mobility for man. Various structural combinations have been formed for this purpose including groups of States and individual States acting unilaterally and in cooperation with another State. This article will review and appraise those efforts to determine the extent of their accomplishments and prospects for the future, with the caveat that the examination will encompass only those persons of established nationality.

I. INTERNATIONAL RECOGNITION OF THE RIGHT TO TRAVEL: UNIVERSAL AND REGIONAL

Although one might say that the quest for basic human freedom has been of international concern from biblical times,⁵ the legalization and recognition of the human right concerning freedom of mobility is of recent vintage. For example, there is initially article 13(2) of the 1948 Universal Declaration of Human Rights, adopted by the United Nations General Assembly which prescribes that "Everyone has the right to leave any country, including his own and to return to his country."⁶ The General Assembly approved the International Convention on the Elimination of all forms of Racial Discrimination in 1965.⁷ In this proclamation the parties undertook to eliminate racial discrimination as defined in article 1(1), and to guarantee everyone the right, without distinction as to race, color, nationality or ethnic origin, to equality before the law in the enjoyment of "[T]he right to leave any country, including his own, and to return to one's country."⁸ On 16 December 1966, the General Assembly adopted the International Covenant on Civil and Political Rights.⁹ The portion of that document which pertains to international mobility is article 12, paragraphs 2, 3 and 4; they read as follows:

2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any

5. References to the right to travel in ancient times are found in *Inglés Report, supra* note 1 at 1 and Turack, *Freedom of Movement: The Right of a United Kingdom Citizen to Leave His Country*, 31 OHIO ST. L.J. 247 (1970).

6. On the development of article 13(2) see *Inglés Report, supra* note 1, Annex III at 82-7.

7. G.A. Res. 2106A, 20 U.N. GAOR Supp. 14, at 47, U.N. Doc. A/6014 (1965).

8. *Id.*, art. 5(d)(ii).

9. G.A. Res. 2200, 21 U.N. GAOR Supp. 16, at 52, U.N. Doc. A/6316 (1966).

restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.¹⁰

Implementation of the procedures provided in the International Covenant and the Optional Protocol¹¹ will eventually assure greater protection of this right.

Regional recognition of the right to travel has also been asserted. An examination of the efforts of the Council of Europe initially reveals article 1 of the 1955 European Convention on Establishment¹² whereby each of the Contracting Parties undertakes to:

[F]acilitate the entry into its territory of nationals of the other Parties for the purpose of temporary visits and shall permit them to travel freely within its territory except when this would be contrary to *ordre public*, national security, public health or morality.¹³

A short stay is envisaged in the terms of article 1. In the case of extended or permanent residence, article 2 provides that:

Subject to the conditions set out in article 1 of this Convention, each Contracting Party shall, to the extent permitted by its economic and social conditions, facilitate the prolonged or permanent residence in its territory of nationals of other Parties.¹⁴

Implicit in these articles is the relaxation of the passport systems¹⁵ of the Member States, subject, of course, to the stated limitations.¹⁶

10. *Id.*

11. Optional Protocol to the International Covenant on Civil and Political Rights, *id.*, at 59.

12. Europ. T.S. No. 19 (1965), 4 INT'L LEGAL MATERIALS 719 (1965).

13. *Id.*, art. 1.

14. *Id.*, art. 2.

15. Members which have ratified the Convention have interpreted articles 1 and 2 very narrowly. See COUNCIL OF EUROPE, FIRST PERIODICAL REPORT BY THE STANDING COMMITTEE ON THE EUROPEAN CONVENTION ON ESTABLISHMENT (INDIVIDUALS) (Strasbourg 1971). Other binding international obligations, to be discussed in the body of this text, have accounted for less stringent travel document requirements for entry into the territory of Member States of the Council of Europe.

16. The safeguards alluded to are an outcome of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The same characteristics of *ordre public* under the Human Rights Convention would be applicable to the Convention on Establishment. For a discussion of the force

In 1961, Member States of the Council of Europe gave further recognition to the right to international mobility in the European Social Charter.¹⁷ The right of any of the Contracting Parties' nationals to engage in any gainful occupation in the territory of the other Parties is enumerated among the nineteen "rights and principles" to be established. Under part II of the Charter, each Party undertakes to recognize "[T]he right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Contracting Parties."¹⁸ Implicit therein is each Party's commitment not to deny its nationals any travel document which might be required for purposes of leaving the country of his residence or for crossing the frontier into the territory of another Party to obtain employment.

More explicit regional recognition of freedom of movement was demonstrated in the Council of Europe's 1963 Fourth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁹ Relevant in this regard is article 2, paragraphs 2 and 3 which read:

2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.²⁰

In the Western hemisphere, the 1969 Pact of San José, Costa Rica, provides a new commitment to this human right.²¹ Therein article 22, paragraphs 2, 3 and 5 provide:

of *ordre public* with regard to the Human Rights Convention, see A. ROBERTSON, HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW 97-150 (Manchester 1968). For comparative purposes, the use of the same term in relation to the right to travel on the universal level can be gauged by reading the *Inglés Report*, *supra* note 1, at 36-43.

17. Europ. T.S. No. 35 (1965), U.K.T.S. No. 38 (1965), I. BROWNLIE, BASIC DOCUMENTS ON HUMAN RIGHTS 366 (Oxford 1971).

18. *Id.*, art. 18.

19. 6 Y.B. EUROPEAN CONVENTION ON HUMAN RIGHTS 14 (1963), COUNCIL OF EUROPE, EUROPEAN CONVENTION ON HUMAN RIGHTS: COLLECTED TEXTS § 1, Doc. 5 (7th ed. Strasbourg 1971).

20. *Id.*, art. 2.

21. See OAS Off. Rec. OEA/Ser.A/16; 9 INT'L LEGAL MATERIALS 673 (1970).

2. Every person has the right to leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.²²

The seeds for an expanded regional recognition of human rights, including the right to travel, have been planted.²³ In this decade their vitality will bloom.

II. ACCOMPLISHMENTS THROUGH UNIVERSAL INTERNATIONAL ORGANIZATIONS

Two important events occurred in 1963 apposite to passports and freedom of movement.²⁴ First, the United Nations study²⁵ on the right to travel was completed. This comprehensive study offered a draft of specific proposals for national and international action to ensure freedom and non-discrimination in the enjoyment of the right of international mobility.²⁶ Second, there was the United Nations Conference on International Travel and Tourism held at Rome with eighty-seven States represented.²⁷ The Conference recognized that the passport was the most suitable international travel document, and encouraged States to minimize requirements for their issuance and to simplify the issuance procedures which includes decentralization of passport offices. States were also encouraged to explore possible adoption and recognition of identity documents as substitutes for the passport. A wider acceptance of collective passports was advocated.²⁸ Additional recommendations concerning passports included an initial

22. *Id.*, art. 22.

23. Movements in Africa and Asia are outlined in A. DEL RUSSO, INTERNATIONAL PROTECTION OF HUMAN RIGHTS 247-51 (Washington 1971).

24. Earlier efforts by the United Nations are discussed in Turack, *The International Regime of Passports*, 6 OSGOODE HALL L.J. 230, 243-46 (1968).

25. *Inglés Report*, *supra* note 1.

26. See draft principles and other pertinent comments in *Inglés Report*, *supra* note 1, at 64-72.

27. U.N. Conference on International Travel and Tourism, *Recommendations on International Travel and Tourism*, U.N. Doc. E/Conf. 47/18 (1964).

28. *Id.*

period of validity of five years, unlimited use for a number of journeys, a validity for all countries if possible, and a simple renewal procedure. Fees were discouraged, but if utilized, they would only be used to offset governmental expense. A comprehensive list of details was outlined to encourage and facilitate standardization.²⁹ Finally, the Conference affirmed the ideals on freedom of movement expressed in the Universal Declaration of Human Rights.³⁰

Since 1963 the United Nations has been less than dynamic in its actions to seek implementation or study the extent of compliance.³¹

It will be recalled that the International Civil Aviation Organization (I.C.A.O.) had bestowed upon it the responsibility of adopting international standards and recommended practices and procedures with respect to immigration procedures.³² Parties to the Convention agreed to adopt all practicable measures to expedite navigation of aircraft to prevent delays through administration of its laws relating to immigration, and to establish the procedures recommended under the Convention.³³ On 25 March 1969, the I.C.A.O. Council adopted Standards and Recommended Practices

29. *Id.*

30. *Id.*

31. With respect to State reaction to the recommendations of the U.N. Conference, see the report of the Secretary-General of the United Nations contained in U.N. Doc. E/4145 (1966). The report was based upon thirty-nine Government replies to a questionnaire distributed to the Member Governments of the U.N. and the Specialized Agencies (the replies were not attached to this document). By June 8, 1966, twenty-six other Governments replied to the questionnaire. These additional answers did not, according to the Secretary-General, appreciably alter the conclusions of the report. U.N. Doc. E/4145/Add.1 (1966).

With regard to the U.N. study, the U.N. Commission on Human Rights has postponed its consideration until the 29th Session of the Commission in 1973. As a consequence of the Secretary-General's request for information on new developments in the area covered by the study, a limited response from Member Governments provided some insight into current State practices. See UNECOSOC, Commission on Human Rights, *Note by the Secretary-General: Study of Discrimination in Respect of the Right of Everyone to Leave any Country, Including His Own, and to Return to His Country*, U.N. Doc. E/CN.4/1042 and Annex (1970); Addendum, U.N. Doc. E/CN.4/1042/Add.1 (1971); Addendum, U.N. Doc. E/CN.4/1042/Add.2 (1971). For a recent commentary on the United Nations actions in this area, see Nanda, *The Right to Movement and Travel Abroad: Some Observations on the U.N. Deliberations*, 1 J. INT'L L. & POLICY 109 (1971).

32. Convention on International Civil Aviation, Dec. 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591, 15 U.N.T.S. 295.

33. *Id.*, art. 22 and art. 23.

on Facilitation, designated as Annex 9³⁴ to the Convention. Under operation of Annex 9, Contracting Parties cannot require transient air travelers to possess any document of identity other than a valid passport. The Annex adds that acceptable identity documents may be expired passports, national registration cards, seafarer's identity documents and alien resident permits.³⁵ Contracting States are supposed to take all practicable measures to ensure that passports will be issued as quickly as possible after the issuing authority receives the application.³⁶ To effectuate this measure, States were urged to decentralize their passport-issuing facilities and waive supporting such documentation by applicants as certificates of good conduct and evidence of financial status, except in special circumstances.³⁷

Contracting States were also encouraged to issue passports for a validity period of at least five years, both initially and upon renewal, for a nominal fee or one designed to defray operational expenses. It was proposed that this document be valid for an unlimited number of journeys to all countries in the absence of special circumstances.³⁸ With respect to children under sixteen years of age traveling with a parent or legal guardian, it was recommended that separate passports not be mandatory if the identifying characteristics of the child are recorded in the passport of the accompanying adult.³⁹ Finally, Parties are not discouraged from issuing a tourist card to non-nationals who do not hold a passport for entry into their territories.⁴⁰ The great majority

34. Convention on International Civil Aviation, *supra* note 17, International Standards and Recommended Practices Facilitation, Annex 9 (6th ed. 1969). The terms "standard" and "recommended practice" are defined in the foreword to Annex 9 as follows:

Standard: Any specification, the uniform observance of which has been recognized as practicable and as necessary to facilitate and improve some aspect of international air navigation, which has been adopted by the Council pursuant to Article 54(1) of the Convention, and in respect of which non-compliance must be notified by States to the Council in accordance with Article 38.

Recommended Practice: Any specification, the observance of which has been recognized as generally practicable and as highly desirable to facilitate and improve some aspect of international air navigation, which has been adopted by the Council pursuant to Article 54(1) of the Convention, and to which Contracting States will endeavor to conform in accordance with the Convention.

35. *Id.*, ch. 3, section 3.4 and Note.

36. *Id.*, ch. 3, section 3.5.

37. *Id.*, ch. 3, section 3.5.1.

38. *Id.*, ch. 3, sections 3.5.2, 3.5.3, and 3.5.4.

39. *Id.*, ch. 3, section 3.5.5.

40. *Id.*, ch. 3, section 3.6n.

of I.C.A.O. Members adhere to these standards and recommended practices.⁴¹

Over the years I.C.A.O. has displayed active interest in the development of improved travel documentation for international passengers. The seventh session of the Facilitation Division established a panel of passport experts to review technology available for the development of a simplified travel document that permitted (a) retention by governments, if desired, of a permanent record of the foreign traveler accorded entry as a visitor, and (b) retention of the same information by machine readable methods.⁴² Since 1969 this panel of experts has conducted a series of studies. With each meeting, they have consistently endeavored to achieve the following objectives:

(a) The establishment of an appropriate document such as a passport card, a normal passport or an identity document with electronically or mechanically readable (as well as visually readable) inscriptions that meet the requirements for document control;

(b) To determine the best types of procedures, systems (electronic or mechanical) and types of equipment for use with the above documents that are within the resources and capability of Member States;

(c) To determine the feasibility of standardizing the requisite control information and methods of providing this information through automated processes, provided that these processes will meet the requirements of security, speed of handling and economy of operation.⁴³

Work continues on the development of a standardized passport-card type of travel document. The third meeting of the panel in January, 1972 culminated in a series of five recommendations⁴⁴ which are currently awaiting further action within the I.C.A.O. structure.

At this juncture it is appropriate to point out that on a regional basis, the European Civil Aviation Conference has also been concerned with air passenger traffic and freedom of movement. It recommended that its membership take all necessary steps to expedite inspections of passports or other documents of

41. For differences between national practices and the standard and recommended practices, see note 34 *supra*, Annex 9 (Supp.).

42. I.C.A.O., *Panel on Passport Cards*, I.C.A.O. Doc. PPC/3-WP/7 (1972).

43. *Id.*, at 1.

44. I.C.A.O., *Panel on Passport Cards*, I.C.A.O. Doc. AT-WP/1114 (1972).

identity through spot-checks of passengers departing from their territories; and that Member States study the feasibility of eliminating such inspections on either a unilateral basis or by means of a bilateral or multilateral agreement.⁴⁵ As before, it was felt that this proposal was applicable only in the absence of special circumstances. With respect to intra-Europe travel documents, the Conference reconfirmed its earlier recommendation which; (a) urged each Member State which had not already done so, to permit its nationals and nationals of other Member States to enter and leave its territory simply by presentation of a valid passport, national identity card, or expired passport not more than five years out-of-date, and (b) proposed, as a means to this end, that the Member States become parties to the 1957 European Agreement on regulations governing the movement of persons between the Member States of the Council of Europe or, if necessary to conclude the appropriate bilateral agreements.⁴⁶

A third organization concerned with freedom of movement is the International Labor Organization (I.L.O.).⁴⁷ A contribution towards eliminating restraints in transnational travel can be found in the 108th I.L.O. Convention, The Seafarers' National Identity Documents Convention of 1958.⁴⁸ Operation of the Convention alleviates a hardship otherwise experienced by seamen lacking a national passport or other recognized national travel document. This hardship is evident where a seaman attempts to embark or disembark in a State whose rigid immigration or security regulations call for the presentation of some national doc-

45. European Civil Aviation Conference, Facilitation Committee's Final Report, E.C.A.C. Doc. No. ECAC/FAL/1 at 2-5 (1969).

46. 17 EUROPEAN YEARBOOK 701 (1969).

47. Consider I.L.O. Convention No. 97 concerning migration for employment (revised), International Labor Office, 32 OFF. BULL. No. 3 at 148 (1949) and Recommendation No. 86 concerning migration for employment (revised) which supplements the Convention and contains a Model Agreement as an annex. *Id.* at 171. Article 4 of the Agreement provides for the Parties to work out conditions for recognition of documents to be presented by migrants and members of their families which would be issued by the competent authorities of the country of emigration, or by a body responsible for refugees and displaced persons. With respect to the latter two groups, the competent authorities of the country of immigration are bound to recognize the validity of the travel document issued either by the country of emigration or issued pursuant to an international agreement. For an example in which this provision was utilized, see the 1951 agreement between Australia and Italy. Agreement for Assisted Migration, March 29, 1951, 131 U.N.T.S. 187.

48. Convention Concerning Seafarer's National Identity Documents, May 13, 1958, 389 U.N.T.S. 277 [hereinafter cited as Seafarer's Convention].

ument other than a seaman's record book as a condition to entry. The Convention improves the situation for seamen whose State failed to provide them with any identity documentation for use in foreign ports, thereby preventing them from leaving the ships for shore leave.

The seaman realizes the benefits of the Convention when the vessel on which he serves is registered in a territory bound by the Convention.⁴⁹ Note that the vessel cannot be a warship and must ordinarily participate in maritime navigation.⁵⁰ If there is any doubt as to what constitutes a seafarer for purposes of the Convention, the competent authority in the State will consult with the shipowners' and seafarers' organizations before reaching its decision.⁵¹ Following ratification by a State, national seafarers can apply and receive a seafarers' identity document indicating the holder's full name, date and place of birth, nationality, physical description, photograph, signature or thumbprint if unable to sign, and any limitation to the document's validity.⁵² Physically the document is durable and simple; it contains the name and title of the issuing authority, the date and place of issue, and a statement that it is a seafarer's identity document issued in accordance with the Convention. Flexibility enables the issuing State to add further particulars and decide upon the exact form of the document.

A State is at liberty to issue the document to non-national seamen who are either serving aboard ships of its registry or who apply for the document at any employment office within its territory.⁵³ If a non-national is given the document, it need not contain any statement pertaining to nationality, and even if it does, the statement cannot be regarded as conclusive proof of nationality.⁵⁴ A Party to the Convention may issue to special classes of seafarers, a national passport instead of the prescribed document if it is impractical to provide them with the standard identity document. In these circumstances the passport com-

49. *Id.*, art. 1.

50. *Id.*

51. During 1962, the British Ministry of Labour requested the opinion of the International Labor Office on whether fishermen could be regarded as coming within the scope of article 1 of the Convention. *See* International Labor Office, 46 OFF. BULL. No. 3, at 466-67 (1963).

52. *See* Seafarer's Convention, *supra* note 48, art. 3.

53. *Id.*, art. 2(2).

54. Customary international law does not recognize the passport as conclusive proof of nationality. *Nottebohm Case (Merits)*, [1955] I.C.J. 1, at 17.

mands the same effect under the Convention as the seafarer's identity document.

One possessing either a currently valid document, or one which has expired within a year of the date of expiry, is entitled to re-enter the issuing State. All Parties to the Convention are obliged to admit the bearer of the valid document for temporary shore leave while his ship is in port. Alternatively, he may be admitted; (a) to join a ship or transfer to another ship, (b) to pass in transit to join a ship in another country or for repatriation; or (c) any other purpose approved by the host State. In the operation of these last three categories, the host State can require satisfactory evidence of the seafarer's intention and ability to execute such intention from the seafarer, or the owner of the ship (or his agent), or consul. The host State can set a limit on the seaman's stay for carrying out his purpose. Finally, each Party to the Convention retains the unrestricted prerogative to preclude any particular seaman from either entering or remaining in its territory.⁵⁵

As of May, 1972, twenty-eight countries have ratified the Convention.⁵⁶

Concern with freedom of movement is evident from another major regional organization. Just as I.C.A.O. has been concerned with international air passengers, so too has the Inter-Governmental Maritime Consultative Organization (I.M.C.O.) in the medium of its responsibility. In 1965, I.M.C.O. sponsored the London Conference on Facilitation of Maritime Travel and Transport which adopted the Convention on facilitation of international maritime traffic.⁵⁷ The Contracting Parties have bound themselves "[T]o co-operate in securing the highest practicable degree of uniformity in formalities, documentary requirements and

55. Travel documents for refugees and stateless seamen have been made available through a number of multilateral instruments. See Turack, *Freedom of Movement and the Seaman*, 3 REVUE DES DROITS DE L'HOMME 465, at 478-84 (1970).

56. Letter from N. Valticos, Chief of the International Labour Standards Department, International Labor Office, to the author, May 15, 1972; namely: Barbados, Brazil, Canada, Denmark, Finland, France, Ghana, Greece, Guatemala, Guyana, Honduras, Iceland, Iran, Ireland, Italy, Malta, Mauritius, Mexico, Norway, Panama, Portugal, Spain, Sweden, Tanzania, Tunisia, Ukraine U.S.S.R., U.S.S.R., United Kingdom.

57. Convention on Facilitation of International Maritime Traffic (with annex), April 9, 1965, 591 U.N.T.S. 265 [hereinafter cited as Facilitation Convention].

procedures in all matters which would facilitate and improve international maritime traffic."⁵⁸

Uniformity in this field can be achieved by each Party's application of the international standards and recommended practices⁵⁹ set out in the annex to the Convention. The annex contains the following standard on travel documents which Parties are obligated to recognize and accept when presented by a crew member:

A valid seafarer's identity document or a passport shall be the basic document providing public authorities with information relating to the individual member of the crew on arrival or departure of a ship.⁶⁰

The standard provides that a valid document will enable the seaman to enter or leave a country to join his ship in another country, or to be repatriated, or be used for any other purpose approved by the authorities of the country concerned. These criteria are predicated upon the document guaranteeing the holder's readmission to the issuing State. Public authorities of a Contracting Party are urged not to require documentation from crew members other than the seafarer's identity document and the information contained in the crew list.⁶¹

With regard to implementation of these international regulations, each Party retains full discretion whether to comply; however, if the State does not abide by the enumerated standards, it must inform the Secretary-General of I.M.C.O. and apprise him of the differences between its own practices and the standards. If a recommended practice is adopted, the State should notify the Secretary-General.⁶² Silence by a Party to the Con-

58. *Id.*, art. 1.

59. Standards and Recommended Practices are defined in art. VI of the Convention. *Standards* are those measures, the uniform application of which by contracting governments in accordance with the Convention, which are necessary and practicable in order to facilitate international maritime traffic. See Facilitation Convention, *supra* note 57, art. VI.

60. See Facilitation Convention, *supra* note 57, Section 3.10. A crewman is defined as "any person actually employed for duties on board during a voyage in the working or service of a ship and included in the crew list." Compliance entails that the document bear particulars concerning the bearer's family name and given names, date and place of birth, physical characteristics, nationality, signature, an authenticated photograph of the holder, the date of the document's expiration, and the signature of the issuing public authority.

61. *Id.*, section 3.10.3.

62. *Id.*, art. VIII. The difference between national practices and Convention standards, and a list of adopted recommended standards are found in Facili-

vention indicates that the international standards have been implemented by it and the recommended practices rejected.

As of May, 1972, thirty countries have accepted the Convention.⁶³

III. RELAXATION OF THE PASSPORT REQUIREMENT FOR TRAVEL IN WESTERN EUROPE

A. *Multilateral Efforts*

Formation of a passport union is one of the most effective methods of extending freedom of movement. Institution of this machinery does not necessarily abolish the need for possession of a passport for everyone who wants to travel within the territory of the union. The passport requirement, as a prerequisite for intra-union travel, is waived for nationals of States comprising the union, while other persons usually are obliged to present a national passport for initial entry into, and departure from the union's territory. Certain obstacles must be removed or machinery set up to meld institutions of national concern. For example, the factors of a customs union, a common labor market, the close proximity of the countries and a similar immigration policy are logical conditions precedent to formation of a passport union. Several multistate passport unions function successfully today.

1. *Scandinavian Passport Union.*⁶⁴—The Scandinavian experience was the forerunner in regional passport unions. Nordic cooperation in freedom of movement initially focussed on intra-Scandinavian travel. In July of 1952 at Stockholm,⁶⁵ the participating States agreed to the readmittance of aliens who have ille-

tation Convention, note 57 *supra*, Notifications by Contracting Governments Under Article VIII of the Convention (London 1968) and I.M.C.O. Doc. No. FAL/Circ. 30 (1971).

63. Monaco, Ghana, Zambia, United Kingdom, Dominican Republic, Yugoslavia, Norway, U.S.S.R., Czechoslovakia, Belgium, Nigeria, Iceland, Ivory Coast, Trinidad & Tobago, U.S.A., Finland, Singapore, Canada, Federal Republic of Germany, Sweden, Netherlands (Surinam & Netherlands Antilles), Israel, France, Denmark, Switzerland, Republic of China, Tunisia, Poland, Malagasy Republic, and Ireland. See MULTILATERAL TREATIES IN RESPECT OF WHICH THE SECRETARY-GENERAL PERFORMS DEPOSITORY FUNCTIONS, U.N. Pub. Sales No. E/72/V/7 (1971).

64. For a more expansive treatment of the subject, see Turack, *The Scandinavian Passport Union*, 38 NORDISK TIDSSKRIFT FOR INT'L RET OG JUS GEN- TIUM 171 (1968).

65. Agreement for the Readmittance of Aliens Who Have Illegally Entered the Territory of Another Contracting Party, July 14, 1952, 198 U.N.T.S. 47.

gally entered the territory of another Contracting Party and to a Protocol⁶⁶ concerning the abolition of passports for travel between Denmark, Finland, Norway and Sweden. The Protocol reflected agreement by the participants that their nationals no longer needed any travel document for short-term sojourns into any of the other contracting countries. However, a stay which culminated in the visitor's employment in the host country necessitated the issuance of a passport or other travel document. Provision was made for unilateral reintroduction of the passport requirement without prior notice in the event of war, threat of war, or other extraordinary circumstance of a national or international character. Under the Agreement which complemented the Protocol, Danish, Finnish, Norwegian and Swedish citizens were not considered as aliens. As the title of the Agreement suggests, aliens who travel from one Contracting State to another without prior authorization and who are not subsequently granted a work permit are to be readmitted to the State from which they departed in accordance with an established procedure. In addition, each Government also agreed to supply the requesting Government with information concerning the entry into, departure from, and residence within its territory, of persons who had or were suspected of abusing the privileges arising from the abolition of passports.

Greater vigilance with respect to movement of aliens was necessitated after 1954 when the Agreement⁶⁷ concerning establishment of a common labor market entered into force. Thereunder, a separate work or residence permit was no longer required for citizens of Denmark, Finland, Norway and Sweden who sought to work in the territory of another Contracting Party. Provision was also made for Iceland's accession to this Agreement.⁶⁸ An earlier Protocol was signed on behalf of the same four Governments concerning the exemption of their nationals from the requirement of possessing a passport or residence permit while residing in a Scandinavian country other than their own.⁶⁹

66. Protocol Concerning the Abolition of Passports for Travel Between Sweden, Denmark, Finland, and Norway, July 14, 1952, 198 U.N.T.S. 37.

67. Agreement Concerning a Common Labor Market, May 22, 1954, 199 U.N.T.S. 3.

68. Today, nationals from the other Nordic States require a work permit to work in Iceland. On the other hand, Iceland's nationals do not require a work permit to work in other Nordic States.

69. Protocol Concerning the Exemption of Nationals From the Obligation

This Protocol replaced the 1952 Protocol. The lone restriction imposed upon the individual was merely his ability to substantiate that he was a Scandinavian citizen (other than Icelandic) in the event that some administrative authority questioned his citizenship. Also, a procedure is set out in the Protocol for reintroduction of the passport requirement or residence permit for nationals of participating States. Iceland became a participant to both the Agreement of 1952 and the Protocol of 1954, on a reciprocal basis through an exchange of Notes at Sweden in 1955.⁷⁰

Combining all of Scandinavia into a single unit for travel purposes required abolition of passport control at intra-Nordic frontiers for non-Scandinavians. This achievement was partially realized in 1957 at Copenhagen, when Denmark, Finland, Norway and Sweden signed a Convention⁷¹ concerning the waiver of passport control at the intra-Nordic frontiers. Passport control was established at outer Nordic frontiers; that is, at non-Contracting State land frontiers adjacent to a Contracting Party, or at an airport or seaport where aliens would be expected to enter or leave any of the Contracting States proceeding to or from a non-Contracting State. Certain safeguards outlined in the Convention and annex thereto assure efficacy of the system.⁷²

If, for example, an alien tourist wishes to travel in Scandinavia for three months or less and a visa is not required, he would present his passport to immigration authorities on initial entry into Nordic territory from a non-Nordic State. Thereafter, when crossing the frontier at designated points, the alien would pass through one gate while Scandinavians would proceed through a different gate. Periodic spot checks are made by passport control authorities to determine whether the system is efficient. The rules become complex if the tourist has entered any Nordic State in the six-month period immediately prior to his latest entry, or if he intends to work during his stay.⁷³

to Have a Passport or Residence Permit While Resident in a Scandinavian Country Other Than Their Own, May 22, 1954, 199 U.N.T.S. 29.

70. Exchange of Notes Between Sweden and Iceland Constituting an Agreement Relating to the Participation of Iceland in the Arrangements Provided for in Protocol No. 2675, Nov. 3, 1955, 369 U.N.T.S. 454 & 458.

71. Convention Concerning the Waiver of Passport Control at the Intra-Nordic Frontiers, July 12, 1957, 322 U.N.T.S. 245 [hereinafter cited as Waiver of Passport Control Convention].

72. See note 64 *supra*, at 175.

73. In case of the former contingency, any time spent in Nordic territory during his previous visit is deducted from the three-month period. If the alien

Procedures are also devised for intra-Nordic State admission of aliens expelled by one of the Contracting Parties, and the return of aliens who have illegally entered a Contracting State by crossing an intra-Nordic frontier within the passport union.⁷⁴ Iceland acceded to the 1957 Convention and became a full participant in the passport union in 1966. In accordance with the Convention, a Nordic Aliens Committee was conceived, with the responsibility to coordinate control of aliens in Scandinavian territory and to deal with matters pertaining to the operation of the passport union.⁷⁵

2. *Benelux Passport Union.*⁷⁶—Pursuant to a network of bilateral agreements,⁷⁷ citizens of Belgium, Netherlands, and

desires to stay in Nordic territory beyond the three-month limit after his arrival from a non-Nordic State, he requires a residence permit from his host State. Although a residence permit is valid only in the issuing State, the bearer may stay during the course of the permit's validity, a maximum of three months in each of the other Nordic countries without being required to obtain a residence permit from those States as long as he does not undertake any employment, and the host State does not require him to seek a residence permit before the expiration of his three-month stay there.

74. See Waiver of Passport Control Convention, *supra* note 71, arts. 9, 10, and 12.

75. European Agreement on Travel by Young Persons on Collective Passports Between the Member Countries of the Council of Europe, *done* Dec. 16, 1961, 648 U.N.T.S. 380. Although discussion of the 1961 European Agreement on travel by young persons on collective passports between member countries of the Council of Europe will follow subsequently, it is appropriate at this juncture to indicate that with a reservation, relating to a consistent accounting of the three-month and six-month limits as already outlined, and with declarations concerning extensions to young refugees and young stateless persons, the Agreement entered into force on 1 July 1968 for Denmark, Norway and Sweden. Sweden became a Party to the Agreement on May 27, 1958 while Denmark and Norway became Parties on May 29, 1968.

76. A fuller account of the Benelux experience and historical perspective is rendered in Turack, *Freedom of Movement and the Travel Document in Benelux*, 17 INT'L & COMP. L.Q. 191 (1968).

77. The operation of these treaties approved substitution of the passport by a variety of identity cards. See Exchange of Letters Constituting an Agreement Between Belgium and the Grand Duchy of Luxembourg Concerning the Freedom of Movement of Persons, April 6, 1950, 336 U.N.T.S. 342; Netherlands and Belgium Exchange of Notes Constituting an Agreement Relating to the Removal of Undesirable Persons, Feb. 4, 1958, 330 U.N.T.S. 83; Netherlands and Luxemburg Exchange of Notes Constituting an Agreement Concerning the Movement of Travelers Who are Nationals of the Netherlands and Luxemburg Residents of Belgium, Feb. 22, 1956, 286 U.N.T.S. 249; Belgium and Netherlands Exchange of Letters Constituting an Agreement for the Liberalization of Minor Frontier Traffic, March 26, 1953, 165 U.N.T.S. 297; Exchange of Letters Constituting an Agreement Between Belgium and the Netherlands for the Liberalization of Minor Frontier Traffic, March 26, 1953, 213 U.N.T.S. 387; Belgium

Luxembourg were already experiencing the reality of freedom of movement across their respective borders. Unfettered by the passport obstacle, the labor force benefited when the three nations coalesced into a common market in manpower with the signing of a Labour Treaty⁷⁸ at The Hague in 1956 supported by a Provisional Labour Agreement⁷⁹ signed at Brussels in 1957. Under the Provisional Agreement salaried workers who were nationals of one of the three States could accept employment from a private employer in the other two States without a labor permit. They crossed the border upon presentation of one of a variety of identity documents in lieu of a passport. Each State reserved the right to refuse entry to persons whom it deemed undesirable.⁸⁰ A similar provision is found in the Labour Treaty which entered into force on 1 November 1960. The same flexibility already in operation continued with respect to frontier-crossing documentation.

Belgium and Luxembourg signed the 1957 European Agreement on Regulations governing the movement of persons between Member States of the Council of Europe.⁸¹ Hence, nationals of both countries were entitled to cross the frontier into the other's territory on presentation of an identity document other than a passport.⁸²

and Luxemburg Exchange of Letters Constituting an Agreement Concerning the Freedom of Movement of Persons, April 6, 1950, 65 U.N.T.S. 147; Exchange of Letters Constituting a Supplementary Agreement Concerning Nationals Possessing a Swiss Identity Card for Aliens, Sept. 19, 1950, 79 U.N.T.S. 328.

78. Labour Treaty Between Belgium, Luxembourg and the Netherlands, June 7, 1956, 381 U.N.T.S. 158 [hereinafter cited as Labour Treaty]. The Labour Agreement entered into force on Nov. 1, 1960 coincidental with the Treaty instituting the Benelux Economic Union. On the operation of the Labour Treaty, see Gilon, *Le Marché Commun du Travail Benelux et L'entrée en Vigueur du Traité de Travail au 1er Novembre 1960*, [1961] BULL. BENELUX No. 1, at 21-29.

79. [1957] BULL. BENELUX No. 1, at 31.

80. See Labour Treaty, *supra* note 55, art. 2(2).

81. European Agreement on Regulations Governing the Movement of Persons Between Member States of the Council of Europe (with appendix), done Dec. 13, 1957, Europ. T.S. No. 25, 315 U.N.T.S. 139.

82. The Appendix to the Agreement shows that Belgium and Luxembourg both advocated that a national passport, valid or expired within the last five years, could be used; in the case of Belgium, an official identity card or an official identity card issued to a Belgian national, having the force of an im-matriculation certificate; by a Belgian diplomatic or consular agent abroad, an identity certificate with photograph was to suffice.

With the tripartite signing of the treaty⁸³ instituting the Benelux Economic Union and a Convention containing the transitional provisions,⁸⁴ the Parties obligated themselves to establish the free movement of persons.⁸⁵ In article 55 of the Treaty, the Parties agreed to conclude a convention to determine standards applicable to each other's nationals with regard to entering or leaving Benelux borders, freedom of movement, sojourn and establishment therein, and expulsion. Article 9 evidences the three States' obligation to coordinate legal and administrative regulations within five years which would culminate in the complete suppression of restrictions on the free movement of their nationals within the Benelux dominion.

During 1960, the Benelux countries concluded a Convention⁸⁶ concerning the transfer of entry and exit controls to the external frontiers of the Benelux territory. Its effect was to establish the territories of the three States as a unit for entrance and exit controls so that non-Benelux nationals would present their travel document only when crossing the external boundaries. Coordination of administration, harmonization of national legislation and a common policy supervised by a ministerial Working Party comprised of representatives from the three States made the system function efficiently.⁸⁷

83. Treaty Instituting the Benelux Economic Union, Feb. 3, 1958, 381 U.N.T.S. 165.

84. Convention Containing the Transitional Provisions, Feb. 3, 1958, 381 U.N.T.S. 214.

85. *Id.*, art. 1. Art. 2 of the Treaty provides that nationals of each Party may freely enter and leave the territory of the other Parties and provides for the same treatment of nationals of the host State regarding freedom of movement. By art. 6, the Parties are bound to act in concert to ensure that no law or regulation unduly hindered any freedom of movement.

86. Convention on the Transfer of Control of Persons to the External Frontiers of Benelux Territory, April 11, 1960, 374 U.N.T.S. 3. For a commentary on the Convention, see J. KARELLE & F. DE KEMMETER, *LE BENELUX COMMENTÉ* 333-38 (Brussels 1961). A brief note on the operation of the Convention is found in Van Bruggen, *Controle sur la Circulation des Personnes dans le Cadre de Benelux*, [1962] BULL. BENELUX No. 6, at 22.

87. Convention on the Transfer of Control of Persons to the External Frontiers of Benelux Territory, April 11, 1960, 374 U.N.T.S. 3, art. 6. A Benelux visa was envisaged which would have a three-month validity in Benelux territory in the event that any Member State required the non-Benelux national to have a visa. This visa would be issued by a diplomatic or consular officer of any of the three States and enable the bearer a maximum stay of three months in Benelux territory. Other non-Benelux nationals were entitled to remain a maximum of three months in each of the three States. An undesirable person in any of the States is denied entry into the entire territory. Border-crossing

The Working Party has provided special regulations the operation of which has waived the national passport requirement for non-Benelux nationals to enter and travel in Benelux territory.⁸⁸ Benelux became a true passport union with respect to intra-Benelux travel by Benelux nationals as a consequence of the 1960 Convention⁸⁹ which implemented articles 55 and 56 of the Treaty instituting the Benelux Economic Union. Henceforth, nationals of any Member State could enter the territory of any other Party by merely presenting an identity document, the makeup of which was to be determined by the Benelux Committee of Ministers. There were also guidelines for these persons to establish residency in the territory of one of the other Parties and machinery for the constitution of a Committee on the Free Movement and Establishment of Persons which would supervise the execution of this Convention and suggest practical means for its implementation. The identity document alluded to was the subject of a 1963 decision⁹⁰ whereby an extensive list of documents were enumerated as acceptable in lieu of a national passport. A measure of the liberal view⁹¹ towards freedom of move-

at internal frontiers within Benelux territory takes place at authorized control points and immigration authorities spot check a small proportion of the total number of foreign visitors. An alien legally resident in one of the Benelux countries can travel to the other Member States on the strength of his residence permit in lieu of a passport. Each State was obliged to re-admit a non-Benelux national to its territory if such person was considered by the host as an undesirable and he entered either of the other Benelux countries from its territory. For reasons of national health or security or public order any of the States could temporarily re-establish entry and exit controls at its internal frontiers.

88. These persons are usually tourists. For categories of non-tourists who may enter Benelux territory without a passport, *see* Turack, note 76 *supra*, at 201-03. In the tourist category are included children under fifteen years of age, persons who are nationals of any Western European country who are traveling in groups of five to fifty persons, persons under twenty-one years of age who are stateless pursuant to the procedure set out in the 1952 Agreement on collective passports for young persons concluded by the Brussels Treaty Powers and frontier workers resident in a country bordering any of the three States who work in Benelux territory.

89. Treaty Instituting the Benelux Economic Union, Feb. 3, 1958, 480 U.N.T.S. 432 (effective Oct. 1, 1963).

90. [1963] BULL. BENELUX No. 5, at 41. The Decision entered into force Oct. 1, 1963.

91. This paper does not take into consideration the additional measures undertaken in Benelux as a consequence of the Protocole Relatif à la Suppression des Contrôles et Formalités aux Frontières Intérieures du Benelux et à la Suppression des Entraves à la Libre Circulation signed at the Hague on April 29, 1969 which entered into force on January 29, 1971.

ment is evidenced by the official acceptability given to a valid identity card for foreigners issued by Belgium, France, Liechtenstein, Luxembourg, Monaco or Switzerland which stated that the bearer was of Belgian or Luxembourg nationality.

The Benelux countries have also concluded a number of multilateral agreements to facilitate the mobility of their national seamen. Typical, is the 1963 Agreement with Spain.⁹² Seamen of Spanish nationality are admitted without a visa if they possess a valid Spanish seamen's book and a statement issued by any shipping company indicating that the bearer needs to enter Benelux territory to enlist on a named vessel at a specified port. This statement must contain a clause guaranteeing repatriation of the bearer at the shipping company's expense in case of non-enlistment. A Spanish seaman need only present a valid Spanish seamen's book to pass through Benelux territory while in transit to join a ship in a foreign port or to return to his country of origin. However, in the former situation the seaman is obliged to carry and to present to immigration officials some evidence indicating the purpose of his journey.

Under the Agreement, national seamen of a Benelux country can enter and traverse Spanish territory under the same conditions that apply to Spanish seamen in possession of a valid national seamen's book. Each Party has reserved the right to refuse admittance to anyone it considers undesirable. All Parties agreed to readmit at any time and without formalities, their own seamen who entered another Party's territory in consequence of the Agreement. Finally, border-crossing is to occur only at authorized points along the Spanish and external Benelux frontiers.

Similar agreements concerning the use of the seamen's book as a travel document have been concluded with Greece,⁹³ Switzerland,⁹⁴ Portugal,⁹⁵ and Italy.⁹⁶

92. Exchange of Letters Constituting an Agreement Concerning the Movement of Seamen, June 19, 1963, 482 U.N.T.S. 19. A similar agreement was concluded by the same parties to encompass the Netherlands Antilles Exchange of Letters Constituting an Agreement Concerning Recognition of the Seaman's Book as a Travel Document for the Netherlands Antilles, Feb. 10, 1965, 545 U.N.T.S. 3.

93. Exchange of Letters Constituting an Agreement Concerning the Use of Seaman's Books as Travel Documents, Feb. 10, 1964, 496 U.N.T.S. 151.

94. Exchange of Letters Constituting an Agreement Concerning the Use of the Seaman's Book as a Travel Document, May 14, 1964, 528 U.N.T.S. 3.

95. Benelux and Portugal Agreement Concerning Use of the Seaman's Book as a Travel Document, May 24, 1967, 601 U.N.T.S. 153.

96. Exchange of Notes Constituting an Agreement Concerning Recognition of the Seaman's Book as a Travel Document, Sept. 8, 1965, 578 U.N.T.S. 3.

3. *Council of Europe*.—The Council of Europe has been concerned with the movement of individuals across international borders since its inception. It focused its efforts toward uniformity of passport issuance and simplification of frontier formalities.⁹⁷ In 1956, a step of major import was taken by the Committee of Ministers in announcing the following aims:

1. Passports shall no longer be compulsory for travel between any Member States. Travellers shall merely be required to prove their identity by presenting an identity card or some other official paper duly establishing their identity;

2. Instead of a check on all travellers without exception, the possibility will be considered of introducing a system of spot checks.⁹⁸

A major development towards this aim appeared in the conclusion of the 1957 European Agreement on regulations governing the movement of persons between Member States of the Council of Europe.⁹⁹ The High Contracting Parties have undertaken to permit all nationals of another party, wherever resident, to enter or leave their territory for visits up to three months in duration, upon presentation at the frontier of any document listed in the appendix to the Agreement. A Member State can require a valid passport when the traveler wishes to enter its territory for a longer period to seek gainful employment. The bearer of any document listed in the appendix can re-enter the territory of a party without further formality although his nationality may be in dispute.¹⁰⁰ The agreement can be temporarily suspended on the grounds of public order, security or public health, however, a State is still obliged to readmit the bearer of any of these documents without formality. Suspension of the Agreement's opera-

97. The subject is discussed in Turack, *Freedom of Movement in Western Europe: The Contribution of the Council of Europe*, 15 AM. J. COMP. L. 781-90 (1967).

98. See *Resolution (56)22*, Eur. Consult Ass., 8th Sess., Doc. No. 595 at 2-3 (1957).

99. European Agreement on Regulations Governing the Movement of Persons Between Member States of the Council of Europe, done Dec. 13, 1957, Europ. T.S. No. 25, 315 U.N.T.S. 139.

100. The current state of acceptable travel documents can be found in the Periodical Report in note 15 *supra*, at 82-5. Acceptable travel documents listed in the appendix include a valid national passport or one which has expired within the last five years, national identity cards, and other identity documents issued by competent public officials.

tion can extend to one or more of the other parties. Each State retains the right to exclude an undesirable national of any other party. The ambit of the Agreement's operation can also cover nationals of the Contracting Parties lawfully residing in the territory of other Contracting Parties.¹⁰¹

Another major milestone was established in 1961 when the Committee of Ministers opened for signature the European Agreement on travel by young persons on collective passports between the member countries of the Council of Europe.¹⁰² Groups of five to fifty persons who were under twenty-one years of age and nationals of one Contracting Party could enter and remain in the territory of another Contracting Party¹⁰³ for a maximum of three months with a collective passport. The group must be accompanied by a leader who is responsible for keeping them together as a unit. This leader, who must be at least twenty-one years of age, retains possession of the collective travel document and must travel with a valid national passport.

In the event that any members of the group become separated from the unit or decide not to return with the unit to the country which issued the collective document, the leader must notify the host authorities accordingly. If this situation arises, the leader would contact his national representative in the host State (usually a consul) to obtain an individual travel document for the youngster in accordance with the host State's requirements. A collective passport is issued by the usual passport-issuing authority who certifies the persons listed therein as nationals of the State.¹⁰⁴

101. For example, France extended the agreement to cover French nationals lawfully resident in Belgium, Luxemburg, and Switzerland. *Eur. Consult. Ass.*, 10th Sess., Doc. No. 818, at 3 (1958). The agreement was not extended to cover all nationals of Member States who were lawfully resident in the territory of a Contracting Party because such an extension would cover holders of foreign identity cards issued by a Contracting Party. *Eur. Consult. Ass.*, 10th Sess., Doc. No. 836, at 28 (1958).

102. *European Agreement on Travel by Young Persons on Collective Passports Between the Member Countries of the Council of Europe*, Dec. 16, 1961, 544 U.N.T.S. 19.

103. Art. 13 of the Agreement provides for its extension to young refugees and young stateless persons.

104. The Appendix to the Agreement contains a model collective travel document. Data in the collective passport includes: date, place of issue, issuing authority, description of the group, countries of destination, period of validity, names of each group member (surnames being in alphabetical order) their date and place of birth, and place of residence.

A collective passport is usually issued only in the original; however, if the host State requires additional copies, these will be provided by the issuing State. As any member of the group can be asked by the host authority to prove his identity and since he is exempt from producing a national identity card, the Contracting States have given notification to the Secretary-General of the Organization as to the documentation expected.

This presentation reflects the fruits of accomplishment under the auspices of the Organization; it does not expose the full import of the Organization's contributions in the area of international regulation of movement.¹⁰⁵ At present, the Council of Europe is studying the prospects of regulating the legal status including the mobility of migrant workers. Many of these individuals, either nationals of Member States or States not members of the Council of Europe, who reside and work in territories of Member States will hopefully gain from future international legislation.

4. *European Communities.*—The Treaties instituting each of the European Communities provide for the mobility of labor among the membership.¹⁰⁶ Implementation of the Treaties' freedom of movement provisions has been in progress in varying degrees for nearly twenty years. Since there is a plethora of literature¹⁰⁷ on the various stages of implementation, this exami-

105. See note 97 *supra* and COUNCIL OF EUROPE, *MANUAL OF THE COUNCIL OF EUROPE* 194 (London 1970).

106. Art. 69(1) of the Treaty instituting the European Coal and Steel Community (E.C.S.C.) provides that Member States "renounce any restriction based on nationality against employment in the coal and steel industries of workers of proven qualification." To realize the purposes of the European Economic Community (E.E.C.), art. 3(c) of the Treaty instituting the E.E.C. calls for "The abolition as between member States of the obstacles to the free movement of persons, services, and capital." Art. 48 and art. 49 spell out greater detail regarding personal mobility. To achieve speedy establishment and growth of nuclear industries, art. 96(1) of the Treaty establishing the European Atomic Energy Community requires Member States to:

abolish all restrictions based on nationality, which have been placed upon access by nationals of any of the Member States to specialized employment in the nuclear field, subject to such limitations as may be imposed by the basic requirements of public order, public safety and public health.

107. On the free movement of labor in the E.C.S.C., see N. CATALANO, *MANUEL DE DROIT DES COMMUNAUTÉS EUROPÉENES* 293-96 (2d ed. Paris 1964). On the free movement of labor in the E.E.C., see the following: *Id.* at 365-89; Lewin, *The Free Movement of Workers*, 2 *Comm. Mkt. L.R.* 300 (1965); Sandri, *The Free Movement of Workers in the Countries in the European Economic Community*, E.E.C. BULL. No. 5 (1961); *Libre Circulation et Migrations des Travail-*

nation will focus on the final stage.¹⁰⁸

On October 15, 1968, The Council of Ministers of The European Communities issued Regulation No. 1612, *Free Movement of Workers Within The Community*¹⁰⁹ to replace Regulation No. 38¹¹⁰ as the third and final stage for the free movement of labor. This Regulation retained and expanded the liberalization measures contained in its two predecessors; in theory,¹¹¹ it removed the last vestiges of restrictions at the end of the transitional period, which was December 31, 1969. The umbrella of application covers workers who are permanent or seasonal and frontier as well as wage-earners and their families in service-related occupations.¹¹² It extends to any worker and national of a Member

leurs dans la Communauté, 1 E.E.C. COMM'N RAPPORT SUR L'APPLICATION DU REG. NO. 15 et LA DIRECTIVE DU 16 AOUT 1961 49-50 (1964); Van Gerven, *The Right of Establishment and Free Supply of Services*, 3 Comm. Mkt. L.R. 344 (1966); U. EVERLING, THE RIGHT OF ESTABLISHMENT IN THE COMMON MARKET (Chicago 1964); G. CHESNÉ, L'ESTABLISHMENT DES ESTRANGERS EN FRANCE ET LA COMMUNANTÉ ECONOMIQUE EUROPÉENNE (Paris 1962); Dahlberg, *The E.E.C. Commission and the Politics of the Free Movement of Labour*, 6 J. CMN. MKT. STUDIES 291 (1967-1968). With respect to travel documents and the mobility of labor, see Turack, *Freedom of Movement and Travel Documents in Community Law*, 17 BUFF. L. REV. 435 (1968).

108. See Ter Heide, *The Free Movement of Workers in the Final Phase*, 6 Comm. Mkt. L.R. 466 (1968-69); Heynig, *La Libre Circulation des Travailleurs à L' Interieur de la Communauté est Instituée Definitivement*, REVUE AU MARCHÉ COMMUN. No. 120 at 65 (1969); Comment, *The Free Movement of Workers Within the Common Market*, 9 COMM. MKT. No. 2 at 38 (1969); Lyon-Caen, *La Libre Circulation des Travailleurs*, 43 JURIS-CLASSEUR PERIODIQUE (La Semaine Juridique) 2222 (1969); Pouyat, *Freedom of Movement Within the Common Market*, 9 J. INT'L COMM'N JURISTS 45 (1969); Bonnet, *L'Europe du Travail est-elle Réalisée?*, DROIT SOCIAL 160 (1969).

109. *Journal Officiel*, 11 E.E.C. J.O. 2, No. L 257 (1968), as rectified, *id.* at 12, No. L 295 (1968).

110. Regulation No. 38 On the Freedom of Movement for Workers within the Community, *Journal Officiel*, 7 E.E.C. J.O. 965 (1964).

111. Italy has recently charged that the Federal Republic of Germany has sought workers from outside the Six rather than from Italy which would violate a cardinal principle of the Common Market labor policy. See N.Y. Times, May 7, 1972, section L, at 13, col. —.

112. Article 10 of Reg. No. 1612 states:

- (1) The following shall have the right to make their home with a worker who is a national of one Member State employed in the territory of another Member State, regardless of their nationality:
 - (a) his spouse and their descendants under the age of twenty-one or dependent upon him;
 - (b) The ascendants of the worker and his spouse who are dependent upon him.
- (2) The Member States facilitate the admission of any family member not covered by the provisions of paragraph 1 who is a dependent of the worker or who makes his home with him in the country of origin. (Unofficial translation).

State, who can accept a position in the territory of another State and travel there to take up his employment. These workers are protected by the identical legislative, regulatory and administrative provisions as those applicable to workers of the receiving State.¹¹³ However, restrictions can be introduced for reasons of public policy, national security, or public health.

To complement Regulation No. 1612, the Council concurrently approved the Directive on *Removal of Restrictions on Travel and Residence for Workers of The Member States and Their Family Members Within The Community*,¹¹⁴ which superseded the 1964 Directive. In emphatic terms, this Directive commands Member States to remove the restrictions on travel and residence for nationals of the membership and their families, to which Regulation No. 1612 applies.¹¹⁵ More specifically, the Member States must recognize the right of their nationals and family members to emigrate. This right may be exercised by simply presenting a valid identity card or passport. To this end, the State is required to issue or renew the requisite travel document to its nationals signifying their nationality. The travel document must be valid for all the Member States, and countries of transit directly between such States. If a passport is to serve as the travel document, it must have a minimum validity of five years from the date of issue. No exit visa or equivalent document may be required from a Member State for these nationals or their families.¹¹⁶

Only this travel document needs to be presented to gain entry into a Member State. If a member of the worker's family is not a national of one of the Member States, the host State can require that person to have an entry visa or its equivalent; however, the host State is obliged to make this additional document easily obtainable at no cost to the petitioner.¹¹⁷ Once the worker and his family have gained lawful admittance to a host State, the authorities there are required to grant these persons a Residence Permit for Nationals of a Member State of the European Economic Community (E.E.C.) or a comparable document.¹¹⁸

113. *Id.*, art. 1(1).

114. *Journal Officiel*, 11 E.E.C. J.O., No. L 257, at 13 (1968).

115. *Id.*, art. 1.

116. *Id.*, art. 2.

117. *Id.*, art. 3.

118. *Id.*, art. 4. To be granted the residence permit, the worker must have

With respect to the free movement of persons in the nuclear field, the Council of Ministers approved the Directive *On Free Access To Skilled Employment In The Nuclear Field*¹¹⁹ in 1962. Article 1 of the Directive states:

Member States shall take all necessary measures, in accordance with the provisions of the present Directive, to abolish any restrictions, based on nationality and having to do with access to skilled employment in the nuclear field, affecting the nationals of one of the Member States.¹²⁰

The Directive indicates that on matters not covered by it, Member States would apply provisions adopted in implementing the E.E.C. Treaty relating to the free movement of workers.¹²¹ Consequently Regulation No. 1612 and its accompanying directive are applicable to the persons meant to benefit from the Euratom Directive. Similarly, the E.E.C. legislation is also applicable to coal and steel workers regulated by the European Coal and Steel Community (E.C.S.C.).¹²²

Articles 52 through 66 of the Treaty of Rome concern the institution of the right of establishment and the free supply of services; both of which involve the free movement of persons. In both of these situations, the travel document impediments had been removed by Community legislation in 1964.¹²³ All other impediments to the right of establishment and freedom to supply services in all economic and social activities were to disappear by the end of the transitional period. Unfortunately, the European Parliament at its session during February, 1971 noted in relation to freedom of establishment that the certain directives "have as a whole not become directly applicable in the Member States at the end of the transition period with effect from 1 Jan-

a valid passport or identity document and proof of his new employment. Workers who are not required to have a residence permit are listed in art. 8.

119. *Journal Officiel*, 5 E.E.C. J.O. 1650 (1962) [hereinafter cited as *Directive on Free Access*].

120. Unofficial translation.

121. Directive on Free Access, *supra* note 119, art. 5.

122. This is in consonance with Reg. No. 1612, *supra* note 109, art. 42(1) and accompanying Directive, art. 11(2).

123. See Council Directive *To Abolish Restrictions on Freedom of Movement and Freedom to Reside Within the Community for Nationals of Member States in Regard to Establishment and the Provision of Services*, 7 E.E.C.J.O. 845 (1964) and Council Directive *To Co-ordinate Special Measures in Respect of Movement and Residence of Foreigners, Justified on Grounds of Public Policy on Law and Order, Public Safety and Public Health*, *id.*, at 850.

uary 1970 and must therefore still be transposed into national legislation."¹²⁴

5. *Organization For Economic Co-operation And Development* (O.E.C.D.).—Both the O.E.C.D. and its predecessor, the Organization for European Economic Community, have contributed to greater freedom of movement for tourists.¹²⁵ The Organization has encouraged standardization of a national identity card for use by nationals of the membership, its substitution for the passport as a travel document, a minimum of frontier controls on tourists including young persons, bilateral passport abolition agreements, decentralization of passport-issuing offices, simplification of the application and renewal procedures for passports, standardization of the passport, recognition and acceptance of collective passports and State self-examination of its travel document procedures to ease the movement of tourists.¹²⁶

Numerous agreements which abrogate the use of passports have been concluded between the following States: the Netherlands-France Agreement of 1957;¹²⁷ the France-Italy Agreement of 1957;¹²⁸ the Federal Republic of Germany-Belgium Agreement of 1956;¹²⁹ the France-Netherlands Agreement of 1958;¹³⁰

124. 4 BULL. EUROP. COMM., No. 4, at 72 (1971). See also *id.*, No. 1, at 70-1 (1971), and Comment, *Community Action in the Matter of Right of Establishment: Balance Sheet and Outlook*, 2 E.E.C. BULL. No. 9/10, at 19 (1969).

125. In using the term "tourist," I am adopting the definition used by the O.E.C.D. Tourism Committee, that is "any person visiting a country, other than that in which he usually resides for a period of at least 24 hours." The following are considered tourists:

- a) persons traveling for pleasure, for family reasons, for health, etc.;
- b) persons traveling to meetings, or in a representative capacity of any kind (scientific, administrative, diplomatic, religious, athletic, etc.);
- c) persons traveling for business reasons;
- d) persons arriving in the course of a sea cruise, even when they stay less than 24 hours (the latter should be reckoned as a separate group, disregarding if necessary their usual place of residence).

See O.E.C.D., *Foreword to INT'L TOURISM AND TOURISM POLICY IN O.E.C.D. MEMBER COUNTRIES* (Paris 1971).

126. See Turack, *Regional Development Towards Freedom of Movement*, O.E.C.D. REVUE BELGE DE DROIT INT'L 516 (1969).

127. Exchange of Notes Constituting an Agreement for the Purpose of Facilitating the Movement of Persons Between the Two Countries, May 21, 1957, 299 U.N.T.S. 43.

128. Agreement on the Movement of Persons, Feb. 28, 1957, 291 U.N.T.S. 191.

129. Exchange of Letters Constituting an Agreement for the Mutual Abolition of Passports, July 26, 1956, 249 U.N.T.S. 187, extended by the Exchange of Letters Constituting an Agreement for the Mutual Abolition of Passports and Visas, July 26, 1956, 272 U.N.T.S. 310.

130. Exchange of Notes Constituting an Agreement Between the Netherlands

the Netherlands-Switzerland Agreement of 1958;¹³¹ the Federal Republic of Germany-Netherlands Agreement of 1958;¹³² the Netherlands-Austria Agreement of 1958;¹³³ the Belgium-France Agreement of 1958;¹³⁴ and, the Italy-Malta Agreement of 1965.¹³⁵ Similar agreements exist but they have not been registered with the United Nations.¹³⁶

These passport abolition agreements have been complemented by bilateral agreements regarding the acceptance of persons at the frontier, and are effective in deportation cases involving undesirable persons.¹³⁷ Operation of these agreements eliminated any second thoughts about waiver of passport requirements since the undesirable person could be returned to the territory from which he gained entrance.¹³⁸

and France for the Purpose of Facilitating the Movement of Persons Between the Two Countries, March 15, 1958, 437 U.N.T.S. 362.

131. Exchange of Notes Constituting an Agreement Relative to the Abolition of Passports and Visas, March 29, 1958, 330 U.N.T.S. 101.

132. Exchange of Notes Constituting an Agreement Concerning the Abolition of Passport and Visa Requirements, April 9, 1958, 335 U.N.T.S. 237. *See also* Exchange of Notes Constituting an Agreement to Facilitate the Acceptance of Persons at the Frontier, Oct. 10, 1958, 486 U.N.T.S. 345.

133. Exchange of Notes Constituting an Agreement Concerning the Abolition of the Passport Requirements, May 30, 1958, 458 U.N.T.S. 147. This was altered by the Exchange of Notes Constituting an Agreement Modifying the Above-mentioned Agreement, June 13, 1959, 458 U.N.T.S. 158.

134. Exchange of Notes Constituting an Agreement Between Belgium and France Designed to Facilitate the Movement of Persons Between the Metropolitan Territories of Belgium and France, March 14, 1950, 314 U.N.T.S. 326.

135. Malta and Italy Exchange of Notes Constituting an Agreement Concerning the Introduction of Identity Cards as Travel Documents, Oct. 23, 1965, 550 U.N.T.S. 337.

136. *See* note 125 *supra*, Annex 1, Table IX, at 77.

137. These agreements have been concluded as follows: Exchange of Notes Constituting an Agreement to Facilitate the Acceptance of Persons at the Frontier, Oct. 10, 1958, 486 U.N.T.S. 345; Exchange of Notes Constituting an Agreement Concerning the Acceptance of Persons at the Frontier Between Austria and the Federal Republic of Germany, July 19, 1961, 414 U.N.T.S. 211; France and Austria Agreement Concerning the Acceptance of Persons at the Frontier, Nov. 30, 1962, 463 U.N.T.S. 173; Austria and Italy Exchange of Notes Constituting an Agreement Concerning the Acceptance of Persons at the Frontier, April 27, 1963, 491 U.N.T.S. 53; Agreement Concerning the Acceptance of Persons at the Common Frontiers Between the Territories of the Benelux States, April 16, 1964, 548 U.N.T.S. 27; Agreement on Acceptance of Persons at the Frontier, Feb. 15, 1965, 547 U.N.T.S. 3; Agreement Concerning the Acceptance of Persons at the Frontier, May 17, 1966, 571 U.N.T.S. 89.

138. For example, under the France and Austria Agreement Concerning the Acceptance of Persons at the Frontier, Nov. 30, 1962, 463 U.N.T.S. 174, Austria

O.E.C.D. encouragement of suppressing the passport requirement has led to certain types of unilateral action. The United Kingdom devised two unique plans to facilitate easier travel documentation for nationals of the O.E.C.D., Council of Europe member countries, and certain other European countries. One plan involved adoption of a pink Visitor's Card¹³⁹ which was printed in England, published by the British Travel Association, and distributed gratis to various travel agencies situated in European countries with which the United Kingdom concluded arrangements for the document's use.¹⁴⁰ The travel agency provides the potential tourist with a Card at the latter's request. This document is valid for a visit of three months or less, and must be presented together with the bearer's national identity card or other recognized identity document, to the Immigration officer at the British port of entry.

The second plan involved the creation of an inexpensive travel document called the British Visitor's Passport for use by United Kingdom citizens and British Protected Persons. Bilateral agreements¹⁴¹ were concluded by the United Kingdom with most of the West European countries to ensure international recognition and acceptance of the document. A British Visitor's Pass-

agreed to accept Austrian nationals, without formalities or resort to its embassy in France, whom French authorities wished to deport if it was proven or the presumption established that the proposed deportee possessed Austrian nationality. Austrian nationality could be established by a number of documents including a passport or identity document although it might be faulty in form or expired within the last decade. The deportee was to be readmitted to Austria on the presentation of such document. There is a procedure outlined to cover the contingency of the deportee being Austrian but not in possession of the documentation mentioned. Another provision pertains to acceptance of persons not nationals of either country but who entered France or Austria from the other Party's territory.

Under the same conditions and procedure, France agreed to readmit its nationals that Austria wished to deport. The French certificate of nationality or certificate of naturalization, passport or identity document even if faulty or expired within the past ten years, could be submitted to establish French nationality. This agreement did not alter the extradition arrangements in force between the Parties.

139. An example of the Visitor's Card is found in Annex 3 of the Exchange of Letters Constituting an Arrangement for the Abolition of Passports for Belgian Nationals Entering the U.K., April 1, 1960, 361 U.N.T.S. 135. See also Turack, *supra* note 126, at 526.

140. The United Kingdom concluded an extensive number of these agreements. See Turack, *supra* note 126, at 527-29.

141. The extensive list of agreements and description of their operation is found in Turack, *supra* note 126, at 531-33.

port¹⁴² cannot be held at the same time as a valid British passport. The applicant must complete an application form available at many Government offices, submit it personally before the issuing officer along with certain identity documentation, and in the company of witnesses have their descriptions inscribed on the travel document.

B. *Bilateral and Unilateral Efforts*¹⁴³

Ireland and the United Kingdom have had an informal agreement operative since 1952¹⁴⁴ whereby the nationals of each country could travel freely in the territory of the other without a passport or national identity card. Furthermore, Irish nationals can take up employment in the United Kingdom with ease. This arrangement has worked satisfactorily due to similar immigration policies and procedures and the close proximity of the two countries.

Since 1955, the United Kingdom has also concluded excursion arrangements with Belgium, France, and the Netherlands whereby the nationals of these three countries could visit the United Kingdom for visits as long as sixty hours without a passport.¹⁴⁵ In such arrangements, the passport has been waived in favor of presentation of a national identity card. Today, these and other European nationals need only present their national identity document and the Visitor's Card for entry to the United Kingdom for short sojourns. Since 1965, Ireland has allowed nationals from the Benelux countries, France, and the Federal Republic of Germany to enter its territory for sixty hours if they possessed an identity card.¹⁴⁶

After World War II, the United States developed simplified border-crossing procedures for use by Canadians and Mexicans.

142. A specimen of it is found in the Annexes to the Belgium-United Kingdom Convention Concerning the Acceptance of the British Visitor's Passport for Travel Between the United Kingdom and Belgium, *adopted* May 23, 1961, 410 U.N.T.S. 367.

143. Certain bilateral agreements are described as prototypes of working arrangements which can serve other countries if the right combination of factors are present. Other agreements are mentioned because of the impact they have created in recognizing the right to travel.

144. EUR. CONSULT. ASS., DEB., 5th SESS., at 1086-7 (Sept. 15, 1953). See also U. K. STAT. INSTR. 1952, No. 636, at 116.

145. See note 125 *supra*, at 39.

146. O.E.C.D., TOURISM IN O.E.C.D. MEMBER COUNTRIES 30 (Paris 1965). See also O.E.C.D., TOURISM IN O.E.C.D. MEMBER COUNTRIES 28 (Paris 1968).

Grounded in a policy of reciprocity, such procedures allowed substitution of other identity documentation for the passport.¹⁴⁷

Occasionally a State will unilaterally adopt a more liberal policy with respect to admission of tourists, perhaps to attract more foreign currency. For example, Greece dispensed with the passport requirement for nationals of Austria, Belgium, France, Germany, Italy and Luxembourg.¹⁴⁸ Similarly, Yugoslavia announced that as of June, 1971, foreign tourists could enter the country for a stay of up to thirty days upon presentation of a national identity card.¹⁴⁹

IV. FUTURE TRAVEL BETWEEN THE GERMAN DEMOCRATIC REPUBLIC AND THE FEDERAL REPUBLIC OF GERMANY

Before looking to future travel arrangements, a glimpse at the past is in order. The Western thesis has regarded the German Democratic Republic (G.D.R.) as being artificial because its government was brought into power in 1949 by the Soviet occupant. Travel arrangements between East and West Germany were fraught with an array of harassments and impediments even before the 1948 Berlin Blockade. A major factor in the travel document controversy has been the policy of non-recognition of the G.D.R. by N.A.T.O. countries. East Germans wishing to travel to the West could not use East German passports because they were not recognized. Instead they applied to the Allied Travel Office¹⁵⁰ in Berlin for a Temporary Travel Document and were required to obtain a visa from the country to be visited. Travel to East Germany by West Germans was possible and the bearer would use either a West German passport or national identity card.

In 1952, travel to East Germany by West Berliners was cut off by East German regulation. Nevertheless, travel to East Berlin by West Berliners was possible until the 1961 Berlin Wall became a reality. Thereafter, stringent measures allowed only periodic travel by West Berliners to the East German capital.

147. 8 M. WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 325 (1967).

148. O.E.E.C., *TOURISM IN EUROPE* 14 (Paris 1959).

149. See note 125 *supra*, at 39.

150. Weyl, *The Allied Travel Office: An Indefensible Institution*, 16 *REV. CONTEMPORARY L.* 17 (1969). Travel by East Germans has been very restricted both by their own government and by N.A.T.O. agreement. See *BRITISH PRACTICE IN INTERNATIONAL LAW* 27-8 (E. Lauterpacht ed. London 1965). See also 9 *INT'L & COMP. L. Q.* 263 (1960); 266 *PARL. DEB., H.C.* (5th ser.) 956-7 (1965).

Travel was arranged through the 1963 Federal Republic of Germany-German Democratic Republic Pass Agreement¹⁵¹ and the Protocol on Passes¹⁵² signed by the East German State Secretary and the West Berlin Senate Counselor. West Berliners could not travel to East Berlin after the Whitsun holiday in May, 1966. Before June 12, 1968, West Germans used identity cards for travel to West Berlin to create the impression that the G.D.R. enjoyed equal sovereignty with the Federal Republic of Germany and to gain further diplomatic recognition. On that day, East German authorities announced that West Germans would require passports and East German visas in order to travel to and from Berlin.¹⁵³

New hope did not appear until the signing of the 1971 Quadripartite Agreement¹⁵⁴ in Berlin by the Governments of the Union of Soviet Socialist Republics, France, the United States of America, and the United Kingdom. At this Conference the U.S.S.R. declared that transit traffic of persons by road, rail, and waterway through the territory of the German Democratic Republic between Western Sectors of Berlin and the Federal Republic of Germany would be facilitated and unimpeded, and that detailed arrangements concerning this civilian traffic would be worked out by the German authorities.¹⁵⁵

Part II, C, of the Agreement enlarges upon this commitment. This section allowed permanent residents of the Western Sectors of Berlin to travel and visit areas bordering on the Western Sectors of Berlin and areas of the German Democratic Republic which do not border on these Sectors, for compassionate, family, religious, cultural or commercial reasons, or as tourists. To facilitate this movement of persons, the U.S.S.R. and the G.D.R. informed the Parties to the Agreement that additional border-crossing points would be opened.¹⁵⁶

151. Text found in *AMERICAN FOREIGN POLICY: CURRENT DOCUMENTS* 554 (1966). This agreement was concluded without recognizing the East German regime.

152. Text found in *AMERICAN FOREIGN POLICY: CURRENT DOCUMENTS* 547 (1967). See also *FED. REP. GERMANY PRESS & INFO. OFF., THE BERLIN SETTLEMENT* 145 (Bonn 1972).

153. *N.Y. Times*, June 13, 1968, at 1, col. 6.

154. Quadripartite Agreement on Berlin and the Supplementary Arrangements, Sept. 3, 1971. *FED. REP. GERMANY PRESS & INFO OFF., THE BERLIN SETTLEMENT* 7 (Bonn 1972); 10 *INT'L LEGAL MATERIALS* 895 (1971).

155. *Id.*, art. 1, Part II A, and Annex I.

156. *Id.*, Annex III(2).

In Agreed Minute I, it was further stipulated that permanent resident West Berliners could travel to the Soviet Union by applying for a Soviet visa and presenting, at that time, both a passport stamped "issued in accordance with the Quadripartite Agreement of September 3, 1971," and an identity card or other appropriately drawn up document. The purpose of the secondary documentation was to confirm that the person requesting the visa was a permanent resident of West Berlin and it had to contain the bearer's address and a personal photograph. If issued the Soviet visa, the bearer can carry either the passport or identity card or both documents to enable him to seek the consular services of West German officials in the Soviet Union. The visa denotes the bearer's right of entry into the Soviet Union. Furthermore, the above-mentioned stamp must appear in all passports used by permanent resident West Berliners for journeys to such countries that may require it.

On December 20, 1971, an Arrangement¹⁵⁷ was signed between the German Democratic Republic and the West Berlin Senate on facilitating and improving the traffic of travelers and visitors. Permanent residents of West Berlin would be able to enter and visit East Berlin and East Germany for thirty days annually provided the visit was in consonance with the Quadripartite Agreement, and they presented a valid identity card and G.D.R. permit.¹⁵⁸ If the person does not possess the required identity card, he may use other West Berlin identification documentation or a corresponding document which may be issued by G.D.R. authorities.¹⁵⁹ Visits may also take place for social, cultural, scientific, economic or commercial purposes, and entry may also be permitted for compassionate grounds if the traveler's thirty day limitation has been used. Arrangements also cover group travel and one day visits without overnight stay. The Arrangement is supplemented by two Agreed Protocols.¹⁶⁰

The agreements entered into force on June 4, 1972; however, prior to implementation of all the agreements, the East German authorities granted a concession to West Berliners by allow-

157. Arrangement Between the Government of the German Democratic Republic and the Senate on Facilitating and Improving the Traffic of Travellers and Visitors, Dec. 20, 1971, reproduced in 11 INT'L LEGAL MATERIALS 11 (1972).

158. *Id.*, art. 1 and art. 2(1). The permits will be issued at designated frontier-crossing points.

159. *Id.*, art. 2(3).

160. See note 157 *supra*, at 12.

ing them to visit East Berlin and certain districts of East Germany over Easter and the Whitsun holiday.¹⁶¹ The prospect of East Berliners being able to travel to West Berlin for "urgent family matters" has also been espoused by the East German State Secretary.¹⁶²

V. ASSESSMENT

This survey reflects the concrete positive achievements currently in operation in the free movement of individuals. The many instances which offend the right to free travel have been purposely side-stepped. The Nations of the world must emphasize the positive and eradicate the obstacles which hinder the exercise of the right of free movement across national frontiers.

Implementation of the machinery provided in the International Covenant on Civil and Political Rights,¹⁶³ the Optional Protocol¹⁶⁴ on the universal level, and regional implementation of the Pact of San José in the Western hemisphere can bring us closer to attaining such goals. Although the United Nations is obviously concerned with this topic, the indications over almost a decade point to a low priority. I.C.A.O. continues to be most active in the travel document-freedom of travel relationship. It is paradoxical that experimentation is in progress with a view toward development of a new standardized travel document in the form of an embossed, or coded, plastic card to replace the booklet-type passport, while standardization of the latter is still illusive. The passport conferences sponsored by the League of Nations and the United Nations have produced workable recommendations with an aim towards uniformity. Standardization of the present passport on criteria of size, format, location of identifying information and dual language with one language being either English or French should be encouraged. This standardization would be of great assistance to immigration officers

161. See *The Times* (London), March 30, 1972, at 17; *id.*, April 1, 1972, at 3; *id.*, April 5, 1972, at 4; *id.*, April 6, 1972, at 5; *id.*, April 11, 1972, at 5.

162. *N.Y. Times*, April 22, 1972, at 2, col. 1. Earlier in 1972, it was announced that under agreements already in operation between the G.D.R. on the one hand, and Czechoslovakia and Poland on the other hand, East Germans would only require their identity card instead of a national passport for travel to these countries. *Id.*, Jan. 2, 1972, at 18, col. 4. *The Globe and Mail*, Toronto, Jan. 15, 1972; *TIME* Jan. 24, 1972, at 28.

163. See note 9 *supra*.

164. See note 11 *supra*.

and would minimize the time spent by the bearer at the border-crossing points.

The Scandinavian and Benelux passport unions have contributed to freedom of movement. A useful preliminary study should be undertaken to determine the obstacles standing in the way of creating a passport union among the Common Market countries.

Neighboring States should study the prospects of agreement on waiver of the passport requirement for the other's nationals for short visits. Both the United States-Canada and Ireland-United Kingdom arrangements could serve as useful prototypes.

International travel is an instrument of peace and its development to achieve better understanding among the peoples of the world should be encouraged. Preliminary to most international travel is the need of a passport. As the passport can be an obstacle to travel, compilation of the passport laws and regulations of the world's political entities should be undertaken for further research and study. This can be done successfully with cooperation from the United Nations as this institution has accomplished the same end in other fields.