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# INTERNATIONAL REVIEW

## FREEDOM OF MOVEMENT AND AIRCRAFT PERSONNEL

BY DANIEL C. TURACK†

### I. THE PRE-ICAO PERIOD

FOLLOWING World War I, civil aviation began a period of moderate expansion which necessitated worldwide regulation. The International Convention<sup>1</sup> relating to the regulation of aerial navigation signed at Paris on 13 October 1919 was designed to meet that purpose. Unfortunately, no provision was made for facilitation of the aircrew with respect to passport or immigration matters, and arrangements to exempt the aircrew from these obligations were left to be worked out between interested States. The international agreements on air navigation concluded in the first years after the war reflected an uncertain attitude by the Contracting Parties as to whether the passport regimes which sprung up during the war would continue. Article 6 of the Great Britain-Switzerland Provisional Convention,<sup>2</sup> signed at Berne on 6 November 1919 regulating aerial circulation between the two countries, was indicative of this uncertainty; it provided that the crew "must carry certificates showing their nationality, their identity, their military rank, and must be provided, if necessary, with passports."

In just a few short years, the uncertainty disappeared as a strict international regime of passports thrived. It was commonplace for States to require crew members to possess a passport for entry into their territory, and no provision was made for accepting presentation of a professional licence or certificate of competency in lieu of a passport. The Argentina-Uruguay Aviation Convention, effective as of 18 November 1922 well illustrates the point, as it stipulated "the crew must be provided in all cases with passports. Their passports are also subject to all the require-

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<sup>1</sup> 1944 U.S. DEP'T OF ST. PUB. 2143; 112 BRIT. & FOR. ST. PAPERS 931 (1919). Parties to the Convention were Argentina, Australia, Belgium, Bulgaria, Canada, Czechoslovakia, Denmark, Estonia, Finland, France, Great Britain, Greece, India, Iraq, Ireland, Italy, Japan, Latvia, the Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Rumania, Spain, Sweden, Switzerland, Liechtenstein, Thailand, Union of South Africa, Uruguay and Yugoslavia. Bolivia, Chile, Iran and Panama became Parties to the Convention but subsequently withdrew.

<sup>2</sup> Provisional Convention Regulating the Aerial Circulation Between Switzerland and the United Kingdom, 6 Nov. 1919, art. 6, 1 L.N.T.S. 37, 112 BRIT. & FOR. ST. PAPERS 775 (1919). The Convention came into force on 9 Feb. 1920. A similar provision is found in Article 6 of the Provisional Convention Regulating the Aerial Circulation Between France and Switzerland, 9 Dec. 1919, 1 L.N.T.S. 30, 112 BRIT. & FOR. ST. PAPERS 1057 (1919); Article 6 of the Provisional Convention Regulating the Aerial Circulation Between Germany and Switzerland, 14 Sept. 1920, 2 L.N.T.S. 331; Article 5 of the Great Britain and Denmark Provisional Agreement Relating to Air Navigation, 23 Dec. 1920, 2 L.N.T.S. 249; and, Article 5 of the Provisional Agreement between Great Britain and Sweden Relating to Air Navigation, 16 Feb. 1921, 3 L.N.T.S. 234.

ments of the laws and regulations of the country to which they belong, and in which they land."<sup>3</sup>

Parties to the 1919 International Convention abided by the requirements set out with respect to licences and certificates of competency to be issued to the aircrew,<sup>4</sup> so that the bearer's status and description were fairly extensive. Some few States recognized the difficulties posed by the stringent passport requirement for aircrew and its impediment to the efficient operation of international air traffic. These States sought to alleviate the problem through international agreement. One of the earliest efforts is found in the British-Greek Agreement<sup>5</sup> concluded at Athens on 27 July 1921 for the exemption of aircraft crews from British and Greek passport and visa regulations during the year 1921. The Agreement was temporary and provided that during the remainder of the year, pilots and operative members of the crew of airships and aeroplanes who carried papers establishing their identity, nationality, and record on ad hoc lists supplied and amended from time to time by each country would be exempted from British and Greek passport and visa regulations before starting on their flights to the other Party's territory.

More comprehensive agreements for waiver of the passport requirement and acceptance of the aircrew member's official papers as travel documents did not appear until 1937. On 21 July 1937 a multilateral agreement<sup>6</sup> was reached between the United Kingdom, Australia, New Zealand, India, and Denmark. The parties agreed on a reciprocal basis, that all Danish subjects arriving by air as members of the operating personnel of aircraft employed on regular Danish airlines and registered in Denmark could enter the territory of the other parties, Newfoundland, all British Colonies, territories under British protection, and designated territories under British, Australian, and New Zealand mandate on presentation of their professional licences or certificates of competency instead of passports. All British subjects or British protected persons in the above-mentioned territories could enter Denmark in similar circumstances without a passport if they presented a certificate of competency or licence issued in either Australia, New Zealand, India, Newfoundland, the British Colonies, Protectorates, or Mandated Territories. It was further stipulated that the crew members' documents conform to the standard form prescribed in Annex E to the International Air Navigation Convention. Although the

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<sup>3</sup> Article 7, paragraph 2. The Convention is found in 9 J. AIR L. & COM. 486 (1938). Similarly, see Provisional Agreement Relating to Air Navigation Between Denmark and Germany, 25 Apr. 1922, art. 3, 18 L.N.T.S. 227, 118 BRIT. & FOR. ST. PAPERS 167 (1922); Agreement Between Belgium and Denmark Relating to Air Navigation, 28 June 1923, art. 6, 20 L.N.T.S. 59, 118 BRIT. & FOR. ST. PAPERS 46 (1922); and the Provisional Agreement Relating to Air Navigation Between France and the Netherlands, 2 July 1923, 20 L.N.T.S. 131, 118 BRIT. & FOR. ST. PAPERS 340 (1922).

<sup>4</sup> The standards to be met by Contracting Parties with respect to these documents is listed in Annex E to the Convention, Ch. II, and models of the documents are found in Appendix E<sup>1</sup> to Annex E, *supra* note 1.

<sup>5</sup> Agreement Between Great Britain and Greece for the Exemption of Aircraft Crews From Passport and Visa Regulations, 27 July 1921, 6 L.N.T.S. 347.

<sup>6</sup> Exchange of Notes Regarding Documents of Identity for Aircraft Personnel, 21 July 1937, 184 L.N.T.S. 271.

Agreement resulted in a suppression of the passport requirement, it left the visa requirements in each of the territories intact.

The United Kingdom, Australia, New Zealand and India arrived at similar multilateral agreements with Norway<sup>7</sup> at Oslo on 11 October 1937, with Belgium<sup>8</sup> at Brussels on 29 April 1938, with Switzerland<sup>9</sup> at Berne on 17 May 1938, with Sweden<sup>10</sup> at Stockholm on 30 May 1938, with the Netherlands<sup>11</sup> at The Hague on 21 August 1939, and with Portugal<sup>12</sup> at Lisbon on 8 January 1940 (despite the fact that World War II was in progress at the time of concluding the last-mentioned agreement and the English speaking countries were directly involved in the conflict). Perhaps the most important of these treaties was the multilateral agreement, similar to those aforementioned, which was arranged between the United Kingdom, India and France at Paris on 15 July 1938.<sup>13</sup>

On 30 October 1936, a bilateral agreement<sup>14</sup> for waiver of the passport requirement and acceptance of the aircraft personnel's professional identity document was concluded at Lisbon between Portugal and South Africa. The following year, Belgium concluded similar agreements with Italy<sup>15</sup> at Rome on 1 May, with Sweden<sup>16</sup> at Stockholm on 15 June, and with Denmark<sup>17</sup> at Copenhagen on 16 September. The pattern of these bilateral agreements was virtually the same. Briefly, each country agreed, on the basis of reciprocity, to recognize the certificates of competency and licences presented by the flying staff of aircraft as identity documents in place of passports if these persons were nationals of the other Contracting Party arriving on an aircraft belonging to a regular air transport line of that Party and registered by that Party. Bearers of these documents were not excused, however, from complying with immigration regulations in force in the place of arrival. Each Contracting Party retained complete discretion to prohibit the entry of any bearer of these documents if it considered that person undesirable.

<sup>7</sup> Exchange of Notes Regarding Acceptance of Aircraft Pilots and Navigators Certificates In Lieu of National Passports, *effective* 11 Oct. 1937, 182 L.N.T.S. 173.

<sup>8</sup> Exchange of Notes Regarding an Agreement on Documents of Identity for Aircraft Personnel, 29 Apr. 1938, 190 L.N.T.S. 115.

<sup>9</sup> Exchange of Notes Constituting an Agreement Regarding Documents of Identity for Aircraft Personnel, 17 May 1938, 192 L.N.T.S. 317.

<sup>10</sup> Exchange of Notes Constituting an Agreement Regarding the Mutual Recognition of Documents of Identity for Aircraft Personnel, 1 July 1938, 191 L.N.T.S. 299.

<sup>11</sup> Exchange of Notes Constituting an Agreement Regarding Documents of Identity for Aircraft Personnel, 21 Aug. 1939, 198 L.N.T.S. 343.

<sup>12</sup> Exchange of Notes Constituting an Agreement Respecting Documents of Identity for Aircraft Personnel, 8 Jan. 1940, 203 L.N.T.S. 133.

<sup>13</sup> Exchange of Notes Constituting an Agreement Regarding Documents of Identity for Aircraft Personnel, 15 July 1938, 195 L.N.T.S. 73. The Agreement also extended to a great number of British and French territories over which the United Kingdom and France exercised some measure of authority. The Agreement was later extended to Burma in an exchange of Notes at Paris dated 8 June 1939 between the United Kingdom and France, Great Britain, Treaty Series No. 50 (1939), Cmnd. 6125.

<sup>14</sup> Great Britain, Treaty Series No. 37 (1937), Cmnd. 5565.

<sup>15</sup> Exchange of Notes Between Belgium and Italy Constituting an Agreement Regarding Documents of Identity for Aircraft Personnel, 1 May 1937, 198 L.N.T.S. 73.

<sup>16</sup> Exchange of Notes Between Belgium and Sweden Constituting an Agreement Regarding Documents of Identity for Aircraft Personnel, 15 June 1937, 198 L.N.T.S. 77.

<sup>17</sup> Exchange of Notes Between Denmark and Belgium Constituting an Agreement Regarding Documents of Identity for Aircraft Personnel, 16 Sept. 1937, 197 L.N.T.S. 67.

During the 21st Session of the Committee for Communications and Transit of the League of Nations held at Geneva in August 1938, the Belgium representative suggested a possible study to consider whether the professional documents held by aircraft personnel could be accepted in lieu of passports. The Belgium representative drew attention to the parallel between crew members of air transport and seamen engaged in maritime transport, noting that arrangements existed for recognition of seamen's papers as travel and identity documents in the place of national passports. He also raised the valid issues in support of his proposal that it was sometimes necessary to replace aircraft personnel at a moment's notice or that unexpected flights might have to take place without sufficient time for the crew to obtain the necessary passports and visas. In other words, the passport and visa requirements for aircraft personnel hampered the efficient functioning of international air transport services. His proposal was approved and a committee of experts was entrusted with the study.<sup>18</sup> However, before any positive achievement could be attained World War II began.

## II. THE ICAO REGULATIONS

The 1944 Chicago Conference on International Civil Aviation bestowed various regulatory powers on the International Civil Aviation Organization (ICAO) under the Chicago Convention in order to fulfill one of its objectives—the facilitation of international air traffic through universal uniformity of aviation law. In accordance with Article 37, paragraph 2 (j) of the Convention which provides, *inter alia*, that ICAO “shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with customs and immigration procedures . . . and such other matters concerned with safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.”<sup>19</sup> The ICAO Council adopted International Standards and Recommended Practices on Facilitation (designated as Annex 9 to the Convention) on 25 March 1949. Over the years, Annex 9 has undergone periodic revision, and for the most part the ICAO Member States have conformed with ICAO's quasi-legislative provisions pursuant to Article 22 of the Convention. This Article requests the Member States “to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between the territories of Contracting States, and to prevent unnecessary delays to aircraft, crew . . . especially in the administration of the laws relating to immigration . . . and clearance.” Also Article 23 of the Convention states that: “so far as it may find practicable, to establish . . . immigration procedures affecting international air navigation in accordance with the practices which may be established or recommended from time

<sup>18</sup> League of Nations, Committee for Communications and Transit, 21st Sess. 26, Geneva, Doc. No. C. 266/M.159/1938. VIII (1-4 Aug. 1938).

<sup>19</sup> Convention on International Civil Aviation, 4 Apr. 1947, 61 Stat. 1180 (1947), 15 U.N.T.S. 295.

to time pursuant to this Convention." Among its International Standards and Recommended Practices,<sup>20</sup> ICAO has included provisions concerning the use and acceptance of the crew member's licence or certificate as a suitable travel document.

We turn now to an examination of the relevant Facilitation Regulations as laid down in Annex 9. Each Member State of the Organization is requested to accept the licence possessed by an airline flight crew member without any passport or visa for the bearer's temporary admission to the State, providing the bearer remains either at the airport where he landed or within the perimeter of the cities adjacent to the airport and departs on the same aircraft or on his next regularly scheduled flight.<sup>21</sup> A flight crew member is defined as "a licensed crew member charged with duties essential to the operation of an aircraft during flight time," and "airline" refers to any air transport enterprise offering or operating a scheduled international air service as foreseen in Article 96 of the Convention.<sup>22</sup>

The licence referred to must contain the specifications enumerated in Annex 1 to the Convention which are: (1) the name of the issuing State (in bold type); (2) title of the licence (in very bold type); (3) number; (4) name of the holder in full; (5) address of the holder; (6) nationality of the holder; (7) signature of the holder; (8) authority and where necessary, conditions under which the licence is issued; (9) certification concerning validity and authorization for holder to exercise privileges appropriate to the licence; (10) signature of the officer issuing the licence and the date of such issue; (11) seal or stamp of authority issuing the licence; (12) ratings; (13) remarks; (14) any other details desired by the State issuing the licence.<sup>23</sup>

For entry without a passport or visa, the flight crew member's licence had to contain in addition: (A) a certification that he could re-enter, at any time, the State which issued the licence, upon production of that licence; (B) a photograph of the bearer; (C) the place and date of birth of the bearer.<sup>24</sup> The standard was proposed in such a way as to encourage the Contracting Parties to issue these licences to resident alien flight crew members as well as their own qualified nationals. Indeed, the test for licensing is not based on nationality. Ideally any qualified person would be able to serve as a flight crew member on any aircraft despite

<sup>20</sup> The Council of ICAO has defined "standards" and "recommended practices" in Annex 9 as follows: "Standards: 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 Art. 54(1) of the Convention, and in respect of which non-compliance must be notified by States to the Council in accordance with Art. 38. Recommended Practices. 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 Art. 54(1) of the Convention, and to which Contracting States will endeavour to conform in accordance with the Convention." Forward, International Standards and Recommended Practices, Facilitation, Annex 9 to the Convention on International Civil Aviation (5th ed., Apr. 1964).

<sup>21</sup> *Id.* at ch. 3, 3.14.

<sup>22</sup> *Id.* at ch. 1.

<sup>23</sup> International Standards and Recommended Practices, Personnel Licensing, Annex 1 to the Convention on International Civil Aviation (5th ed., Nov. 1962), ch. 5, 5.1.1.

<sup>24</sup> *Supra* note 20, at Annex 9, ch. 3, 3.14.

the fact that he is not a national of the State of registry of the aircraft. As the standards in the Annexes are accepted by the Member States voluntarily, it appears that at the present time not all of ICAO's members have been persuaded to adopt these measures. Mandatory notification by the members, regarding departures from the standards, records the few divergencies of practice.<sup>25</sup>

ICAO members were asked to extend privileges of temporary admission as outlined, to airline flight crew members who held a licence which did not conform to the recommended specifications and to unlicensed crew members of an airline provided these persons possessed a valid crew member certificate.<sup>26</sup> The Organization also recommended a similar extension (1) to a flight crew member of an aircraft operated for remuneration but not engaged in scheduled international air services if he departed with the aircraft on its first flight out of the State,<sup>27</sup> and (2) to such individual if his licence did not meet the requisite specifications or to an unlicensed crew member of an aircraft operated for remuneration (but not engaged in scheduled international air services) provided such persons possessed a valid crew member certificate and departed with the aircraft on which they arrived, on its first flight out of the State.<sup>28</sup>

Another standard practice of ICAO calls upon each member to accept the ICAO approved licence or the ICAO approved crew member certificate in lieu of a passport and visa whenever a crew member of an airline must travel to another State to join an aircraft.<sup>29</sup> ICAO proposes a similar recommendation to benefit crew members of an aircraft operated for remuneration but not engaged in scheduled international air services.<sup>30</sup>

### III. APPLICATION OF THE ICAO REGULATIONS AND OTHER INTERNATIONAL AGREEMENTS

The first edition of Annex 9 of the ICAO Convention did not come into force until 1 March 1950. A number of the ICAO members concluded

<sup>25</sup> Namely, Chile, China, Indonesia, Iran, Madagascar, the Netherlands, Nigeria, Portugal, United States of America, Upper Volta, and Yugoslavia. For the requirements of these States see, Supplement to Annex 9, Facilitation, Differences between the national practices of Contracting States and Annex 9 as notified to ICAO pursuant to Art. 38 of the Convention and the Council's Resolution of 20 Nov. 1963.

<sup>26</sup> *Supra* note 20, at Annex 9, ch. 3, 3.15. The "Crew Member Certificate" is found in Appendix 5, Annex 9. Chile, China, Iran, the Netherlands, New Zealand, Nigeria, Portugal, United States of America, and Upper Volta have indicated to ICAO that their practice does not comply with the outlined standard. Supp. to Annex 9.

<sup>27</sup> *Supra* note 20, at Annex 9, ch. 3, 3.14.1. Differences in the recommended extension have been notified to ICAO by China, the Federal Republic of Germany, India, Iran, the Netherlands, Nigeria, Portugal, Switzerland, the United States of America and Upper Volta. Supp. to Annex 9.

<sup>28</sup> *Supra* note 20, at Annex 9, ch. 3, 3.15.1. Differences to the recommended practices have been notified to ICAO by China, the Federal Republic of Germany, India, Iran, the Netherlands, New Zealand, Nigeria, Portugal, Switzerland, United States of America, Upper Volta, and Yugoslavia. Supp. to Annex 9.

<sup>29</sup> *Supra* note 20, at Annex 9, ch. 3, 3.15.2. Differences to the standard practice have been notified to ICAO by Australia, Chile, China, the Federal Republic of Germany, India, Iran, Japan, the Netherlands, New Zealand, Norway, Portugal, South Africa, Sweden, Switzerland, Turkey, United Kingdom, United States of America, Upper Volta. Supp. to Annex 9.

<sup>30</sup> *Supra* note 20, at Annex 9, ch. 3, 3.15.3. Differences to the recommended practice have been notified to ICAO by China, the Federal Republic of Germany, India, Iran, Japan, the Netherlands, New Zealand, Norway, the Philippines, Portugal, Turkey, the United Kingdom, United States of America and Upper Volta. Supp. to Annex 9.

bilateral agreements for waiver of the passport requirement for aircraft personnel before Annex 9 was formulated or after it was approved by the Organization but before it went into force. In these circumstances, Belgium and Switzerland concluded an agreement<sup>31</sup> at Berne on 1 September 1948 relating to the free transit of the staff engaged in air services. In preliminary correspondence the governments exchanged a number of types of documents held by their respective aircraft personnel, presumably professional licences and other certificates of competency issued by their air transport authorities. Under the agreement in what might be termed "the standard clause," Belgium agreed to accept these documents in lieu of national passports and visas when presented by a Swiss member of the operating personnel of a Swiss airline company arriving by aircraft on a regular route for entry into Belgium, the Belgian Congo, and Ruanda-Urundi. Similarly, the Belgian operating personnel on Belgian aircraft arriving on regular routes could enter Switzerland solely on presentation of one of the aforementioned documents. It was explicit that the above-mentioned persons had to arrive on an aircraft belonging to a Swiss or Belgian airline company registered in one of the aforementioned territories and flying regular routes in the circumstances indicated. Either Party could still prevent entry to any person whom it deemed undesirable.

Belgium arranged a similar agreement<sup>32</sup> with France at Paris on 28 October 1948 for the reciprocal entry of the Belgian and French aircrews of regular French and Belgian air transport companies to Belgium, the Belgian Congo, Ruanda-Urundi, France, and the territories of the French Union. However, this agreement contained a clause limiting entry to the airports of the territories indicated and to short stays necessitated by stops; in the latter situation a special *laissez-passer* or safe conduct had to be obtained in order to leave the airport. A simplified version of the Belgium-Switzerland agreement was concluded between Belgium and Sweden at Stockholm on 16 December 1948.<sup>33</sup> This agreement varied from the first mentioned agreement in that holders of the certificates of competency or professional licences had to be allowed to re-enter the country issuing the documents. The Belgium-Switzerland agreement also served as a prototype for Belgium's agreement with Italy<sup>34</sup> concluded at Rome on 1 January 1949. The Belgium-Sweden agreement formula was followed in the Belgium-Denmark agreement<sup>35</sup> arranged at Copenhagen on 31 May 1949.

After Annex 9 of the ICAO Convention entered into force, a number

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<sup>31</sup> Agreement Between Belgium and Switzerland Concerning the Free Transit of Staff Engaged in Air Service, 1 Sept. 1948, 23 U.N.T.S. 139.

<sup>32</sup> Agreement Between Belgium and France Relating to the Free Transit of Air Navigation Staff of the Two Countries [1948], 25 U.N.T.S. 151.

<sup>33</sup> Agreement Between Belgium and Sweden Concerning the Free Transit of Air Crews, 16 Dec. 1948, 26 U.N.T.S. 3.

<sup>34</sup> Agreement Between Belgium and Italy Concerning the Simplification of Regulations Regarding the Identity Documents of Air Crews, 1 Jan. 1949, 26 U.N.T.S. 151. The Agreement abrogated and replaced the Agreement of 1 May 1937 Between Belgium and Italy Regarding Documents of Identity for Aircraft Personnel, 198 L.N.T.S. 73.

<sup>35</sup> Agreement Between Belgium and Denmark Concerning Free Transit of Airline Crews, 31 May 1949, 32 U.N.T.S. 337.



of countries which accepted the apposite provisions and were party to waiver of passport agreements regarded the former as superseding the latter; consequently, they sought to formally terminate their agreements. This course was followed by New Zealand<sup>36</sup> and the United Kingdom<sup>37</sup> with respect to their agreement of 29 April 1938 with Belgium on 1 September 1953 and 5 November 1954, respectively. The United Kingdom and New Zealand agreed to terminate their agreements with Sweden<sup>38</sup> of 30 May 1948, with Denmark<sup>39</sup> dated 21 July 1937, with Norway<sup>40</sup> of 11 October 1937, with the Netherlands<sup>41</sup> dated 21 August 1939, and with Switzerland<sup>42</sup> dated 17 May 1938, on 29 October 1954, 7 May 1955, 12 July 1955, 18 October 1954 and on 9 May 1955, respectively. France and the United Kingdom agreed to terminate their agreement of 15 July 1938 on 29 August 1955.<sup>43</sup>

Despite the general acceptance of Annex 9, a number of countries preferred to implement the relevant provisions pertaining to recognition of documents of professional qualification in lieu of passports of flight personnel by bilateral agreement based on reciprocity. This was the Netherlands approach in agreements with Italy<sup>44</sup> on 21 December 1953 and with Portugal<sup>45</sup> on 26 March 1957. In the Netherlands-Italy agreement "the standard clause" stressed that the licences and certificates presented by the aircrew were to conform with the standards and recommended practices of Annex 9. Moreover, each Party agreed to readmit unconditionally any of their aircrew members who might be refused entry by the other Party. Under the Netherlands-Portugal agreement, the professional documents issued pursuant to Annex 9 were to be recognized reciprocally as identity documents when presented by members of the crew (1) of an aircraft belonging to an airline designated by either Government and (2) of aircraft registered in either country which were engaged for remuneration, but not operated on a scheduled international service. Furthermore, it was

<sup>36</sup> Agreement Between New Zealand and Belgium Terminating the Agreement of 29 April 1938 Relating to Identity of Aircrew Members, 1 Sept. 1953, 192 U.N.T.S. 283.

<sup>37</sup> Agreement Between Belgium and the United Kingdom Terminating the Agreement Regarding Documents of Identity for Aircraft Personnel of 29 April 1938, 20 Oct. 1954, 209 U.N.T.S. 69.

<sup>38</sup> Agreement to Terminate the Agreement of 30 May 1938, Respecting Documents of Identity for Aircraft Personnel of 20 May 1938, 29 Oct. 1954, 209 U.N.T.S. 75. The 1938 Agreement was also subsequently terminated in respect of Sweden, Australia, India, Pakistan, 262 U.N.T.S. 480.

<sup>39</sup> Agreement to Terminate the Agreement Regarding Documents of Identity for Aircraft Personnel of 21 July 1937, 7 May 1955, 218 U.N.T.S. 397. The Agreement to terminate the Agreement of 21 July 1937 entered into force on 7 May 1955 with retroactive effect from 26 October 1954.

<sup>40</sup> Agreement to Terminate the Agreement for the Acceptance of Aircraft Pilots and Navigators Certificates in Lieu of National Passports of 11 Oct. 1937, 12 July 1955, 218 U.N.T.S. 396. Australia was also a Party to the termination Agreement.

<sup>41</sup> Termination of the Agreement Regarding Documents of Identity for Aircraft Personnel of 21 Aug. 1939, 18 April 1955, 218 U.N.T.S. 398.

<sup>42</sup> Termination of Agreement Regarding Documents of Identity for Aircraft Personnel of 17 May 1938, 29 Nov. 1955, 221 U.N.T.S. 443. Treaty Series No. 66 (1955), Cmd. 9584.

<sup>43</sup> Termination of Agreement Regarding Documents of Identity for Aircraft Personnel of 15 July 1938, 29 Nov. 1955, 221 U.N.T.S. 444.

<sup>44</sup> Agreement Between the Netherlands and Italy for the Simplification of Entry Requirements and Procedures for Flight Personnel, 21 Dec. 1953, 189 U.N.T.S. 25.

<sup>45</sup> Agreement Between the Netherlands and Portugal Concerning Identity Documents for Aircraft Crews, 26 Mar. 1957, 288 U.N.T.S. 47. The Agreement entered into force on 12 April 1957.

understood that the bearers of these documents had to be nationals of either Party or the nationals of a third country with which Portugal had concluded or might conclude a similar agreement on this subject. Another bilateral agreement on the subject was concluded between Portugal and Belgium at Lisbon on 26 March 1957.<sup>46</sup> Thereunder, it was reciprocally agreed that professional identity documents conforming to the forms prescribed in the annexes to the Chicago Convention, issued by either Party would be accepted for entry into, departure from, and transit through metropolitan and overseas territories of either Party when presented by the nationals of either Party or nationals of another State (with which either Party concluded a similar agreement) who were members of the crew (1) of any aircraft employed in the operation of international services specified in the annex to the agreement between Portugal and Belgium on air transport,<sup>47</sup> or (2) of any aircraft which was operated for remuneration but was not engaged in a regular international service. The agreement<sup>48</sup> between Pakistan and Denmark regarding mutual acceptance of crew members certificates was effected at Karachi on 5 September 1959 whereby Denmark agreed to extend the facilities specified in the relevant sections of Annex 9 to the ICAO Convention to Pakistan and foreign aircrew members on Pakistan's national airlines on the basis of reciprocity.

States which were not members of ICAO also sought agreement for waiver of the passport requirement for aircrew members of their national airlines. One such agreement was concluded between the United Kingdom and Yugoslavia at Belgrade on 22 July 1959,<sup>49</sup> before Yugoslavia became a member of ICAO. It was agreed that valid "licences or crew members certificates of aviation" endorsed with a clause guaranteeing re-entry facilities to the issuing country would be recognized in lieu of passports and visas when presented by crews of aircraft belonging to civil aviation enterprises of either country. The bearer of the licence or certificate could have any nationality but had to be a regular employee of an airline designated in accordance with the United Kingdom-Yugoslavia Air Services Agreement<sup>50</sup> of 3 February 1959. In addition, Yugoslavia had to submit a list of the names of crew members of each aircraft to the immigration authorities of the United Kingdom on arrival of the aircraft in the United Kingdom. On the other hand, the United Kingdom had to send a list to the Yugoslav aviation authorities for approval of the crew members employed by designated airlines of the United Kingdom before they

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<sup>46</sup> Agreement Between Portugal and Belgium on Air Transport, 26 Mar. 1957, 268 U.N.T.S. 352. An additional Agreement was concluded by Portugal and Belgium at Lisbon on 28 February 1958 making the Agreement of 26 March 1957 applicable to the flying licenses and crew member's certificates issued in the form prescribed in the Annexes to the ICAO Convention by Belgian Congo and Angolan air transport authorities, 304 U.N.T.S. 346. This Agreement entered into force on 29 April 1958 and was also applicable to Ruanda-Urundi.

<sup>47</sup> 34 U.N.T.S. 49; 133 U.N.T.S. 330.

<sup>48</sup> Agreement Between Pakistan and Denmark Regarding Mutual Acceptance of Crew Members Certificates, 5 Sept. 1959, 354 U.N.T.S. 377. The Agreement entered into force on 1 October 1959.

<sup>49</sup> Agreement Between the United Kingdom and Yugoslavia Concerning the Mutual Recognition of Aircrew Licenses, 22 July 1959, 374 U.N.T.S. 319.

<sup>50</sup> Agreement Between the United Kingdom and Yugoslavia Concerning Air Services, 3 Feb. 1959, 359 U.N.T.S. 339.

arrived in Yugoslavia. Authorized aircrew members arriving on a regular international service flight could enter the other Party's territory and remain at the airport or at a city nearest to the airport on the condition that they had to depart on the same aircraft on which they arrived or the next regularly scheduled flight. Crew members arriving on a specially permitted flight could enter the other Party's territory under similar circumstances if they departed on the same aircraft. Apparently only British European Airways was a designated airline under the agreement for a further agreement<sup>51</sup> was concluded between the parties at Belgrade on 24 March 1960, to extend the agreement of 22 July 1959 to the aircrews of other British companies.

#### IV. CONCLUSIONS

In view of the voluntary adherence by the vast majority of the world's political entities to the ICAO Regulations regarding acceptance of certificates or licences held by crew members of aircraft engaged in international civil aviation in lieu of passports and visas, we have come as close to universal practice in a field as one could hope for in the absence of a world legislature. Given time, even the slight divergencies of attitude which exist may be eroded.

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<sup>51</sup> Agreement Between the United Kingdom and Yugoslavia Extending the Agreement of 22 July 1959, 24 Mar. 1960, 374 U.N.T.S. 326. The Agreement entered into force on 1 April 1960.