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AIRLINE FRONTIER FORMALITIES AND CUSTOMS-FREE AIRPORTS

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INTERNATIONAL air transportation began in 1785 with a flight in a hot air balloon across the English Channel,¹ and the first crossing of national frontiers in a heavier than air machine took place in 1909 when Louis Bleriot flew from France to England in thirty-seven minutes.² Commercial international sky services were initiated on February 8, 1919 with the movement of eleven passengers and their baggage from Paris to London in a Farman "aerobus." Only five days later "the same plane essayed the flight from Paris to Brussels: apparently the latter route was considered to have the greater possibilities and a regular weekly service was inaugurated on March 22, 1919."³ This was only a few months after the cessation of hostilities in World War I—a conflict which demonstrated and accelerated the possible development of human flight—and the major historic event of 1919 was the conference called to dictate the terms of a peace treaty and to set the basis for an effective inter-governmental organization. The importance of international trade and transport was not forgotten by the statesmen assembled to found the League of Nations. Indeed, Article 23 (e) of the Covenant of the League required each member to "make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League."⁴ A Convention for the Regulation of Air Navigation⁵ was adopted on October 13, 1919 by a commission appointed by the Paris Peace Conference, with the customs clauses of Annex H of that document playing a significant part in the overall development of aircraft "clearance" in Europe between the great wars.

Annex H of the Paris Convention of 1919 required planes flying across a frontier to depart and land at "customs aerodromes" which the nations would designate,⁶ and that these aircraft cross the border

¹ From Dover to Calais. WILSON AND BRYAN, *AIR TRANSPORTATION*, p. 9, (1949).

² COOPER, *THE RIGHT TO FLY*, p. 17 (1947).

³ S. Ralph Cohen, *"IATA—The First Three Decades,"* 9. This monograph was published by the International Air Transport Association in 1949.

⁴ Official text as issued by Secretariat (Information Section), Geneva, Feb., 1924.

⁵ Article 34 established the International Commission for Air Navigation, predecessor of the Provisional International Civil Aviation set up under the Chicago Convention of 1944. Since 1947, it is no longer "provisional."

⁶ Article 1.

"between certain points fixed by the contracting States."⁷ Annex H also provided that parties to it might institute "international aerodromes at which there may be joint customs services for two or more States,"⁸ a program which received comparatively little attention until after World War II when the French-Swiss airport of Basle-Mulhouse was established.

To understand the thinking behind the Paris Convention and the basic air policies of the signatories, one must remember that the end of World War I saw the general acceptance of the legal concept that each nation possesses complete and exclusive sovereignty over its own airspace akin to that which it exercises over its land areas. "This doctrine became the first and fundamental principle of the International Convention for the Regulation of Aerial Navigation signed at Paris on October 13, 1919, by representatives of twenty-six countries and it has been incorporated expressly or by implication in all subsequent multi-lateral or bi-lateral air navigation treaties."⁹ It was in this atmosphere that international civil aviation passed its adolescence, with the result that legal and political complications¹⁰ often retarded prompt and total utilization of Man's steadily increasing capacity to fly.¹¹

League of Nations

While the League of Nations was careful not to duplicate the work of specialized agencies such as I.C.A.N., the League's Transit Committee was occupied with questions of frontier formalities as was its Organization for Communications and Transit. Most of the efforts of the Transit Committee and Organization were restricted to surface transport and barriers to the free movement of persons. With passport¹² and visa¹³ restrictions multiplying rapidly in troubled nationalistic postwar Europe, on August 24, 1920 the Secretary General of the League's Provisional Committee on Communications and Transit sent the members an invitation to "consider the difficulties in international passenger traffic," and meetings were held in Paris in October to develop a pro-

⁷ Article 2.

⁸ Article 3.

⁹ Gates, *International Control of Aviation in Time of Peace*, 10 J. AIR LAW & COMMERCE 440 (1939).

¹⁰ Result of this sovereignty over airspace was a tangle of bilateral treaties on rights to fly over and/or land in each state, agreements concluded after protracted negotiations and bickering.

¹¹ Warner, *Aviation—International Aspects*, Encyclopedia of the Social Sciences 349 (Nov. 1937).

¹² "The American passport is a document of identity and nationality issued to persons owing allegiance to the United States and intending to travel or sojourn in foreign countries. It indicates that it is the right of the bearer to receive the protection and good offices of American diplomatic and consular officials abroad and requests on the part of the Government of the United States that the officials of foreign governments permit the bearer to travel or sojourn in their territories and in case of need to give him all lawful aid and protection." HACKWORTH, III DIGEST OF INTERNATIONAL LAW 435 (19....).

¹³ While *United States ex rel. Johanson v. Phelps*, 14 F. 2d 679, 682 (D.C. Vt. (19....)) defined a visa as recognition by the country to which the bearer is going of the validity of a passport issued by the country from which the traveler came it is now popularly understood to constitute written permission to enter the territory of the issuing power. It is actually no such guaranty.

gram for elimination of obvious barriers "to the resumption of normal intercourse and to the economic recovery of the world."¹⁴ A ten point plan was drafted calling for a uniform type of passport, abolition of exit visas, exemption of registered luggage in transit from customs, joint control of passports at points of exit and entry of adjacent countries, combination of passport and customs formalities, and joint services for common customs entry and exit examination. Additional recommendations on the passport and visa problem came from the Organization's May 1926¹⁵ conference which attempted further simplification of travel documents. The International Convention for the Simplification of Customs Formalities and Protocol concluded in Geneva on November 3, 1923¹⁶ had already proved no panacea, and there was continuing research and consultation on frontier controls.¹⁷

The United States was not a party to the Paris Convention, and "had only nebulous regulations in this connection"¹⁸ in the mid-twenties. The Public Health Service had established quarantine rules for aircraft¹⁹ and on December 1, 1920 the First Division of Customs of the Treasury Department issued the following statement:

"There are no customs laws on the statute books relating particularly to the importation or exportation of merchandise by aircraft, and there are no regulations covering the subject generally. However, merchandise imported or exported by aircraft would be subject to the same laws, regulations and duties as if imported or exported by vessel, train, automobile or other vehicle, and under these regulations the craft would be required to land at the port of entry nearest to the point at which it entered the United States, in order that customs formalities might be complied with. Whether the craft itself would be subject to duty, if a foreign production, would depend on whether it was owned by a regular transportation company and operated as a common carrier. If so, it would not be subject to duty, otherwise it would be. The department has, however, ruled that airplanes of foreign manufacture may be brought into the United States under their own power free of duty for a period of 30 days for touring purposes under Article 422 of the Customs Regulations of 1915. This would also apply to any other form of aircraft brought in for a similar purpose.

"As stated above, the aircraft would be required to land at the port of entry nearest to the point at which the same entered the United States. If the airdrome, or landing field, should be situated within the limits of such port, the customs examination and super-

¹⁴ Resolution Adopted by Conference on Passports, Customs Formalities and Through Tickets, in Paris on Oct. 21, 1920 issued as C. 641. M. 230, 1925. VIII. Geneva, Nov. 1, 1925.

¹⁵ Final Act of the Conference published by the League as C.320.M.119 1926. VIII. Geneva 1926. Minutes of Plenary Meetings published as C.423.M.156 1926. VIII. Geneva 1926.

¹⁶ In force Nov. 27, 1924, L.O.N. O.J., Spec. Suppl. No. 193 at 110.

¹⁷ Not only by League bodies, but by national conferences, meetings of the International Chamber of Commerce and the International Union of Railways, for the first decade after World War I saw extensive emigration and a revival of international trade.

¹⁸ Greer, *International Aerial Regulations*, Air Service Information Circ. Vol. VI No. 566 at 15, G.P.O. July 15, 1926.

¹⁹ U. S. Quarantine Regs. of Oct. 22, 1920 was amended by Secretary of the Treasury.

vision of arrivals and departures would be without expense to the owner of the vessel, but if situated outside the limits of the port examination and supervision of arrivals and departures would be at the expense of the owner of the vessel, but if situated outside the limits of the port examination and supervision of arrivals and departures would be at the expense of the party in interest.

"The requirements under the passport control act of May 22, 1918, and the President's proclamation of August 8, 1918, made in pursuance thereof, would be applicable to arrivals and departures of persons by vessel or vehicle. The regulations regarding export declarations covering shipments by land or sea would also be applicable to exportations by aircraft."²⁰

Although not a member of the League, the U.S. did take part in the Third General Conference of the Organization for Communications and Transit in 1927, and in the Fourth in 1931. A number of Americans, serving in both private and official capacities, functioned as members of the Organization's technical committees.²¹

As aviation expanded slowly in the United States in the hectic decade which followed the defeat of Hohenzollern Germany, legislation was developed to meet the continuing problems of civil and commercial flying. The Air Commerce Act of 1926²² and the Tariff Act of 1930²³ authorized the Secretary of the Treasury to designate places within the U.S.A. as ports of entry for civil aircraft "and to apply to civil air navigation appropriate regulations under the customs and public health laws."²⁴ The Secretary of Commerce was empowered to regulate entry and clearance at the designated fields, and the Secretary of Labor had authority to name any port of entry a station of the U. S. Immigration Service with appropriate staff and regulation. There was no official provision for these agencies' collaboration with the Department of Agriculture's Bureau of Entomology and Plant Quarantine, but consultation with its personnel was customary. "In cases where the need for interdepartmental cooperation is so clear-cut as this, the act of creating an interdepartmental committee is almost automatic. A letter from the Secretary of the Treasury to the Secretaries of Labor and Commerce led to the establishment of the Committee on Airports of Entry, with an assistant secretary from each department as members."²⁵

Although European carriers and governments had been actively concerned with international operations since 1919, American interest was moderate until Pan American World Airways built its network of Caribbean and Latin American routes. This was largely finished by 1935 when the same firm launched its big flying boats west from San Francisco to the Orient. In 1939, Pan American began service to Europe. World War II gave the United Nations many dramatic lessons

²⁰ Greer, *op. cit. supra* in note 18.

²¹ TOMBS, INTERNATIONAL ORGANIZATION IN EUROPEAN AIR TRANSPORT, 195-6 (1936).

²² 44 Stat. 568, as amended July 1, 1944, 58 Stat. 714, 49 USCA §177.

²³ 46 Stat. 762, 19 USCA §1001 et al. (June 17, 1930).

²⁴ REYNOLDS, INTERDEPARTMENTAL COMMITTEES IN THE NATIONAL ADMINISTRATION, 112 (1939).

²⁵ *Id.* at 113.

in the importance of air transport, and also stimulated tremendous technical progress in design and mass production of quality airframes, motors, instruments, navigational aids, communication equipment and weather forecasting devices and techniques. It was generally recognized that the post-war world would feature a substantial expansion of international sky services.

U. S. Calls Conference

Several anti-Axis countries had been considering post-war air policies²⁶ and it came as small surprise when on September 11, 1944 the U.S. Department of State announced that fifty-four countries had been invited by President Roosevelt to a civil aviation conference to begin in the United States on November 1.²⁷ On September 29, the State Department revealed that it had sent out a proposed agenda; this listed under "Technical Standards and Procedures" as item 1 (J) the problem of customs procedure.

Four committees were set up to handle the work of the conference, with Sub-committee 8 of Committee II designated to take care of "Customs Procedures; Manifests." On November 16, it reported completion of its work²⁸ and submitted a recommended draft procedure to the parent Committee II. This text followed the Paris Convention closely, but was regarded as an advance in that it provided a degree of coordination between the 1919 document and the customs systems in force in the Western Hemisphere.²⁹ Sub-committee 8 looked into "customs procedures and manifests in relation to international air transport in particular, and to all forms of international flight in general" before filing its report³⁰ on November 18. Committee II made its final report on November 23 emphasizing "the need for continuing study with the objective that the participating states will assume the largest practicable measure of obligation to standardize and simplify their customs procedures as applied to aircraft."

Under the Convention on International Civil Aviation³¹ concluded in Chicago on December 7, 1944 each contracting party undertakes to collaborate in procuring "the highest practicable degree of uniformity in regulations, standards, procedures, and organization in all matters in which such uniformity will facilitate and improve air navigation (Article 37); agrees 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, crews, passengers and cargo.

²⁶ The U. S. and U. K. set up interdepartmental committees to consider these questions.

²⁷ See Report of the Chicago Conference on International Civil Aviation issues by U. S. Office of War Information.

²⁸ Some thirty-six countries sat on the Sub-committee to insure a broad view.

²⁹ The I.C.A.N. text was signed by only one independent nation in the Western Hemisphere, Canada.

³⁰ Conference Document 300 published in the two volumes titled INTERNATIONAL CIVIL AVIATION CONFERENCE, Chicago, Nov. 1 to Dec. 7, 1944, *Final Acts and Related Documents*, Dept. of State No. 2882, Conf. Ser. 64 (G.P.O. 1945).

³¹ Complete text in State Dept. document cited *supra* in note 30.

especially in the administration of the laws relating to immigration, quarantine, customs and clearance (Article 22); and it undertakes, so far as it may find practicable, to establish customs and immigration procedures affecting international air navigation in accordance with the practices which may be established or recommended from time to time pursuant to the Convention on International Civil Aviation (Article 23)."³²

Article 24 provides for exemption from customs of fuel, spare parts, lubricants, regular equipment and aircraft stores on a plane of a signatory power, and allows spare parts and equipment to be imported into a contracting State for incorporation in or use on an aircraft of another contracting State free of duty.³³ Planes are required to land at "customs airports" by Article 10 of the Chicago Convention, and the regulations of contracting States on admission or exit of passengers, crew or cargo must be complied with by or on behalf of those persons or shipments.³⁴ Article 29 lists the documents³⁵ which must be carried in each aircraft.

It might be noted at this point that it was the conference at Chicago which popularized the term "facilitation" as the basic description for the program to simplify and standardize the maze of customs, immigration, and public health rules which complicate the free movement of persons and property across national frontiers. The 1944 meeting also generated a dozen draft technical annexes to the main agreement, with Annex K devoted to "Customs Procedures and Manifests." It is based on Annex H of the 1919 Paris Convention, as modified by the Brussels Protocol of 1935,³⁶ and reflects the same underlying belief that special clearance precautions are necessary for international air traffic. Other material relevant to facilitation may be found in the Chicago documents.³⁷

POST-CHICAGO DEVELOPMENTS

Twenty-five of the countries represented at Chicago had become parties to the Paris Convention and belonged to the International Commission for Air Navigation. Some asked the Secretary General to place examination of the twelve draft annexes on the agenda for the next I.C.A.N. session, and the I.C.A.N. Customs Committee met at the Commission's Paris headquarters on April 27, 28, 1945 to consider Annex K. Its views were cleared through the Legal Sub-Commission

³² *Background Material Considered in Framing the Facilitation Division's First Agenda and in Revising Annex K*, PICA Doc. 1158, FAL/7, 19/1/46.

³³ Articles 22, 23, 24 are part of Chapter IV titled "Measures to Facilitate Air Navigation."

³⁴ Article 13 of the Chicago Convention.

³⁵ These were (a) certificate of registration (b) certificate of airworthiness (c) license for each crew member (d) journey log book (e) radio station license if radio equipped (f) list of passengers, places of embarkation and destination (g) cargo manifest and detailed declaration.

³⁶ *C.I.N.A. Bull. Off. No. 23*, p. 174 (E) and (F) and treated briefly in PICA Doc. 1193, FAL/20, 21/1/46 at p. 2.

³⁷ See (4) (b), (4) (c), and (6) (b) of VIII of the Final Act and Art. III Section 6 3b(1) of Appendix I, known as the Interim Agreement.

in June and presented to the twenty-eighth Plenary Session of I.C.A.N. in London in August. At that time, the Commission decided to transmit its limited recommendations³⁸ directly to the interim Provisional International Civil Aviation Organization (PICAO) which had been established in Montreal earlier that year.

The Interim Agreement on International Civil Aviation, under which PICAO functioned until sufficient ratifications of the Chicago Convention had been deposited for a permanent International Civil Aviation Organization (ICAO) to commence, listed among the functions of the Committee on Air Navigation study, interpretation and advice on customs, immigration and quarantine processes.³⁹ On November 23, 1945 the Interim Council of PICAO transferred these matters to the Air Transport Committee and set up "a new division on Facilitation of International Air Transport."⁴⁰ Operating with a very small staff and limited funds, that unit has helped to advance and coordinate the ideas and efforts of many governments.

The Facilitation Division of the Secretariat has an excellent record of conscientious, realistic achievement, one which began with a draft revision⁴¹ of the proposed Annex K and picked up speed with circulation of a comprehensive agenda⁴² for the initial session of the Subcommittee on Facilitation on January 24, 1946. It is worth looking at that agenda, for many of those problems remain among the unsettled clearance questions facing international flight today. There were two dozen items for study:

1. Review and revision of draft Annex K.
2. Unification, standardization and simplification of customs documents and their possible combination with those used by immigration and public health authorities.
3. How to avoid delay by customs at transit stops.
4. Analysis of desirability of shifting responsibility for customs breach or manifest error from plane captain to an agent.
5. Study of customs-free airports and free trade zones at airports.
6. Policy in application of import and/or export duties on aircraft, equipment, spare parts, stores and fuel, lubricating oil.
7. Standardization and simplification of documents and procedures for public health examination of passengers, crews and cargo.
8. Uniform vaccination and inoculation requirements and certificates.
9. Standard disinfection procedures and uniform sanitary rules.

³⁸ PICAO Doc. 1070, FAL/1, 3/1/46.

³⁹ Art. III Section 6 3b(1).

⁴⁰ According to PICAO Doc. 1158, FAL/7, 19/1/46, "The Council decided that the work of the Division on Facilitation of International Air Transport should be interpreted as covering all obstacles to aircraft, passengers and cargo in international air transport arising from national laws and required forms, regulations and procedures prescribed by governmental or other public authorities. The Council decided that the subjects coming under this definition included customs procedures and manifests, sanitary, public health or quarantine regulations, financial and monetary regulations, taxes, police and immigration requirements, military restrictions, and the regulations imposed by national or international aeronautical authorities."

⁴¹ *Proposed Revised Draft of Annex K*, PICAO Doc. 1159, FAL/8, 19/1/46.

⁴² PICAO Doc. 1088, FAL/2, 9/1/46.

10. Standardization of quarantine stations and medical facilities.
11. Standardized quarantine fees.
12. Control by airport medical authority over crew health (capacity to fly).
13. Unification, standardization and simplification of document forms and travel procedures.
14. Definition of airline responsibility for detention of passenger or crew, with special treatment in forced landings.
15. Possible exemption from visa and immigration exams for transit passengers, for fuel and overnight hotel stops for plane and passenger in transit.
16. Possible acceptance of crew licenses instead of passport, visa.
17. Study of desirability of exchange facilities at airports.
18. Possible simplification or elimination of tax payment certificates for outbound citizens and non-citizens.
19. Analysis of desirability of relieving airlines from collection of levies such as head tax as agents for governments.
20. Consideration of comprehensive blanket bond for operators.
21. Study of who should provide space and service for and pay overtime to government clearance officials at airports.
22. Uniform minimum period of advance notification of changes in national clearance regulations, standardized publication and distribution of such regulations.
23. Standardization or limitation of number of copies of each document.
24. Standardization of terms, designations and definitions.

All of these problems directly affected the airlines operating across national frontiers. The scheduled international carriers had set up their International Air Transport Association⁴³ after a Havana conference on April 19, 1945 and facilitation was high on the agenda of that organization. These airlines and their governments looked to a swift post-war recovery of free travel and international trade to pump essential hard currency into weary economies.⁴⁴ A Sub-Committee on Government Forms⁴⁵ was soon established under the IATA Traffic Committee, and has been giving ICAO the benefits of the practical advice of its veteran airline clearance experts. IATA's contribution to the facilitation program has been substantial, and the combined operating experience of its members has enabled it to lead the way through the

⁴³ It is "the successor in function to the old International Air Traffic Association" and "a voluntary association of airlines companies. . . . In practice, IATA is the agency through which the airlines seek to solve jointly those problems they cannot individually surmount and to do that work which can be carried out more effectively or economically by combined effort." *Facts About IATA*, issued in Montreal in 1947.

⁴⁴ The U. S. recognized this when it launched the Marshall Plan. Under Section 117(b) of the Economic Cooperation Act of 1948, the Administrator, in cooperation with the Secretary of Commerce, is authorized to "facilitate and encourage, through private and public travel, transport and other agencies, the promotion and development of travel by citizens of the United States to and within participating countries." On July 21, 1948 ECA Administrator Paul G. Hoffman noted that "Dollars spent by American travelers in Europe can play an important part in Europe's struggle to balance its books in trade with the Western Hemisphere." The present policy of "trade not aid" also encourages foreign countries to expedite both U. S. travel and commerce.

⁴⁵ Without the cooperation of its members, this study would not have been possible. The ICAO facilitation director, Mr. Jay Moulton, was also of continuing assistance, as were Messrs. Tarrington and Morton of the CAA.

tangled jungle of frontier controls. These carrier specialists, retained by air transport companies to whom clearance means dollars daily because you don't make money with your planes on the ground or delayed by formalities, not only help IATA advise ICAO but also assist the governments of their own countries in developing progressive national positions to be presented at ICAO facilitation meetings.

The Transport and Communications Commission of the United Nations⁴⁶ has also kept a continuing watch over restrictions on the international movement of persons and goods, but has been more concerned with surface transport. It has not, however, overlooked the significance of the ICAO facilitation program.⁴⁷ Between 1946 and 1949 the ICAO frontier formalities experts developed three proposed revisions of Annex K of the Chicago Convention; culminating in the present Annex 9. The "permanent" technical annexes now being offered for global implementation are designated by numbers rather than letters.

THE U.S.A. AND FACILITATION

Clearance of passengers, crews, cargo and planes calls for action by a number of U.S. federal agencies, so on November 28, 1945 the interdepartmental Air Coordinating Committee⁴⁸ set up a Subcommittee on Facilitation of International Civil Aviation.⁴⁹ Consisting of representatives of the State, Agriculture, Commerce, Navy, Air Force and Post Office Departments, the U.S. Public Health Service, Civil Aeronautics Board, Immigration and Naturalization Service, Bureau of Customs and the air transport industry, it was instructed to give:

"consideration and make recommendations with respect to existing or proposed laws, rules, regulations, and procedures governing the field of customs, immigration, police, public health and quarantine, military regulations, passports and visas, fiscal and exchange facilities, taxation and airport charges."⁵⁰

Working closely with the carriers both individually and as they are represented by the Air Transport Association of America and IATA, the Subcommittee sent a special survey team to visit twenty-four U.S. airports of entry in 1947 "to inspect the major United States airports of entry and confer with local governmental, civil and industry officials and private fliers on problems affecting the facilitation of inter-

⁴⁶ The Economic and Social Council of the UN has designated the Transport and Communications Commission to advise it on travel matters. ICAO is a specialized agency "in relation" to the UN.

⁴⁷ One example of the UN's interest may be seen in the attendance of Mr. Oliver Pendar, aviation specialist on the Transport and Communications Staff, at the Third Session of the ICAO Facilitation Division in Buenos Aires in 1951.

⁴⁸ Including representatives from the State, Air Force, Navy, Commerce, Post Office Departments and the Civil Aeronautics Board, the ACC was organized by interdepartmental memorandum on March 27, 1945. On September 19, 1946, it was given a stronger basis in President Truman's Executive Order 9781 which assigned the ACC aviation issues "affecting more than one participating agency."

⁴⁹ ACC 50, p. 3.

⁵⁰ ACC Subcommittee on Facilitation of International Civil Aviation, "Simplifying International Air Transportation," p. 3, April 22, 1948.

national air travel.”⁵¹ This team found a need for local machinery to monitor routine clearance problems peculiar to each airport and created local air facilitation committees⁵² which included representatives of government, scheduled and non-scheduled air services, private pilots and special “civic”⁵³ organizations. Matters which could not be handled or settled locally were to be referred to the parent ACC Subcommittee on Facilitation back in Washington, and in this way current policy issues are often called to the immediate attention of the key federal officials. The ACC found these local units “functioned with outstanding success” and that “great strides have been made.”

The ACC Subcommittee itself has continued its patient work on the federal level, not only in streamlining of irksome and/or administrative regulations but also in the drafting of remedial legislation for submission to the Congress. It is not the only inter-agency body in the Executive Branch concerned with overseas travel and trade, for the Interdepartmental Committee on Foreign Travel⁵⁴ is the federal group in which “the U.S. basic policy to encourage bona fide travel of non-immigrant visitors between all countries as a vital factor in promoting trade, economic and cultural understanding was originally formulated. The positions taken by the United States in international conferences on non-immigrant travel are originated in this Committee.”⁵⁵

The legislative branch of the federal government has also shown a slowly rising interest in the facilitation bills supported by ACC and ATA, and while these remedial statutes are often lost in the crush of other vital legislation it must be said that the Congress is becoming more aware of the effects and implications of costly, tedious, obsolete frontier clearance rules inhibiting the full rapid growth of air transportation. In the March 1, 1948 report of the bipartisan Congressional Aviation Policy Board, a legislative group proposed:⁵⁶

- “46. a. There should be a complete examination by the Congress into present customs and immigration laws as they affect air carriers with a view toward their modernization by corrective legislation.
- b. Removal of travel barriers in other countries should be discussed with representatives of those countries through the Department of State or American representatives in the International Civil Aviation Organization on the basis of mutual desirability.
- c. Consideration should be given by interested Government agencies to establishment of additional ports of entry at

⁵¹*Id.* at p. 4.

⁵² Some were in cities not visited, and spread consciousness of facilitation problems.

⁵³ “In August 1948, the Port of New York Authority joined with the airlines serving New York and with Federal agencies charged with the supervision of overseas air travel in the organization of the New York Facilitation Committee and has participated in meetings of the Committee since that time.” Statement of N.Y.P.A. Airport Planning Bureau, Jan. 6, 1949.

⁵⁴ A subcommittee of the President’s Executive Committee on Economic Foreign Policy, it first met on March 22, 1946.

⁵⁵ Letter to the author from Chairman H. A. Wilkinson, March 10, 1949.

⁵⁶ NATIONAL AVIATION POLICY, 32-33, Sen. Report No. 949, 80th Cong. 2nd Sess.

airports where international traffic justifies, and the same right of clearance granted to all classes of American aircraft."

These recommendations have not been forgotten in the past five years, and some real progress has been made. Equally important, a number of key legislators in both House and Senate are now clearance conscious. Their awareness of facilitation problems is the result of educational lobbying by ATA, ACC⁵⁷ and individual federal departments. U. S. representatives at ICAO played an important part in developing Annex 9⁵⁸ which went into effect on March 1, 1950 and have been vigorous in the international drive to simplify and standardize clearance processes. Americans have always been impatient with red tape, especially when it means "red ink" for federally subsidized airlines. There is still a great deal of work for the U. S. officials concerned with facilitation, for American legislation and regulations are among the most complex.⁵⁹ There is no doubt, however, that this country has improved its clearance procedures substantially since January 1, 1948 when the President's Air Policy Commission reported that the U. S. "is and has been one of the chief offenders in imposing burdensome regulations."⁶⁰ These advances have been recognized⁶¹ by IATA's facilitation experts.

CUSTOMS-FREE AIRPORTS

The facilitation program is not limited to efforts to expedite passenger travel. Increasing attention is being paid to re-evaluation of terminal facilities⁶² at airports of entry, and growing interest in the potentialities of customs-free airports is evident. On the basis of the general outline of the historic evolution of the problem of airline clearance presented in the previous pages, it should now be possible to examine this specific question in its proper perspective.

Basis for the post-World War II study of customs-free airports rested in the pre-war success of the Continent's free-trade zones. Birth of these zones has been set in 1189, when Emperor Frederick I⁶³ granted Hamburg a charter exempting it from paying customs levies on the lower Elbe River. History reveals that:

"The fourteenth century witnessed the growing power of cities, particularly those strategically situated on natural harbors, estuaries and rivers. In a succession of political and military events

⁵⁷ The ACC Subcommittee's 1950-51 Reports list Bills sponsored.

⁵⁸ See ICAO Circular 14-AT/3 of March 1950 on acceptance of Annex 9.

⁵⁹ This is in large part due to the great number of foreign persons interested in migrating to the U. S. A. and the U. S. quota legislation designed to limit the flow.

⁶⁰ SURVIVAL IN THE AIR AGE (G.P.O. 1948) p. 119.

⁶¹ See Report of 1950 IATA Facilitation meeting in Cairo and Oct. 1953 Annual Report of Director General in Montreal IATA Assembly.

⁶² Revue of the working papers of the Third Session of the ICAO Facilitation Division in Buenos Aires (Nov. 21-Dec. 7, 1951) confirms this. See FAL/3-WP/21, 15/7/51.

⁶³ Of the Holy Roman Empire.

which marked European history, cities like Bruges, Antwerp, Amsterdam and London followed each other in commercial ascendancy through the fortunes of their respective countries. Outstanding were the Hansa cities of Hamburg, Bremen, Lubeck and others, whose merchants traded to the shores of the Mediterranean and eastward into Russia. Other ports of the time were Leghorn, Trieste, Marseille, Genoa, Naples and Venice. The seventeenth and eighteenth centuries were characterized by high tariffs and tolls administered by strong commercial cities for their own benefit. Throughout this period many coast cities were free-trade ports, and continued so well into the nineteenth century when many of them became free-zone ports. In the 1880s and 1890s Hamburg, Bremen, Copenhagen and the Italian ports of Leghorn, Genoa and Trieste lost their free-trade aspect, as did others. Subsequent to World War I there was a widespread movement of European ports to establish zones exempt from customs regulations. There are no free-trade ports in Europe today. In 1940 there were 43 free-zone ports in the world. There are several free ports in Latin America countries; both the Philippine Republic and China have plans for free zones."⁶⁴

The author of that 1947 monograph was careful to define his terms precisely.

"Some confusion has accompanied the common use of the terms 'free-trade port' and 'free zone.' Ports like Hong Kong and Singapore, where ships come and go at will and cargo moves through to inland destinations without payment of duties, are correctly called 'free-trade ports,' to distinguish them from those such as Copenhagen and others which have segregated customs-free areas known as 'free-zones.' The number of free-trade ports has diminished, whereas free-zones or foreign-trade zone ports have tended to increase, especially following World War I. . . . In the United States the term 'foreign-trade zone' has been adopted to avoid confusion with 'free port' and 'free-trade port.' The so-called free-ports of Europe are in fact free-zone ports, with all or part of the waterfront segregated from the rest of the city and carefully policed at the customs boundary."⁶⁵

Enabling acts of national legislatures and decrees by heads of states set up the free zones of Europe with local administrations separate from regular port control machinery.⁶⁶ The land areas of the zones were generally owned by the port commission, which body did not interfere with property rights of firms already established and which leased space to businesses desiring to come into the zone later.

The zones on the Continent allowed mixing, manipulating, sorting, regrading and packing, but not manufacturing or retailing. Hamburg was the major exception, and permitted all sorts of manufacturing.⁶⁷ It is interesting to note that manufacturing was barred in the

⁶⁴ Lomax, *The Foreign-Trade Zone*, University of Oregon Bureau of Business Research Pamphlet, 1947, pp. 8-9.

⁶⁵ *Id.* at 5.

⁶⁶ *Id.* at 9.

⁶⁷ Defined as "actual form-changing processes."

half-dozen U. S. foreign-trade zones until 1950, when the long protested restriction finally fell under new legislation.⁶⁸

First U. S. legislation for the establishment of a foreign-trade zone was introduced in 1894 to provide for a free port on Long Island, but failed in the Senate due to poor promotion and opposition by certain steamship companies. Interest in the idea continued, and the chief of the Bureau of Foreign and Domestic Commerce recommended free zones in 1915 as an aid to foreign trade. In 1916 and 1917, unsuccessful resolutions were introduced into the House of Representatives calling on the Secretaries of War, Commerce and Treasury to report on the subject.

Legislation which had the backing of the Department of Commerce, port groups, bankers and shipping companies was introduced again and again in the decade after World War I but without success. Its failure was linked with the contention that foreign-trade zones would violate Article 1, Section 9 of the Constitution:

"No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear or pay duties in another."

This point of view, based on the legal interpretation that a foreign-trade zone in one state would give it an unfair advantage over the competing harbors in nearby states, would bar both foreign-trade zones and customs-free airports. Other "aspects of the bills to which objections were constantly raised concerned administrative controls; competition between public and private warehousing; the geographic allocation of the proposed free-trade ports; property rights of the Federal government, states, and private interests; prohibitions against manufacturing within the zone. There was also considerable discussion of bonded warehouses and drawbacks, and their inadequacies. Perhaps it was felt that there was no need for foreign-trade zones under the still-operative expanded free list of the 1913 Underwood tariff and the reorganization of customs districts which was made at that time."⁶⁹

It should be kept in mind that the conditions essential for a foreign-trade zone are (1), a protective tariff system (2) an enterprising port with transport and harbor facilities, banks, exporters and

⁶⁸ In its report on new legislation for the fiscal year 1950, the U. S. Foreign Trade Zones Board noted that "Previously, activities within zones were limited to so-called manipulation, viz.: sorting, grading, cleaning, repacking, remarking, mixing or combining with other domestic or foreign materials, or such other assembling or minor processing as did not constitute manufacturing. There was an express prohibition in the original law against manufacturing. This undefined distinction between manipulation and manufacturing led to both administrative and substantive difficulties. . . . By permitting manufacturing the statute eliminates the need for drawing such a distinction. It thus both avoids this troublesome administrative problem and enlarges the usefulness of zones. Production of articles in the zones by combined use of domestic and foreign materials makes unnecessary either the sending of domestic materials abroad for manufacture or the duty-paid or bonded importation of the foreign materials into this country." This comment on Public Law 566 of June 17, 1950 appears on pp. 2-3 of the 1950 Report to Congress, released March 15, 1951.

⁶⁹ Lomax, *opus cit.*, 15.

importers (3) a densely populated hinterland (4) adjacent foreign countries for development of reexport and transshipment trade. 1922 saw the return to office of protectionist minded Republicans, increased rates in the Fordney-McCumber Tariff Law, revision of the customs administration, and a significant amendment of the regulations on bonded-warehouses so that goods might be cleaned, sorted, repacked and withdrawn for export without any duty.

Bills for trade zones made no progress in the next dozen years, however, and it was not until 1934 that the 73rd Congress passed Representative Emanuel F. Celler's statute⁷⁰ authorizing municipalities which are ports of entry to establish foreign-trade zones. The Foreign Trade Zones Act calls for a Board of the Secretaries of Commerce, Treasury and War⁷¹ to guide the program with the authority⁷² to grant to public⁷³ or private⁷⁴ corporations "the privilege of establishing, operating and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States."

The 1934 Act stipulated that "In granting applications preference shall be given to public corporations,"⁷⁵ and that:

"Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this Act, be brought into a zone and may not be manufactured or exhibited in such zone but may be stored, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, and be exported, and foreign merchandise may be sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise; *Provided*, that when the privilege shall be requested the collector of customs shall supervise the unlading of foreign merchandise in the zone, cause such merchandise or any portion thereof to be appraised and the duties liquidated thereon. Thereafter it may be stored or manipulated under the supervision and regulations prescribed by the Secretary of the Treasury, and within two years after such unlading such merchandise, whether mixed with domestic merchandise or not, may be sent into customs territory upon the payment of such liquidated duties thereon; and if not so sent into customs territory within such period of two years such merchandise shall be disposed of under rules and regulations prescribed by the Secretary of the Treasury and out of the proceeds the duties shall be paid and the remainder, if any, shall be delivered

⁷⁰ Public Law 397, 73rd Congress, June 18, 1934.

⁷¹ Now the Secretary of the Army since dissolution of the War Department.

⁷² Sec. 2. (a).

⁷³ Sec. 1. (e) defines "public corporation" as "a State, political subdivision thereof, a municipality, a public agency of a State or municipality, or a corporate municipal instrumentality of one or more States."

⁷⁴ Sec. 1. (f) defines "private corporation" as "any corporation (other than a public corporation) which is organized for the purpose of establishing, operating and maintaining a foreign-trade zone and which is chartered under special Act enacted after the date of enactment of this Act of the State or States within which it is to operate such zone."

⁷⁵ Sec. 2. (c).

to the owners of the property: *Provided further*, That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles the growth, product or manufacture of the United States, and articles previously imported on which duty has been paid, or which have been admitted free of duty, may be taken into a zone from the customs territory of the United States, and may be brought back thereto free of duty, whether or not they have been combined with or made part, while in such zone, of other articles: *Provided*, That, if in the opinion of the Secretary of the Treasury their identity has not been lost such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter the customs territory of the United States as foreign merchandise under the provisions of the tariff laws in force at that time."⁷⁶

Just a year after passage of the Celler Act, the young Foreign-Trade Zones Board issued regulations⁷⁷ defining the nature and function of a free zone:

"A zone is an isolated, enclosed, and policed area, under the supervision of a designated Board of Federal officials, operated as a public utility by a corporation, in or adjacent to a port of entry, without resident population, furnished with the necessary facilities for loading and unloading, for storing goods, and for reshipping them by land or water; an area into which goods may be brought, stored, and subjected to certain specified manipulation operations. If re-shipped to foreign points the goods may leave the restricted trade zone without payment of duties and without the intervention of customs officials, except under certain conditions. Such products cannot, of course, leave the trade zone for domestic use or consumption without full compliance with existing customs laws. Goods may not be manufactured or exhibited in such an area. The area is subject equally with adjacent regions to all the laws relating to public health, vessel inspection, Postal Service, immigration, and to the supervision of Federal agencies having jurisdiction in ports of entry, including customs, to a limited extent."

Public Law 566 of June 17, 1950 eliminated the burdensome bars to both manufacturing and exhibiting, which should add to the zones' advantages.⁷⁸

CUSTOMS-FREE AIRPORTS AND CUSTOMS-FREE TRADE ZONES

By 1947 interested observers were aware that "These advantages apply not only to free zones in seaports; they may apply equally to inland freshwater ports and airports. With expanding air-cargo potentialities, there is a possibility of free-zone airports being established to facilitate the transshipment of foreign-imported air cargo."⁷⁸ The

⁷⁶ Sec. 3.

⁷⁷ *Regulations Governing the Establishment, Operation, Maintenance, and Administration of Foreign-Trade Zones in the United States*, U. S. Dept. of Commerce, Foreign-Trade Zones Board, June 29, 1935, 1.

⁷⁸ Listed in detail in Lyons, "Foreign-Trade Zones," *Foreign Commerce Weekly*, July 10, 1943.

⁷⁸ Lomax, *opus cit.*, 13.

1946 Annual Report of the Foreign-Trade Zones Board also drew attention to this possibility:

"Due to the rapid increase in air cargo, several communities concerned with the development of international air freight are now studying the question of establishing foreign-trade zone facilities at airports of entry. Although foreign-trade zones were primarily designed to aid ocean commerce and shipping, the Celler Act also authorized their establishment at points not necessarily served by water carriers. If these zones can be satisfactorily located at or near international airports, they may eventually aid in developing our vital air commerce."⁷⁹

The idea is not new, for a 1931 document of the Fourth Pan American Commercial Conference records a proposal by the International Chamber of Commerce that "Free airports be created in the principal centers of international trade where goods may be loaded, unloaded, warehoused and where aircraft used for regular transport may be repaired, assembled equipped, free of all customs duties."⁸⁰ It is interesting to observe that this basic notion seems to coincide with the fundamental proposals put forward by Seaboard & Western Airlines in its 1948-53 series of applications to the Civil Aeronautics Board for a certificate of public convenience and necessity authorizing scheduled cargo flights to Western Europe and the Near East on "an area basis," for Seaboard originally planned to operate DC-4 freighters into Luxembourg⁸¹ and then transship to smaller C-46 aircraft which would fan out on short feeder routes. Such a system would be impossible if it were necessary to pay customs duties in Luxembourg.

Other governments have been interested in the possibilities of customs-free airports, and the idea was actively supported by the Irish Delegation at the Chicago Conference in 1944.⁸² It has received the continuing attention of the ICAO Facilitation Division, and the Standards and Recommended Practices on Facilitation of International Air Transport contained in Annex 9 to the Chicago Convention recommend that "Contracting States should establish Customs-Free Airports"⁸³ and customs-free trade zones "in connection with international airports."⁸⁴

The definitions in Chapter 1 of Annex 9 are relevant and indicate the scope and trend of ICAO thinking on these problems:

"Customs-free airport. Any international airport at which, provided they remain within the designated boundaries of the airport until removal by air to a point outside the territory of the State, crew, passengers, baggage, cargo, mail and stores may be disembarked or unladen, may remain and may be trans-shipped, with-

⁷⁹ At 2.

⁸⁰ Pan American Union, Com. D M 10, at 6.

⁸¹ Where Seaboard enjoys special privileges through its ownership of stock in the national carrier.

⁸² Starting with proposal to Subcommittee 8 on Nov. 13, 1944.

⁸³ See 6.1 at p. 33.

⁸⁴ See 6.2 at p. 33.

out being subjected to customs charges or duties, but where customs examination may be carried out in special circumstances."⁸⁵

"Customs-free trade zone. An area where goods, merchandise or baggage may be deposited, stored, packed, processed or sold, and from which they may be removed to a point outside the territory of the State without being subjected to customs charges or duties, but where customs examination may be carried out in special circumstances."⁸⁶

There are now customs-free airports at Shannon, Ireland and Tocumen, Panama, as well as a foreign-trade zone in San Antonio, Texas which encompasses the airport there. The basis of the Shannon project lies in the Customs-free Airport Act of 1947.⁸⁷ Section 4 provides that all laws then in effect governing the import and export of goods do not apply to goods brought directly into and out of the airport "from and to countries outside the State, except in so far as these laws are applied by regulations made under this Act." This statute had been in drafting for some time, and the Finance Act, 1946 already included a special section which "exempts from payment of Customs duty any goods brought direct from abroad into the customs-free airport. The combined effect is to create the Customs-free Airport."⁸⁸

Passengers and cargo in transit are free of customs processing at Shannon, and goods brought there by air are also exempt as long as they stay inside the "Free Airport" area. Most travelers coming to Shannon are in transit on North Atlantic services, and those delayed overnight are accommodated in "hostels" within the "Free Airport." Ireland's import and export laws do apply to goods moving from Shannon to other parts of the country. It should also be noted that "goods may not be brought into the airport for personal use or consumption within the airport or for sale by retail therein except from another part of the State."⁸⁹ If any such goods are subject to excise or customs duties, these must be paid before the goods enter the airport.⁹⁰

There have been problems in the operation of a Customs-Free Airport, and Ireland has had to develop regulations⁹¹ to meet them. It was necessary to draw the boundaries of the "Free Airport" so as to exclude a small part of the terminal building and adjacent landing field which was made a customs area. Disembarking (i.e. non-transit) passengers, passengers on flights within Ireland, and local visitors to the airport are restricted to this area.⁹²

⁸⁵ Annex 9, p. 15.

⁸⁶ Annex 9, p. 16.

⁸⁷ Enacted by the Irish Parliament on March 18, 1947.

⁸⁸ Memorandum dated December, 1951 supplied by Mr. John Laydon of Department of Industry and Commerce, Dublin, p. 1.

⁸⁹ 6.-(1) of Customs-Free Airport Act, 1947, p. 9.

⁹⁰ 6.-(2) of Customs-Free Airport Act, 1947, p. 9.

⁹¹ Customs-Free Airport Order, 1947, (Stat. Rules & Orders 1947 No. 114, P. No. 8159); also Stat. Rules & Orders 1947 No. 113, P. No. 8165; No. 115, P. No. 8162; No. 116, P. No. 8160; No. 117, P. No. 8161; No. 137; Statutory Instrument No. 339 of 1948, P. No. 9081; S. I. No. 4 of 1948, P. No. 8647; S. I. No. 60 of 1951, Pr. 402.

⁹² *Opus cit. supra* in note 88, at 2.

In December 1951, the following official report of the Department of Industry and Commerce threw further light on the situation:

"It has not been possible to remove all restrictions on the movement of traffic through the Airport. It has been necessary, owing to international obligations, or for other reasons, to extend to the airport certain existing restrictions and prohibitions apart from Customs laws. These include certain public health laws and laws relating to dangerous drugs and animal and plant diseases. In present circumstances, the Free Airport cannot be exempted from currency restrictions. These restrictions have been extended to the airport by regulations made under the Customs-free Airport Act, 1947, and enforced by officers specially appointed by the Minister for Industry and Commerce in accordance with powers conferred on him by the Act. Thus in respect of these matters the same control is exercised in the Customs-free Airport as is exercised at other airports or seaports elsewhere in the country. These regulations can be revoked or amended at any time if warranted by prevailing conditions.

"For the adequate protection of the revenue of the State, certain powers of search are provided in the Customs-free Airport Act. The Minister for Finance has made regulations under the Act, governing the movement of persons, goods and vehicles between the Customs-free Airport and the remainder of the State and applying to such traffic certain provisions of the Customs Acts and Acts relating to duties of Excise, subject to necessary modifications.

"The Customs-free Airport has been operating for over four years and has worked smoothly over that period. It has been of considerable assistance in the facilitation of transit aircraft and passengers and freight traffic. Airlines have found the facilities afforded by the Free Airport a great convenience, the absence of formalities in respect of the movement of aircraft stores and spare parts being particularly helpful. The Free Airport was also designed to afford facilities for the development of the carriage of freight by air."⁹³

Both Shannon and Tocumen have drawn the attention of the ICAO clearance technicians, who commented on them in a special "circular" entitled "Report on Implementation of Annex 9 to the Convention as well as on Other Aspects of the FAL Programme"⁹⁴ — FAL is ICAO's abbreviation for "facilitation":

"Although most States appear to favor the establishment of customs-free airports and customs-free trade zones and realize what an important factor they could become in the facilitation of international air transport, at present, only two customs-free airports have been established, the first at Shannon, Ireland and the second at Tocumen, Panama. These two airports have been generally considered as successful, and it is believed that this is at least partially due to the fact that both of them allow for a number of the functions of a free-trade zone to be carried out on their premises. The fact must be faced that under the present FAL Annex definition the term 'customs-free airport' in and of itself (i.e. without any 'free trade zone' aspects connected with it) provides for little that is new when thought of in terms of what facilities

⁹³ *Ibid.*

⁹⁴ ICAO Circular 14, AT/3 March 1950.

are offered at any international airport where adequate 'Direct Transit Areas and Arrangements' are available (*see* Definitions and Chapter 5 B of Annex 9). Complete free trade zones, a feature available at a number of seaports both in Europe and in the Americas, would undoubtedly aid in the development of air transport, provided such zones are open to air transport and are located at or near international airports."⁹⁵

In the same year that this survey was released, Foreign-Trade Zone No. 6⁹⁶ was opened for business at San Antonio, Texas. This was a noteworthy event for two reasons. First, this is the only U. S. zone to be owned and operated by a private enterprise — the Scobey Fireproof Storage Company. Second, because Foreign-Trade Zone No. 6 was not only linked to rail trunk lines by a spur track but also was directly connected with San Antonio's Municipal Air Terminal by its own concrete ramp which allows planes to taxi right up to the warehouse, eliminating intermediate freight charges. This was what ICAO had in mind.

San Antonio's passenger and cargo traffic moves steadily over the scheduled flights of Braniff, Slick, Continental, Eastern and American Airlines. "The zone is at an international crossroads by geographical measurement, based on facts such as this: the shortest route by air from the Panama Canal to Tokyo is not directly across the Pacific Ocean but over the Gulf of Mexico and Texas. Once in the zone's spacious fireproof warehouse, facilities are provided for the storage of valuables, for fumigation, washing, culling, refrigeration, quick freezing, equipment for inspecting, grading, sorting, assembling and distribution. Perishable goods flowing into the zone may be processed and held in the zone for future delivery without customs duty. There is also an added service to importers dealing in perishable goods. Direct truck and air service to the warehouse greatly reduces the risk of loss by spoiling. And the zone's cold-storage facilities include freezer and cooler rooms for the proper handling of such products as flowers, produce, shrimp, fish and other perishables. Domestic goods may be moved in and out of the zone without customs duty. The zone was created as a public utility, and the domestic merchant should find the zone's facilities especially valuable for the handling of those domestic products which move into San Antonio for processing and for distribution throughout the nation by air. It is not necessary that the domestic merchant or the importer be located in San Antonio. Goods will be manipulated for the foreign importers and exporters, trades and domestic merchants of any city in the world. Transit imports passing through the U. S. A. to foreign markets may be brought into the zone for storage and repacking, and may be exported to any foreign country, free of U. S. customs duty. Damaged goods or spoiled products may be screened out by the importer, reexported or destroyed, and duty will be required only on the usable goods accepted by the importer. Buyer inspection of products in the zone enables the importer and the market

⁹⁵ *Ibid.* at 17.

⁹⁶ Others are New York, New Orleans, San Francisco, Los Angeles, Seattle.

outlets to see and test products thus obviating the costly importation of unseen goods. Importers are free to invite buyers to inspect and sample their goods. A foreign exporter may use the facilities of the zone too. He may consign shipments of goods to himself for storing in the zone, and he maintains complete control over those goods. He may designate an agent or the zone operators to examine and cull his shipments for him . . . to manipulate his goods, arrange to clear them through the customs and ship them to their ultimate destinations. Loans under certain circumstances may be obtained on non-perishable goods held in the zone, through the use of negotiable warehouse receipts."⁹⁷

To these facilities and rights must be added legal permission to manufacture and exhibit as authorized by the 1950 legislation cited. The operation at San Antonio would appear to be a foreign-trade zone which in effect includes an airport in that planes can taxi directly to the warehouse in the "free" area. While not the customs-free airport which the facilitation experts conceived, it is close to it for Foreign-Trade Zone No. 6 was designed to serve an inland hinterland. It is the first U. S. zone not situated on the ocean shore, and opens the way to other such ventures. It is not clear just how important the right to manufacture — extant at San Antonio but not in the Annex 9 definitions of customs-free airport and customs-free trade zone — will be. There has been no pressure for such facilities at either Shannon or Tocumen, and no evidence is available that there has been any in U. S. Zone 6.

An interesting comparison of existing and desirable facilities at various types of international air termini emerged at the Third Session of the ICAO Facilitation Division in Buenos Aires. The results are embodied in the analytical table designated Appendix A.⁹⁸ The evaluation prepared by the ICAO facilitation secretariat is particularly important, for it⁹⁹ reveals that the present trend of expert thinking

⁹⁷ Brochure prepared by operators of Zone 6 (1950) and supplied by Foreign-Trade Zones Board, Washington, D. C.

⁹⁸ Appendix to ICAO Doc. FAL 3, WP/18, 7/6/51.

⁹⁹ 2.1 Any international airport today, if it provides the full facilities contemplated under certain Convention Articles, Resolutions and Recommended Practices, compares favorably with existing free airports except that it does not then have (a) certain free trade zone features (these should not be minimized, but the extent of their use in connection with aviation is largely an unknown factor); (b) the larger geographical area (i.e., the entire airport) within which operators and the loads they carry are completely free of red tape; and (c) such prestige advantage as accrues from the title "free airport."

2.2 The major success of free trade zones in the field of maritime transport appears to have occurred (e.g., along the northwest coast of Europe) where cargo would come into such zones via ocean-going vessels for *trans-shipment* on smaller vessels (e.g., through the Rhine River and Euporean Canal Systems). It does not appear that trans-shipping will become as major a feature in aviation because the same aircraft is more likely to carry the cargo on through to destination. However, one can readily conceive of air cargo (e.g., watch parts, air mail editions of periodicals, etc.) being flown intercontinentally to one strategically located city, for trans-shipment via different aircraft to all other major cities on the same continent.

2.3 As implied in 2.1(b) above, greater gain facilitationwise is secured when all of the items listed on the attached chart can be accomplished anywhere

does not particularly favor the devotion of considerable effort to customs-free airports as such, with all the lengthy legislative and administrative delays, if the great majority of the facilities and advantages can be gained more simply and speedily through implementation of other provisions of Annex 9 in direct-transit areas. A Dutch description of the facilities are Schiphol Airport illustrated¹⁰⁰ what can be done without establishment of customs-free airports. On the basis of recent discussions with airline operators in New York, it can be stated that the carriers have lost some of their enthusiasm for concentrating on long range projects such as free airports and their clearance specialists would prefer to focus the facilitation program on other immediate issues. The IATA position¹⁰¹ concurs with this practical approach.

ICAO surveys in 1950¹⁰² and 1951¹⁰³ showed that only France and the United States¹⁰⁴ were seriously considering the establishment of customs-free airports in the near future. Early in 1952, the Department of Civil Aviation of the State of Israel began a preliminary survey of the problem but dropped the project in the face of more pressing aeronautical development problems. Today, governments and carriers seem to be emphasizing improved direct transit facilities. Ireland has reported no demand for the erection of warehouses at Shannon and noted that entrepot activities in air cargo remain "a matter for conjecture."¹⁰⁵ The ICAO staff is continuing its study of the various terminal facilities best suited to the changing needs of international air transport.

There is still a great deal to be done in the facilitation program. Many countries are following the U. S. lead and setting up inter-departmental committees¹⁰⁶ to handle airline clearance, and there has already been a regional FAL conference for Europe. As Mr. A. A. Berle said in another connection, "... we are trying to work out . . .

within the bounds of an entire airport. Where it is not practicable to have an entire free airport, because of the difficulty of providing supervision throughout its entire area by means of guards or fencing arrangements, then up to four so-called "free zones" might be created in or around an airport which simply accomplish the purposes of (1) a "direct transit" area; (2) a "bonded or supervised stores" area; (3) a "bonded or supervised ground equipment" area; and (4) a "free trade zone." Except in the last case mentioned, however, there appears to be no particular reason why the formal designation "free zone" should be given to the areas concerned, unless by so doing (in the case of the direct transit area) goods could then be sold free from customs duties and domestic sales taxes." ICAO Doc. FAL 3—WP/18, 7/6/51, pp. 1-2.

¹⁰⁰ ICAO Doc. FAL 3—WP/33, 22/8/51 on "Proposal to Establish Direct Transit Facilities on Airports."

¹⁰¹ Reflected in IATA's lack of support for customs-free airports at Buenos Aires and in ICAO Doc. FAL 3—WP/96.

¹⁰² ICAO Circular 14—AT/3, cited *supra*, in special chart section at rear.

¹⁰³ ICAO Doc. FAL 3—WP/1, 18/4/51, chart section at rear.

¹⁰⁴ In 1948, the ACC announced it was backing legislation for customs free airports in the previously cited "Simplifying International Air Transportation" at 26.

¹⁰⁵ ICAO Doc. FAL 3—WP/68, 20/11/51, at 1.

¹⁰⁶ Dr. Edward P. Warner, writing on "ICAO After 6 Years" in No. 15 of the IATA Bulletin, June 1952, p. 80, noted that "At least 30 states have set up inter-departmental facilitation committees." The June 1953 issue, No. 17, carries an article by Dirk Wessels Van Leyden describing Argentina's Inter-ministerial Commission on air clearance, pp. 79-80.

an orderly and friendly way by which the processes of peaceful transport can be resumed."¹⁰⁷ Looking back over this brief introduction to the many complex problems of airline frontier clearance formalities and customs-free airports some half century since Man first flew in a powered heavier-than-air machine, the words of Colonel Charles Lindbergh seem particularly appropriate:

"Every advance in transportation has stimulated commerce and brought people into closer contact with each other. One after another the fears and prejudices of isolation has been overcome as methods of communication and transport improved. Aviation, with its great speed and freedom of movement, is too powerful an instrument of progress to be long confined by the remaining artificial restrictions left over from an age of provincialism. Constructive thought is turning more and more toward international cooperation, and nothing is more important in this field than the simplification of communication and intercourse at the present time."¹⁰⁸

¹⁰⁷ *Hearings on H.R. 52, 88, 78th Cong. 2nd Sess.*

¹⁰⁸ League of Nations' Organization for Communications and Transit, *"Enquiries into the Economic, Administrative and Legal Situation of International Air Navigation"* vii, C.339.M.139.1930.VIII.

FACILITIES WHICH SHOULD BE FURNISHED AT ORDINARY INTERNATIONAL AIRPORTS PURSUANT TO EXISTING CONVENTION ARTICLES PLUS RECOMMENDATIONS (These are now available in varying degrees at many international airports)						FACILITIES OF FREE AIRPORT AT SHANNON IRELAND	FACILITIES IN FREE ZONES ON TUCUMEN PANAMA AIRPORT
	"Direct Transit Areas"	"Bonded or Supervised Stores Facilities" (Warehouses or stock rooms, fuel tanks, etc.)			"Bonded or Supervised Ground Equipment Facilities" (Warehouse or stock rooms)		
	Annex 9 (Para. 5.3- Recommended Practice)	Convention (Art. 24(A))	Convention (Art. 24(B))	Tax Resolution (Appendix I of DOC 7145, C/824)	Annex 9 (Para. 4.5 - Recommended Practice)		
A. DIRECT TRANSIT TRAFFIC (Under supervision)	1. No examination	Crew, passengers, baggage, cargo, mail and stores				Based on information available in Montreal to date	Based on information available in Montreal to date
	2. Exempt from Custom Duties					Same as Annex 9.	Same as Annex 9.
	B. STORES (Under Customs Supervision) (EXEMPT FROM CUSTOMS AND RELATED DUTIES)					Same as Annex 9. (Entire airport constitutes a direct transit area?)	Same as Annex 9.
	3. Unload for placement in stock	All Stores retained on board				Same as Convention	Same as Convention
	4. Hold in stock for incorporation in aircraft	From "none to all" stores, depending upon Customs regulations of a State.	Spare parts and equipment (articles and supplies of the commissary variety are not specifically mentioned - an oversight?)	Fuels and lubricants (retund, rather than exemption from duty is frequently the method used)		All stores	All stores while kept within free zone
	5. Hold in stock for consumption, use or sale on board aircraft	?	"	"		"	"
	6. Process (e.g. prepare aircraft meals from commissary articles and supplies)	?	"	"		"	"
	7. Load on outbound craft	?	"	"		"	"

All ground equipment	All ground equipment	All ground equipment while kept within free zone
"	"	"
"	"	"

- | D. TRADE (entire area (s), i.e., airport or zone (s), either "fenced in or under supervision")
(FUNCTIONS ALLOWED (RE GOODS AND SERVICES) FREE FROM CUSTOMS DUTIES AND DOMESTIC SALES TAXES) | Yes | Extent not known |
|---|------------------|------------------|
| 11. Import | " | " |
| 12. Hold in stock | " | " |
| 13. Process | " | " |
| 14. Manufacture | " | " |
| 15. Pack | " | " |
| 16. Exhibit | Extent not known | " |
| 17. Sell (to any greater extent than is normally allowed in a direct transit area) | " | " |
| 18. Export (with any greater freedom than is normally allowed elsewhere) | " | " |
| 19. Restaurant and hotel facilities (for use even by residents of State in which airport is located) | " | " |
| 20. General merchandising e.g., department stores (for use even by residents of State in which airport is located) | " | " |

Direct Transit Traffic:
Includes crew, passengers, baggage, cargo, mail and stores handled by means of direct transit area (such areas generally contain telephone, telegraph, post office facilities).

Stores:
Includes fuel, lubricants, spare parts, regular (including removable) equipment, articles and supplies (e.g., commissary) for incorporation in, or for consumption, use or sale on board aircraft engaged in international operations.

Ground Equipment:
Includes equipment and technical supplies of the engineering, passenger handling, cargo handling and duplicating (for production of aircraft documents) variety, for use within the limits of an airport in connection with aircraft engaged in international operations.

Trade:
Includes exporters, importers, manufacturers and other business undertakings operating within designated geographical limits i.e. either an entire "free airport" or "free zone" or an ordinary international airport.

APPENDIX A, COMPARE
—FAL 3-WP-18, 7-6-51