

Section XI

This deals with the fusion between one European company and another, or between a European company and a national company.

Finally, two sections are left blank—one dealing with fiscal provisions, the other dealing with penal provisions. Quite plainly these are not the least important, but go beyond the mandate of Professor Sanders at the present moment.

It will, therefore, be seen that this draft is an attempt to provide a comprehensive company law for a European company and it sets out to be acceptable to all the member States, as well as to be a new departure which might lead to the establishment of a single company law inside the Community. As this may one day extend to the rest of Europe and even beyond, it will be easy to appreciate its importance. The difficulties and the arguments which it is bound to provoke will result in a very useful examination of the draft and will allow of no easy or rapid solution. It may well be, however, that in the long run it will be the only effective way in which a harmonisation of company law can be achieved.

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FREEDOM OF MOVEMENT AND THE TRAVEL DOCUMENT IN BENELUX

WITHIN Benelux territory there operates a model system of free movement of persons which can well serve as an example of co-operation for other States. The Benelux countries have through the years taken a liberal outlook towards human mobility. Before looking at the present-day position, the past efforts of co-operation to reduce obstacles to freedom of movement to Belgium, Luxembourg and the Netherlands are worth examination.

History and Development

In Western Europe prior to the First World War, there was almost complete freedom of mobility for the nationals of Western European countries. Both manpower and tourists could traverse national frontiers without possessing a passport. 1914 saw the re-introduction of passport régimes which shackled mobility and survived the Great War. In addition to the efforts of the League of Nations, it was up to each nation either to act unilaterally or conclude international arrangements to free the fetters. Belgium and Luxembourg took the first step to revert to previous practices, at Luxembourg on October 20, 1926, by concluding a Labour Treaty¹ to benefit their nationals working in the other's country. Each country undertook that no obstacles would be placed in the way of the departure of their nationals who wished to leave their country to take employment in the other country. Such workers and their families were to receive every administrative facility from their country for this purpose.

¹ LXXVIII *League of Nations Treaty Series* (L.N.T.S.) 375. The Labour Treaty came into force on December 15, 1927.

Generally, such workers and their families could enter the other country, reside in it and leave it at will.²

At Geneva on February 20, 1933, representatives of the Belgian and Netherlands Governments signed a Convention regarding Establishment and Labour³ which was to regulate the conditions of establishment and labour for Netherlands nationals in Belgium and Belgian nationals in the Netherlands. Each country agreed that its nationals would have the right to enter the other's territory, to establish themselves there and leave the territory as long as they observed the laws of that country. Each State could withhold permission of entry or residence to anyone considered undesirable either as regards maintaining order, public morals, public health or public security, or because the person was without means of subsistence. Belgian nationals situated in the Netherlands would normally be able to leave that territory if they wished and vice versa.⁴ Each State reserved the right to subject the nationals of the other State to its police regulations such as those concerning passports and identity cards.⁵ Each country agreed not to place any obstacles in the way of the departure of their nationals who wanted to travel to the other country in order to take up employment there. All administrative facilities were to be given to such workers and their families towards this end.⁶ Frontier workers, who were nationals of either country but worked in the other's territory, had to procure an identity card from the mayor of their domicile⁷; the card served as a travel document.

On April 1, 1933, at The Hague, Luxembourg and the Netherlands signed a Convention concerning Establishment and Labour⁸ which set out the conditions for establishment and movement of labour for each Party's nationals in the other Party's territory. What has already been said about the Belgium-Netherlands Convention applied between Luxembourg and the Netherlands for their nationals who sought work in the other's territory except that no provision was made for frontier workers.

Belgium and Luxembourg signed an Arrangement concerning the Status of Frontier Workers⁹ at Brussels on July 22, 1938. The Arrangement provided for the issuance of a Frontier Worker's Card¹⁰ to the frontier workers of Belgian or Luxembourg nationality residing in Belgium. This card was issued by the communal authorities in the frontier worker's place of residence. Luxembourg or Belgian nationals who were frontier workers residing in the Grand Duchy but worked in Belgium required their Luxembourg identity card to be endorsed by the communal authorities of the place where they worked with the words *frontier worker*. Each of these identity documents served its holder as a valid travel document for crossing the Belgium-Luxembourg border.

² Art. 1.

³ CLXV L.N.T.S. 383. The Convention came into force on January 7, 1936.

⁴ Art. 1 (1).

⁵ Art. 1 (3).

⁶ Art. 11 (1).

⁷ Art. 18.

⁸ CLXXXIX L.N.T.S. 11. The Convention came into force on June 11, 1937.

⁹ CXCI L.N.T.S. 113. The Arrangement came into force on September 7, 1938.

¹⁰ Model attached to the Arrangement, *ibid.* p. 116.

Immediately prior to the Second World War, nationals of the three countries could cross the frontiers into either of the other two countries on presenting a national passport or, in the case of Netherlands nationals, a certificate of Netherlands nationality, or a valid official identity card. The Second World War ended freedom of movement in Europe.

At the end of the war, Belgium and Luxembourg in an exchange of notes at Brussels on April 17 and 28, 1945, concluded an Agreement on the Re-establishment of the Freedom of Movement of Persons.¹¹ The Agreement restored the system in force prior to the outbreak of war on September 3, 1939, in respect of movement of persons between Belgium and Luxembourg. Consequently, Belgian and Luxembourg nationals could cross the Belgo-Luxembourg frontier in either direction on production of an identity card issued by the competent authorities. A supplementary Agreement¹² to the latter Agreement was concluded by an exchange of letters at Brussels on June 2 and July 15, 1949, between representatives of the Belgian and Luxembourg Governments. The Supplementary Agreement provided that Luxembourg nationals could enter and leave Belgium on producing either a Luxembourg identity card issued subsequent to October 1, 1944, or a Luxembourg national passport which was valid or expired less than five years ago but was issued after October 1, 1944. Luxembourg nationals resident in Belgium could cross the Belgo-Luxembourg frontier on presenting either a valid alien's identity card issued or renewed by the Belgian authorities subsequent to October 6, 1944, or an unexpired certificate of entry in the aliens' register. Belgian nationals could enter and leave Luxembourg on production of either a Belgian identity card validated or extended after October 1, 1944, or a national passport issued, extended or renewed after October 1, 1944, and still valid or expired within the last five years. Belgian nationals resident in Luxembourg could cross the Belgo-Luxembourg border in either direction on presentation of a valid alien's identity card issued or renewed by the Luxembourg authorities since October 1, 1944. Belgium and the Netherlands exchanged letters at The Hague on March 22 and 29, 1950, which constituted an Agreement concerning the Abolition of the Obligation to Carry a Passport for Travel¹³ between the two countries. Under the Agreement, Netherlands nationals could enter Belgium on presentation of a certificate of Netherlands nationality. Persons carrying a valid Belgian identity card could enter the Netherlands. Belgian nationals residing in the Netherlands were able to cross the Belgium-Netherlands frontier in either direction on presenting their registration card issued by the Netherlands authorities. Netherlands citizens resident in Belgium were able to cross the frontier on presenting a certificate of Netherlands nationality issued by the Netherlands Consul in their area of residence. In order to obtain either Belgian or Luxembourg currency

¹¹ 41 *United Nations Treaty Series* (U.N.T.S.) 265. The Agreement came into force on April 18, 1945.

¹² 41 U.N.T.S. 13. The Supplementary Agreement came into force on August 1, 1949.

¹³ 68 U.N.T.S. 45. The Agreement came into force on April 1, 1950.

in the Netherlands for a trip to these countries, Belgian and Netherlands citizens needed only to produce any of these afore-mentioned travel documents instead of a national passport. Belgium and Netherlands citizens in Belgium would be able to obtain and exchange their foreign currency in Belgium for travel to Luxembourg and the Netherlands, by presenting their above-mentioned travel document. It is implied in the Agreement that Belgian, Luxembourg and Netherlands nationals would be able to use their travel documents for crossing the Luxembourg-Netherlands frontier. Luxembourg nationals were able to cross the borders of the three countries on possessing a valid identity card.

Belgium and Luxembourg rescinded and replaced their Agreements of April 17 and 28, 1945, and of June 2 and July 15, 1949, by an Agreement concerning the Freedom of Movement of Persons¹⁴ contained in an exchange of letters at Luxembourg on April 6, 1950, between representatives of both countries. Under the Agreement, Belgian nationals whatever their country of residence could enter or leave Luxembourg if they carried any of the following: (a) a national passport that was issued or renewed after October 1, 1944; (b) a valid Belgian identity card issued or renewed after October 6, 1944; (c) a valid alien's identity card, issued or renewed by the Luxembourg authorities after October 1, 1944; (d) a valid alien's identity card issued or renewed by a French prefecture in France or Algeria after October 1, 1944; (e) a valid alien's identity card issued by the Monaco authorities after October 1, 1944. Belgian children under 15 years of age domiciled in Belgium could enter Luxembourg if they possessed either a passport or an identity card bearing a photograph and giving their complete civil status, issued after October 1, 1944, by the communal authorities of their domicile. Belgian children under 15 years of age who were domiciled in another country required either a passport, or a registration certificate bearing a photograph which was issued by a Belgian diplomatic or consular official.

Luxembourg nationals whatever their country of residence could enter or leave Belgium if they possessed any of the following documents: (a) a national passport issued or renewed after October 1, 1944; (b) a valid Luxembourg identity card issued or renewed after October 1, 1944; (c) a valid alien's identity card issued or renewed by the Belgian authorities after October 1, 1944; (d) a valid alien's identity card issued or renewed by a French prefecture in France or Algeria after October 1, 1944; (e) a valid alien's identity card issued by the Monaco authorities after October 1, 1944. Luxembourg children under the age of 15 years could enter and leave Belgium, (a) if they were included in the passport of a person of Luxembourg nationality who was accompanying them, or (b) if they possessed an identity certificate bearing a photograph and giving their complete civil status which was issued after October 1, 1944, by the communal authorities of their place of residence.

Each Government reserved the right to refuse admission to, or sojourn in its territory of, any nationals of the other country whom it considered as undesirable.

¹⁴ 65 U.N.T.S. 147. The Agreement came into force retroactively on March 7, 1950.

The Agreement of April 6, 1950, between Belgium and Luxembourg was extended by a Supplementary Agreement concerning Nationals possessing a Swiss Identity Card for Aliens¹⁵ which was concluded by an exchange of letters at Luxembourg on September 13 and 19, 1950. In addition to the travel documents acceptable under the Agreement of April 6, 1950, both Governments agreed that Belgian nationals would be able to enter and leave Luxembourg if they presented a valid Swiss identity card for aliens which contained their photograph, and Luxembourg nationals would be able to enter and leave Belgium if they presented a valid Swiss identity card for aliens which contained their photograph.

Belgium and the Netherlands sought to ensure a greater freedom of movement for their subjects across the Belgium-Netherlands border in an exchange of letters at The Hague on March 26, 1953, which constituted an Agreement for the Liberalisation of Minor Frontier Traffic.¹⁶ Both Governments agreed that their nationals could cross the frontier if they possessed an identity card, a passport either valid or expired within the last five years, or proof of Netherlands citizenship. The Agreement further stipulated that border crossing between the two countries could take place anywhere during the period sunrise to sunset, as well as at the prescribed crossing points at any time. Due to complaints from the inhabitants in the frontier zone, Belgium and the Netherlands modified their Agreement of March 26, 1953, in a further Agreement¹⁷ negotiated in an exchange of letters at Brussels on February 24 and March 5, 1955. The partial restriction on border crossing at unauthorised points between sunrise and sunset was made most liberal so that nationals of both countries could cross the frontier anywhere, at any time of the day.

Belgium and the Netherlands also sought agreement to assist two other groups of persons who resided in their territories, namely, seamen and refugees. Representatives of both countries exchanged letters at Brussels on July 29, 1954, and January 13, 1955, which constituted an Arrangement concerning the crossing of the Frontier by Belgian and Netherlands Seamen on Presentation of a Seaman's Book.¹⁸ It was agreed on a reciprocal basis that seamen nationals of either country could enter the other State's territory to join a ship, if each seaman upon reaching the frontier presented a valid Belgian or Netherlands seaman's book and a certificate from a shipping company to the effect that the seaman was proceeding under orders to join a named ship of the company at a named port. The seaman's book had to contain a stamped photograph of the holder and particulars of his identity and nationality. The shipping company certificate had to state that it was the company's obligation to repatriate at its expense any discharged seaman who was replaced by the new crew member sent to join the ship.

On the subject of movement of refugees, Belgium and the Netherlands exchanged letters at The Hague on February 16, 1955,

¹⁵ 79 U.N.T.S. 328. The Supplementary Agreement came into force on September 19, 1950.

¹⁶ 165 U.N.T.S. 297. The Agreement came into force on May 26, 1953.

¹⁷ 213 U.N.T.S. 387. This Agreement came into force on May 8, 1955.

¹⁸ 210 U.N.T.S. 63. The Agreement came into force on February 13, 1955.

constituting an Agreement to Improve the Condition and Facilitate the Movement of Refugees in Belgium and the Netherlands.¹⁹ Belgium agreed to accept into its territory, on a reciprocal basis, refugees lawfully settled in the Netherlands, who produced a valid refugee travel document issued by the Netherlands Government in accordance with the London Agreement of October 15, 1946, or the Geneva Convention of July 28, 1951. The entry visa which had formerly been required was no longer needed. Each Government reserved the right to refuse admission or residence to persons that it considered undesirable. Refugees benefiting by the Agreement were to be re-admitted, at any time, to the State which issued the travel document, upon the simple request of the other State unless the latter State authorised the refugee to settle in its territory.

Belgium and Luxembourg came to a similar Agreement on the movement of refugees in an exchange of letters at Luxembourg on April 4, 1955,²⁰ as did the Netherlands and Luxembourg in an exchange of notes at Luxembourg on May 4, 1955.²¹

The spirit of co-operation by these three countries in relation to freedom of movement is next illustrated by the Agreement concerning the Movement of Travellers Who Are Nationals of the Netherlands and Luxembourg Resident in Belgium,²² which is found in an exchange of notes by the Netherlands and Luxembourg at The Hague on February 6 and 22, 1956. This Agreement sought to simplify frontier formalities and encourage the movement of travellers. On a mutual basis, the Governments agreed that any of their nationals who resided in Belgium would be admitted to Luxembourg or the Netherlands if they possessed a Belgian identity card for aliens which indicated that they were either a national of Luxembourg or the Netherlands. Both Governments reserved the right to refuse entry to its territory of persons that it considered undesirable. Each Government mutually agreed to accept a person expelled by the other Government if such person was, according to his Belgian identity card for aliens, their national, and if required that Government would issue the person a travel permit.

Belgium and the Netherlands exchanged notes in Brussels on January 14 and February 4, 1958, resulting in an Agreement Relative to the Removal of Undesirable Persons.²³ The Netherlands agreed to accept the return of any of its nationals from Belgium that the latter considered as undesirable; procedure to be initiated by a simple request for return made by Belgium. The undesirable person had to possess either a Netherlands national passport, valid or expired, or a certificate of Netherlands nationality, but even if he did not hold any of these travel documents, the Netherlands had to accept a person

¹⁹ 211 U.N.T.S. 49. The Agreement came into force on April 4, 1955. This Agreement was subsequently denounced on April 9, 1961, to take effect on November 10, 1961, 410 U.N.T.S. 295.

²⁰ 211 U.N.T.S. 57. This Agreement came into force on April 19, 1955. The Agreement was subsequently denounced on July 15, 1961, to take effect on October 16, 1961, 410 U.N.T.S. 296.

²¹ 292 U.N.T.S. 17. The Agreement came into force on July 30, 1955.

²² 286 U.N.T.S. 249. The Agreement came into force on June 1, 1956, but was applied from March 1, 1956.

²³ 330 U.N.T.S. 83. The Agreement came into force on March 16, 1959.

from the Belgian authorities when there was every reason to believe that such person was a Netherlands national. An undesirable person would be handed over to the Netherlands authorities at a designated clearing post with any travel document that such person carried, or any other document relating to his nationality and a declaration of the hand-over.²⁴ Similarly, Belgium agreed to the return of any of its nationals considered as undesirable by the Netherlands under the same conditions and procedures outlined, if such persons held any of the following documents: a Belgian national passport, valid or expired; an identity card; a registration card or certificate issued by a Belgian consulate; a certificate of nationality; or a copy of civil register documents proving the acquisition of Belgian nationality. If none of the foregoing documents was held by the undesirable person, Belgium would still accept him if there was every reason to believe that he had Belgian nationality.²⁵ This Agreement did not prejudice the Belgium-Netherlands Agreement of February 16, 1955, on the movement of refugees between Belgium and the Netherlands.

On June 7, 1956, Belgium, Luxembourg and the Netherlands signed a Labour Treaty²⁶ at The Hague, which was designed to establish a common market in manpower. The Treaty provided for the free circulation of wage-earning nationals of each Party in permitting them to accept an offer of employment from a private employer in any of the three countries. At the time of signing the Labour Treaty, the three Governments realised that it would not become operative until a much later date and consequently decided to adopt some interim arrangement. To this end, the three countries signed a Provisional Labour Agreement²⁷ at Brussels on March 20, 1957, which was to enter into force immediately and continue to operate until the Labour Treaty of June 7, 1956, came into force.²⁸ The Provisional Labour Agreement gave salaried workers who were nationals of one of the three States the right to accept employment from a private employer in either of the other two States under the same conditions as the national workers of that State.²⁹ Operation of the Provisional Labour Agreement demonstrated the liberal attitude of the three States towards the free movement of labour across their national boundaries. Each country reserved the right to refuse entry to persons whom it deemed undesirable as a threat to its public order and morals, national security and public health.³⁰ In operation, the workers did not require a labour permit to take up their employment. They crossed the frontier in the usual way by simply producing one of the accepted travel documents already mentioned.

The Labour Treaty of June 7, 1956, came into force at the same time as the Treaty Instituting the Benelux Economic Union, that is,

²⁴ Art. 1.

²⁵ Art. 4.

²⁶ 381 U.N.T.S. 158. On the operation of the Labour Treaty see C. Gilon, "Le marché commun du travail Benelux et l'entrée en vigueur du Traité de Travail au 1er novembre 1960" (1961) *Bulletin Benelux* (No. 1), 21-29.

²⁷ (1957) *Bulletin trimestriel Benelux* (June, No. 1) p. 31.

²⁸ Art. 8.

²⁹ Art. 2 (1).

³⁰ Art. 2 (2).

November 1, 1960. Any national of a Party to the Labour Treaty could accept a wage-earning position from a private employer in the territory of another Party without having to obtain any work permit not required by the receiving State's own nationals.³¹ Each State accepted the responsibility of providing the necessary administrative facilities for the temporary or permanent entry or departure of wage-earners and their families.³² Such persons could cross the national borders by presenting one of the travel documents aforementioned. A similar provision to that found in the Provisional Labour Treaty regarding the right to refuse entry to undesirable persons was incorporated in the Labour Treaty.³³ The entry into force of the Labour Treaty abrogated the Belgium-Luxembourg Labour Treaty of October 20, 1926, the Netherlands-Belgium Convention regarding establishment and labour of February 20, 1933, in its application to wage-earners, and the Netherlands-Luxembourg Convention concerning establishment and labour of April 1, 1933, in its application to wage-earners.³⁴

Both Belgium and Luxembourg signed the European Agreement on Regulations Governing the Movement of Persons between Member States of the Council of Europe at Paris on December 13, 1957.³⁵ Under the European Agreement, nationals of the Contracting Parties whatever their country of residence could enter or leave the territory of another Party on presentation of any travel document listed in the Appendix to the Agreement.³⁶ Although Luxembourg did not ratify the European Agreement until April 24, 1961,³⁷ Luxembourg and Belgium decided to bring their Agreement of April 6, 1950, concerning the movement of persons, into line with the European Agreement. This step was taken at Brussels in an exchange of letters constituting an Agreement³⁸ on March 9 and April 9, 1959. The new Agreement amended the Agreement of April 6, 1950, by allowing Belgian and Luxembourg nationals whatever their country of residence to enter the other Party's territory if they could show a national passport valid or expired within the last five years. The provisions of the April 6, 1950, Agreement which required a national passport, valid or expired but issued or renewed after October 1, 1944, were cancelled.

*Progress in Benelux*³⁹

At a meeting in The Hague on February 3, 1958, plenipotentiaries representing Belgium, Luxembourg and the Netherlands signed a

³¹ Art. 2, para. 1. The Labour Treaty did not apply provisionally to worker nationals of the three States who were engaged as members of a ship's crew—Protocol, 381 U.N.T.S. 162.

³² Art. 7.

³³ Art. 2, para. 2.

³⁴ Art. 16.

³⁵ 315 U.N.T.S. 139. Belgium ratified on December 13, 1957, and the Agreement came into force on January 1, 1958.

³⁶ Art. 1.

³⁷ The Netherlands, which had not signed the European Agreement, became a Party to the Agreement when it ratified on February 24, 1961.

³⁸ 336 U.N.T.S. 342. The Agreement came into force on April 9, 1959.

³⁹ The future operation of the passport régime was forecast by H. C. Fraaij, "Vers une Union Benelux des Passeports" (1960) *Bulletin Benelux* (No. 11) 16-21.

Treaty Instituting the Benelux Economic Union.⁴⁰ The Treaty indicates that the Economic Union to be established by the three countries would include the free movement of persons.⁴¹ More specifically, the Treaty relates that the nationals of each member State may freely enter and leave the territory of the other member States, which included the same treatment as nationals of that State as regards freedom of movement, sojourn and settlement.⁴² Moreover, the three countries bound themselves to act in concert to ensure that no law or regulation unduly hindered any freedom of movement.⁴³ Article 55 of the Treaty called for conclusion of a convention to determine standards applicable to the nationals of the member States "with regard to their entering or leaving its territory, to their freedom of movement, of sojourn and of establishment therein, and to their expulsion."⁴⁴

Also, on February 3, 1958, the Convention Containing the Transitional Provisions⁴⁵ was signed by the plenipotentiaries. Article 1 of this Convention stated that the convention mentioned in Article 55 of the Treaty was to be concluded before January 1, 1959. The member States also undertook to co-ordinate legal and administrative regulations within five years which would culminate in the complete suppression of restrictions on the free movement of nationals of the member States within Benelux.⁴⁶

(a) *Travel in Benelux by Non-Benelux Nationals*

The Benelux Committee of Ministers, meeting in Brussels on April 11, 1960, signed the Convention Concerning the Transfer of Entry and Exit Controls to the External Frontiers of the Benelux Territory,⁴⁷ which was subsequently ratified by the three national parliaments and came into force on July 1, 1960. The Convention has the effect of constituting the three Benelux States as a single unit for entrance and exit controls.⁴⁸ It terminated the entry and exit controls at the internal frontiers of the member States, thus enabling maximum freedom of mobility within the Benelux territory to non-Benelux nationals. Henceforth, travel documents would only have to be shown when crossing at the external boundaries of Benelux territory.

A successful régime of this nature envisages a certain unification of administration, harmonisation of national legislation and a common policy taken by the three Governments. Co-operation among the Benelux members in this common venture was to begin

⁴⁰ (1959) VII *European Yearbook* 167-205 contains an unofficial translation of the Treaty. The Treaty went into force on November 1, 1960.

⁴¹ Art. 1 (1).

⁴² Art. 2.

⁴³ Art. 6.

⁴⁴ Art. 55.

⁴⁵ (1959) VII *European Yearbook* 205-219 contains an unofficial translation.

⁴⁶ Art. 9 of the Convention.

⁴⁷ 374 U.N.T.S. 3; (1960) VIII *European Yearbook* 175-183. For a commentary on Convention see J. Karelle and F. de Kemmeter, *Le Benelux Commenté* (Brussels, 1961) pp. 333-338. For a brief note on the operation of the Convention see M. A. P. J. van Bruggen, "Controle sur la Circulation des Personnes dans le Cadre de Benelux" (1962) *Bulletin Benelux* (No. 6) pp. 22-23.

⁴⁸ Art. 2.

with the creation of a ministerial Working Party responsible for laying down the basic rules, governing the entry and exit controls at the external frontiers.⁴⁹ The Working Party was formed following the Decision of the Benelux Committee of Ministers on November 3, 1960. On October 25, 1965, the Committee of Ministers modified their Decision of November 3, 1960, so that the present Working Party is composed of Ministers of Foreign Affairs and Justice of the three countries, the Minister of State for Luxembourg and the Minister of the Interior of the Netherlands. A Special Committee was to assist the Working Party in implementing the Convention.⁵⁰ Since November 1960, the Working Party has appointed members of the Special Committee from the government departments of the three countries.

In the event that a member country concludes an agreement with a third country for the movement of persons, all Benelux members would have to apply the most liberal view to the agreement's application adopted by any one member. The Convention calls for the creation of a Benelux visa which would be valid for the entire Benelux territory if a member State required a visa for entry.⁵¹ In practice, the Benelux visa would be attached to the travel document by the diplomatic or consular officer of any member State. If the visitor required a Benelux visa, his total stay on Benelux territory would be a maximum of three months.

Freedom of movement of non-Benelux nationals within the Benelux territory means that such persons are entitled to stay a maximum of three months in each member State without further formalities. The time limit is governed by the question of establishment of foreigners within each member State to which national legislation applies. Documents required by non-Benelux nationals for entry into Benelux territory had to be the same in the three States. Persons regarded as undesirables by any one member would be refused entry into the entire territory. Although Article 7 of the Convention obliges non-Benelux nationals entering from one member country to another member country to declare their arrival to the competent authorities of that country, in practice, the authorities assert this procedure upon a small proportion of the total number of foreign visitors. It also means that persons are to enter by way of authorised internal frontier entrances. Non-Benelux nationals established in one of the member States are able to travel in the other Benelux countries on the strength of their residence permit which in this case serves as a travel document.⁵² Each member undertook to re-admit non-Benelux nationals to its territory if such persons entered either of the other Benelux countries from its territory and were considered undesirable in the other Benelux countries.⁵³

A member State can always temporarily re-establish entry and

⁴⁹ Art. 6 of the Convention.

⁵⁰ On November 3, 1960, the Benelux Committee of Ministers adopted a Resolution instituting the Working Party and the Special Committee (1960) VIII *European Yearbook* 184.

⁵¹ Art. 4.

⁵² Art. 8, para. 2.

⁵³ Art. 9.

exit controls at its internal frontiers for reasons of national security or public order which is meant to include public health.⁵⁴

Generally, a non-Benelux national requires a valid passport to enter Benelux territory. Special regulations put forward by the Working Party concerning the entry of certain categories of non-Benelux nationals are now operative. The first such category of persons are children under 15 years of age who are travelling with one of their parents, grandparents or tutor. If such children wish to enter and remain in Benelux territory for more than three months, they need not possess a travel document or an authorisation for their provisional stay, providing they have the same nationality as the person with whom they are entering and are identified on such person's travel document or authorisation for provisional stay. If the children are entering for a maximum stay on Benelux territory of three months, they can enter without a personal travel document providing they are travelling with one of the above-mentioned persons, have the same nationality as such person and are identified on the travel document of this person. If the child is to travel alone, he must possess the requisite travel document to enter, which is normally a national passport.

Another group of non-Benelux nationals exempt from production of a national passport on entering Benelux are those persons from Western European countries who are travelling in groups whose numbers range from five to fifty persons. Such groups of persons may enter Benelux territory for three months or less on a collective passport or collective list. This travel document must be valid and contain particulars of the group, giving full names, their date and place of birth and domicile. If they are entering on a collective list, it must be authenticated by the issuing country. The issuing authority must mention that the persons listed in the collective list or collective passport possess the nationality of the issuing State. Young persons under 21 years of age who are stateless can also be included in collective passports on the basis of the Agreement on Collective Passports for Young Persons concluded by the Brussels Treaty Powers on February 28, 1952. However, their names must appear in the collective passport separately from the others. The collective passport or collective list will only be accepted when presented by the leader of the group who must hold the document and possess a personal valid national passport. All persons travelling under a collective passport or a collective list must carry an identity card bearing their photograph except young persons under 16 years of age who are travelling under a collective passport for young persons. However, young stateless persons who are travelling on a collective passport for young persons must carry an identity card containing their photograph.

Non-Benelux nationals who are seamen and enter a Benelux port aboard ship are in certain circumstances exempt from carrying travel documents. Within twelve hours of their ship's arrival in a Benelux port, the captain must present the immigration authorities with two copies of a manifest of the ship's crew which indicates the name of the ship, the nationality of the ship, date of arrival, the

⁵⁴ Art. 12.

full names of the captain and crew, their function, nationality and date of birth. At the time of presenting the manifest, the captain must tell the authorities the expected time of departure of the vessel. All persons on the manifest list can have shore leave in the port while the ship is in port. If the captain or crew have a valid passport or a seaman's book, they can leave the vicinity of the port. The last statement does not apply if the seaman wishes to sign off the ship or does not intend to return before the ship leaves port.

Refugee seamen presenting a valid travel document issued under the Agreement relating to Refugee Seamen⁵⁵ by West Germany, France, Denmark, Monaco, Norway, Sweden, Morocco, Great Britain or Switzerland can enter Benelux territory and in most cases stay for three months.

Frontier workers resident in a country bordering Benelux territory can cross into Benelux simply on presentation of a valid frontier worker's card, issued by the competent authority where they reside.

Persons belonging to international organisations can enter Benelux countries without national passports. The Benelux countries allow officials of the United Nations and its Specialised Agencies to enter Benelux territory simply on presentation of a valid United Nations laissez-passer. The members and high officials of the High Authority of the European Coal and Steel Community are admitted on presenting a valid European Coal and Steel Community laissez-passer. Judges, Advocates-General and the Registrar of the Court of Justice of the European Communities can enter any Benelux country by showing the external frontier immigration officer a valid laissez-passer issued by the European Coal and Steel Community. The same is true for the members and senior officials of the European Parliamentary Assembly who are issued with a laissez-passer by the President of that institution.

The foreign members of NATO's military armed forces can enter Benelux by presenting their personal identity card and either a collective or individual mission order issued by their national authorities or the NATO authorities. British, American and Canadian nationals stationed in Europe can enter by presenting a military identity card and a permit of leave.

Refugees recognised by one of the Benelux countries can enter for a maximum stay of three months if they hold a valid travel document issued by their country of residence. If they wish to stay longer than three months, the only additional document required is an authorisation for provisional stay issued by the diplomatic representative or consular officer of the country to which they are proceeding. Stateless persons can also enter for a maximum stay of three months if they hold a valid travel document issued by their country of residence. If they wish to stay for more than three months, they must have an additional authorisation of provisional stay issued by the diplomatic representative or consular officer of the country to which they are going. Flight crew members of the countries party to the Chicago Convention of December 7, 1944, can enter Benelux if they possess a "Flightcrew Member's Licence" or

⁵⁵ For a discussion of the Agreement relating to Refugee Seamen, see P. Weis, "The Hague Agreement relating to Refugee Seamen" (1958) 7 *I.C.L.Q.* 334-348.

a "Crew Member Certificate" issued in application of the Chicago Convention. Such persons are permitted to leave the airfield where they landed on condition that they leave on the first airplane to which they are assigned. Persons possessing such documents can also enter Benelux to travel to an airfield or to a place of operation of their company.

As the Benelux countries are all members of the European Communities, the nationals of the member States of the European Communities and their families can enter Benelux in conformity with the European Economic Community's Regulation No. 38 on the Freedom of Movement for Workers within the Community and the Directive of March 25, 1964, on the Abolition of Restrictions on Movement and Residence within the Community of Workers and Members of their Families Belonging to Member States simply on presenting a valid identity card issued by the national authorities or a valid national passport.

(b) Intra-Benelux Travel by Benelux Nationals

Article 55 of the Treaty calls for the conclusion of a convention "determining, in the interest of public order, public security, public health or morality . . . such provisions which may be applied to nationals of a High Contracting Party in the territory of another High Contracting Party with regard to their entering or leaving its territory, and to their freedom of movement, of sojourn and of establishment therein, and to their expulsion."⁵⁶ On September 19, 1960, the Convention Implementing Articles 55 and 56 of the Treaty Instituting the Benelux Economic Union⁵⁷ was signed. Article 1 of the Convention reveals that nationals of a member State could enter the territory of the other member States on the sole condition of being in possession of a valid identity document to be determined by the Benelux Committee of Ministers.⁵⁸ Nationals of a Benelux country enjoyed the right to establish⁵⁹ themselves in the other Benelux countries provided they had adequate means, and were of good character,⁶⁰ proof of means and a certificate of good character or a certificate from the police. A Committee on the Free Movement and Establishment of Persons was to be established to keep track of the execution of this Convention and also to suggest practical means for its implementation.⁶¹

On October 1, 1963, the Benelux Committee of Ministers rendered

⁵⁶ Unofficial translation

⁵⁷ (1960) VIII *European Yearbook* 169-175. The plenipotentiaries had initialled the Convention on April 11, 1960.

⁵⁸ Art. 1.

⁵⁹ On the legislative activity in each of the Benelux countries in the field of establishment, see P. J. Ph. Th. Menger, "Législation en matière d'établissement aux Pays-Bas" (1961) *Bulletin Benelux* (No. 2) 31-40; L. Salpeteur, "La législation belge d'établissement," *ibid.* 41-46; E. Emringer, "Le régime d'accès aux professions commerciales industrielles et artisanales au Luxembourg," *ibid.* 47-50. On establishment in Benelux, see H. A. M. van der Kallen, "La Consultation Préalable au sujet des Projets de Régimes d'Établissement" (1963) *Bulletin Benelux* (No. 4) 7-12.

⁶⁰ Art. 2.

⁶¹ Art. 8. The Benelux Committee of Ministers adopted a Resolution to establish the Committee on November 3, 1960 (1960) VIII *European Yearbook* 183.

a Decision Relative to the Identity Document Foreseen in Article One of the Convention Executing Articles 55 and 56 of the Treaty Instituting the Benelux Economic Union.⁶² Article 1 of the Decision indicated the documents which would entitle the nationals of one Benelux country to enter the other member States; these included a valid national passport, a national passport which lapsed within the last five years, an official Belgian identity card, an official Luxembourg identity card, a valid Netherlands identity card. Children of Netherlands nationality under 16 years of age and Belgian or Luxembourg children under 15 years of age require a national passport, valid or expired within the last five years of their parents, grandparents or tutor whom they are accompanying, that mentions their identity. Children under 16 years of age of Netherlands nationality are admitted on presenting the identity card of their parents, grandparents or tutor which mentions their identity and with whom they are travelling. A Belgian identity card for children under 12 years of age or a Luxembourg proof of identity and travel for children under 15 years of age can be used. Other acceptable documents for entry include: a valid identity card with an inscription from the book of registration issued by a diplomatic representative or Belgian consul; a valid identity card for foreigners, issued by Belgium, France, Liechtenstein, Luxembourg, Monaco or Switzerland, which mentions that the holder is of Belgian or Luxembourg nationality; a valid identity card for foreigners issued by Belgium or Luxembourg which states that the holder is of Netherlands nationality. Article 2 of the Decision implies that any of the afore-mentioned documents is sufficient to constitute a presumption of the bearer's nationality in case the bearer seeks to become established in one of the Benelux countries.

Other documents listed in Article 1 of the Decision which will enable the nationals of each Benelux country to enter the territory of the other Benelux countries include, for Netherlands children under 16 years of age and Belgian or Luxembourg children under 15 years of age, a national passport, valid or having expired within the last five years of their parents, grandparents or tutor of Netherlands, Belgian or Luxembourg nationality, which mentions their identity and with whom they are travelling. The following documents are also acceptable: a collective passport for persons under 21 years of age; a collective list prepared by the director of a school or by the head of a youth group and stamped by the local police; a collective list of old persons stamped by the local police and mentioning the country of destination. Persons presenting a Flightcrew Member's Licence or a Crew Member Certificate issued pursuant to the Chicago Convention of December 7, 1944, can travel intra-Benelux if the bearer is travelling in the course of his occupation. A valid Belgian, Luxembourg or Netherlands seaman's book will entitle its bearer to travel intra-Benelux if the bearer is travelling in the exercise of his occupation. According to Article 2 of the Decision, none of the documents mentioned in this paragraph is sufficient to constitute a presumption of nationality for the purposes of establishment.

⁶² (1963) *Bulletin Benelux* (No. 5) 41. It came into force on October 1, 1963.

Conclusion

The Benelux experience in freedom of movement has been influential to some extent in Europe, although the full import of Benelux co-operation has not made sufficient impact thus far so as to serve as a prototype for other regional groupings. Ripe for similar co-operation are the member States of the European Communities. As early as 1953, the Consultative Assembly of the Council of Europe supported a programme to suppress the passport requirement for travel by nationals among the member States of the European Coal and Steel Community.⁶³ This effort was abortive although the member States of the ECSC did conclude many bilateral agreements to abolish the passport requirement for travel between their territories.⁶⁴

By March 13, 1960, all the member States of the European Communities had signed the European Agreement on regulations governing the movement of persons between member States of the Council of Europe,⁶⁵ which relieved their nationals from the obligation of presenting a passport for travel to other members' territories as long as such persons did not stay in each country beyond three months or pursue gainful employment there. With the exception of Germany, the member States of the European Communities have also signed the European Agreement on travel by young persons on collective passports between the member countries of the Council of Europe.⁶⁶

Under the aegis of the European Economic Community, the abolition of restrictions on freedom of movement and freedom to reside within the Community for nationals of member States in regard to establishment and the provision of services was assured by the Council of Ministers on February 25, 1964.⁶⁷ The EEC economic union will be operating in the near future, and on July 1, 1968, the remaining obstacles to the free mobility of labour in the Community

⁶³ Recommendation No. 51, Council of Europe, *Consultative Assembly, Fifth Ordinary Session, Third Part*, September 15-26, 1953, *Official Report of Debates*, p. 554.

⁶⁴ Bilateral Agreements designed to facilitate the movement of persons and abolish the passport requirement since 1950 include: the Belgium-France Agreement of March 7 and 14, 1950, 65 U.N.T.S. 139; the Belgium-France Agreements found in 47, 48, 71 and 277 U.N.T.S. at pp. 365, 306, 313 and 339 respectively which assisted the movement of their nationals resident in the Saar; the France-Belgium Agreement of August 8 and September 3, 1958, 314 U.N.T.S. 326; the Belgium-Italy Agreement of June 20 and 25, 1952, 137 U.N.T.S. 239; the France-Netherlands Agreement of May 21, 1957, 299 U.N.T.S. 43; the France-Netherlands Agreement of March 15, 1958, 437 U.N.T.S. 362; the Belgium-Federal Republic of Germany Agreements concluded on July 26, 1956, and on January 24 and March 11, 1957, 249 and 272 U.N.T.S. at 187 and 310 respectively; the France-Italy Agreement of February 28, 1957, 291 U.N.T.S. 191; the Netherlands-Federal Republic of Germany Agreement of April 8 and 9, 1958, 335 U.N.T.S. 237; the Netherlands-Federal Republic of Germany Agreement of September 19 and October 10, 1958, 486 U.N.T.S. 345; the France-Federal Republic of Germany Agreement of December 8, 1956, *Gemeinsames Ministerialblatt*, December 8, 1956, p. 592; the Luxembourg-Federal Republic of Germany Agreement of July 25, 1956, *Gemeinsames Ministerialblatt*, July 25, 1956, p. 357; the France-Luxembourg Agreements of April 8, 1950, and May 30, 1959; the Italy-Luxembourg Agreement of July 3, 1958.

⁶⁵ *European Treaty Series*, No. 25.

⁶⁶ *European Treaty Series*, No. 37.

⁶⁷ [1964] *Journal Officiel des Communautés Européennes* 845.

will disappear. Euratom and the ECSC have also taken steps to create labour mobility in the fields within their purview.⁶⁸

In addition to all of these factors, the successful operation of a passport union within half of the member States of the European Communities invites the expansion of this union to encompass all the Communities' members. Entry and exit controls could be transferred to the external frontiers of the Communities' territory to regulate the movement of foreigners, while the nationals of the member States could travel intra-Community on possessing one of the many internationally recognised travel documents. Although such a blueprint can be formulated in a Convention, the facility of present Communities' machinery stands ready to accomplish the same ends. Indeed, such a project would demonstrate yet another aspect of continuing European integration.

DANIEL C. TURACK.*

THE COURT-MARTIAL OF CAPTAIN LEVY

WHAT seemed at first another pedestrian case of an American army officer being disciplined for disobedience to "superior orders" turned out to be a trial of immense political significance.

Captain Howard Brett Levy—a physician from Brooklyn specialising in dermatology—was charged principally with:

- (a) wilful refusal to obey a command (to train the Special Forces Aidmen—the para-medical troops in the Green Berets) for duty in Vietnam;
- (b) "conduct unbecoming an officer and gentleman"; and
- (c) making statements promoting disaffection and disloyalty.

This case was different and significant due to the reasons Captain Levy gave for disobeying his orders; also because Army Intelligence had a dossier (a "G-2" security file) on his background and because of the presiding law officer's forthright initial ruling. The law officer, Colonel Earl Brown had said, "My researches disclose that the Nuremberg trials involve a rule that a soldier must refuse an order to commit war crimes."¹ The ruling was made in response to Dr. Levy's argument that the "Green Berets" were "killers of peasants" and "murderers of women and children" and that to train the Aidmen for service in Vietnam would be abetment of war crimes committed by them.

⁶⁸ With respect to the ECSC, see *Arrangement en execution de la Décision relative à l'application de l'article 69 du Traité instituant la Communauté Européenne du Charbon et de l'Acier* (ECSC, May 1956); on Euratom, see [1962] *Journal Officiel des Communautés Européennes* 1650.

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¹ It may be recalled that Article 8 of the Charter of the International Military Tribunal at Nuremberg provided that "The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility but may be considered in mitigation of punishment if the Tribunal determines that justice so requires," Text in (1945) 39 A.J.I.L. suppl. pp. 258-264. The Tribunal Judgment added that "The true test . . . is not the existence of the order, but whether moral choice was in fact possible," Cmnd. 6964 at p. 42.