COUNCIL OF EUROPE

SECOND COLLOQUY

ON EUROPEAN LAW

FACULTY OF JURISPRUDENCE - UNIVERSITY OF AARHUS

30 June - 2 July 1971

"INTERNATIONAL MUTUAL ASSISTANCE IN ADMINISTRATIVE MATTERS"

STRASBOURG

TABLE OF CONTENTS

./.

INTRODUCTION

The Second Colloquy on European Law held under the auspices of the Council of Europe took place at the University of Aarhus (Denmark) from 30 June to 2 July 1971. The theme was: INTERNATIONAL MUTUAL ASSISTANCE IN ADMINISTRATIVE MATTERS.

Since the First Colloquy, held in London in July 1969, had dealt with a question of private law (redress for non-material damage) (1), the second was devoted to a public law topic included in the Council of Europe's Intergovernmental Work Programme for 1971/1972.

The Second Colloquy on European Law was held at the instigation of the Council of Europe - or more precisely the Committee of Ministers - at the suggestion of the Committee of Specialists for the Comparative Study of the Law of European States, endorsed by the European Committee on Legal Co-operation (CCJ).

Thanks to the hospitality of the University of Aarhus Institute of Public Law, the Colloquy was provided with a setting and facilities conducive to its success, which was further guaranteed by the presence in the Chair of Professor Max Sørensen.

The subject chosen was one which has hitherto hardly been touched upon. Apart from a few international Conventions, mutual assistance between different countries' administrative authorities is based mainly on arrangements prompted by practical necessity and goodneighbourly relations. Mutual assistance is less developed in administrative than in judicial matters and is rarely systematic: where it is systematic, it is confined to narrowly delimited areas.

The Aarhus Colloquy could not, therefore, be expected to produce extremely detailed results of immediate practical value for the establishment, by means of appropriate instruments, of a general system of mutual assistance on a European scale.

Thanks are due to the three Rapporteurs, Mr. Fromont, Mr. Gersing and Dr. Loebenstein, for having laid a solid foundation for the Colloquy - and for subsequent work in the Council of Europe - and supplied the subject matter for discussions, the high standard of which was acknowledged by all the participants (professors, senior officials and administrative court judges).

./.

---

(1) The proceedings of the First Colloquy were published by the Council of Europe in 1970 in a bilingual booklet entitled: "Redress for non-material damage / Réparation du préjudice moral".

Fiscal questions were excluded from the discussions by common consent, since it was felt that they constituted a specialised field of mutual assistance - and indeed a privileged one - by virtue of the many treaties in force. With this exception, it will be seen that the conclusions of the Colloquy range widely over problems requiring solution; and they offer, if not the answers, at least some stimulating ideas which may bring about a speedy improvement in the existing situation, to the advantage of both the administrative authorities and the general public.

./.

Report presented
by
Professor Michel FROMONT
Dean of the Faculty of Law, Dijon

International mutual assistance means that the administration of one State helps that of another to perform its tasks. Generally one administration assists another only if such assistance is reciprocal; nevertheless in each actual case assistance is given for the exclusive benefit of the administration which receives it. That is not the same as administrative co-operation, whereby the two administrations act out of common interest. Thus mutual assistance in administrative matters is basically an exchange, whilst administrative co-operation means the pooling of resources.

Mutual assistance in administrative matters takes a number of forms. These can be classified in different ways. First, they can be classified according to the extent to which mutual assistance is automatic; cases in which a request is necessary and does not have to be complied with, cases in which a request is necessary and is always complied with, cases in which no request is necessary and mutual assistance in administrative matters is entirely automatic. They can also be classified according to whether the administration providing the assistance plays an active part: transmission of information, issuing of certificates, notification of a foreign decision, or whether it is purely passive: recognition of a foreign administrative decision.

In domestic law, mutual assistance in administrative matters acquires a special significance in some federal States. For example, Article 35 of the Constitution of the Federal Republic of Germany stipulates that "all federal and land authorities shall render each other mutual legal (Rechtshilfe) and administrative (Amtshilfe) assistance" (1). According to German theory, the obligation of the Federation and the Länder to help one another is a consequence of the unity of federal power. Mutual assistance in administrative matters is, in fact, an expression of the solidarity which unites the members of the same constitutional entity.

The same idea is found in international society: mutual assistance in administrative matters can develop only among States which feel they belong to a single community and are closely bound together. That is why international mutual assistance in administrative matters can scarcely develop save in a regional framework, such as Europe. It was that idea which inspired the two parts of this report, that dealing with the legal basis, and that covering the content of mutual assistance.

./.

---

(1) Compare with Article 4 of the 1871 Constitution and Article 7 of the Weimar Constitution.

I. The legal basis of international mutual assistance in administrative matters in Europe

I shall show in turn that no principle of public international law makes mutual assistance in administrative matters an obligation, that the consent of the State approached is always a necessary condition of mutual assistance and, lastly, that in the European framework, States are quite willing to offer one another mutual assistance in administrative matters.

A. The lack of a general rule in public international law

Public international law contains no rule making it generally an obligation for one State to assist the administration of another State.

There can be no doubt about there being no such rule when mutual assistance in administrative matters requires positive action on the part of the State offering assistance: transmission of information (automatic or at the request of the other State), notification of a foreign decision. In fact, the principle of State sovereignty prevents a State from issuing an order to another State, even in administrative matters.

The absence of any general rule is less obvious when the mutual assistance in administrative matters is such as to require a State to respect the legal effects of the decision of a foreign administration. Indeed, although there can be no coercion outside the State's territory, the same is not necessarily true of a State's power to take an administrative decision affecting one of its nationals abroad when such a decision is taken in pursuance of a law applicable in principle to all nationals. More than that, it seems difficult to limit the effects of an administrative decision to the territory of a State if that decision was taken by the State with respect to a person who was on its territory at the time. Consequently, the principle of territoriality is not enough, in my view, to establish the absence of any obligation to offer mutual assistance in such a case.

Indeed, American and English court decisions have often stressed the need to respect the administrative actions of foreign States and thus to recognise that these have legal effects in the USA or the United Kingdom. Thus, for example, the well known judgment in Hatch v. Baez declares that in the universal comity of nations and by virtue of the recognised rules of international law, the courts of one country must refrain from passing judgment on the acts of another government in its own territory (7 Hun 596, 599, New York, 1876), and Anglo-Saxon jurists speak of the "sacrosanctity of foreign acts of State". But that concept

./.

is not accepted in other countries. They believe that the independence of States does not mean that the administrative acts of one State must be fully effective on the territory of other States. Consequently, the Anglo-American theory of the "Act of State" becomes no more than a rule of domestic law, even if it is justified by considerations of international law. Thus there is no general rule in international law.

However, public international law does accept the compulsory nature of mutual assistance in administrative matters in certain fields: e.g. all States agree that foreign consulates should engage in certain administrative activities vis-à-vis their nationals, most States agree that measures of expropriation and decisions attributing nationality to a person have effects outside the territory of the States whence they emanate.

B. The consent of the State approached is always necessary

In the absence of an international rule compelling States to assist one another in administrative matters, States are free to agree to this or not. In fact, States adopt different attitudes according to their traditions.

These attitudes find expression either in the conclusion of agreements, or in the promulgation of legislation, or simply in administrative practice. But in all cases it is the State which decides on the desirability of mutual assistance in administrative matters, through diplomats, legislative bodies or administrators. There are differences, however, between these three techniques. In the first case, the State commits itself in advance and cannot withdraw unless the other party agrees. In the second case, the State issues a rule which is automatically applicable in all cases, but it can amend that rule unilaterally at any time. In the third instance, the State can decide on the desirability of mutual assistance in administrative matters as each case arises.

In practice, States adopt different attitudes according to which State is the beneficiary: implicitly, they require reciprocity, and are more willing to offer mutual assistance in administrative matters to States from which they can expect services similar in both quality and frequency, i.e., States whose administration is of the same standard and which receive a considerable number of their nationals. All this explains why mutual assistance in administrative matters has been able to reach a particularly high state of development in Europe.

./.

C. Texts and practices concerning intra-European mutual assistance in administrative matters

A study of the replies to the questionnaire (2) sent out by the Legal Directorate of the Council of Europe to the relevant departments in the member States reveals that mutual assistance in administrative matters is the subject of numerous texts and practices.

The texts referred to are most frequently international Conventions, and more rarely texts concerning domestic law.

Multilateral Conventions take pride of place among international agreements. They include in particular the Conventions of the International Commission on Civil Status (ICCS) (3), Conventions concluded under the auspices of the Council of Europe, particularly in the field of education and social matters, and Conventions concluded within smaller groups of European States, such as the Scandinavian States and Benelux (4). Some Conventions are concluded within a much wider framework than that of Europe, such as UNO (road traffic) and ILO. European States have also concluded many bilateral agreements, especially where very large numbers of their citizens move to and fro between them (States with common frontiers, States which receive or provide many migrant workers).

Texts concerning domestic law are rarer; but they do exist, particularly in matters concerning civil status. Here, the example of Switzerland is very characteristic: the Order on Civil Status (OEC), the Order on Personal Judicial Records, and the Federal Vocational Training Act contain very precise provisions on the transmission of documents and the recognition of foreign administrative acts. Obviously the rules of domestic law are characterised by the fact that they are applicable to all foreign administrations, unless they are made subject to reciprocity.

It is difficult to establish to what extent practices are particularly important. Nevertheless the replies to the questionnaire seem to indicate that the States regard mutual assistance in administrative matters as a foregone conclusion between neighbouring States or those which are close to one another. Moreover, often the sole aim of Conventions is to sanction past practice.

In that field, the Council of Europe might promote the drawing up of a Convention which would unify and consolidate existing practices; national administrations would then be better aware of their obligations in the field of mutual assistance.

./.

(2) See page 43

(3) The Commission comprises the six EEC States, Switzerland, Austria, Greece and Turkey.

(4) The EEC regulations should also be included in the social sphere, although these have a different legal nature.

II. The content of international mutual assistance in administrative matters in Europe

The administrations of two States can offer each other mutual assistance in very different ways and fields.

A. Procedures for international mutual assistance in administrative matters in Europe.

I spoke in the introduction of two possible ways of classifying the different procedures whereby two administrations render each other mutual assistance: active or passive mutual assistance; automatic, semi-automatic or discretionary mutual assistance. Those classifications make it possible to explain in part the attitudes adopted by States towards the various forms of mutual assistance in administrative matters.

The active forms of mutual assistance apply to cases in which the national administration acts on behalf of a foreign administration. In theory, this assistance might go as far as taking official action on behalf of the other State; but, in fact, no State has ever agreed to do so, apart from decisions concerning extradition or expulsion. Even cases in which a State notifies a person or persons of a decision taken by another State are rare: they are hardly met with except in the case of non-judicial documents in civil or commercial matters (Article 17 of The Hague Convention on Private International Law).

In fact the most prevalent form of active mutual assistance in administrative matters is without any doubt the transmission of national decisions or of information to a foreign administration. A distinction should be made according to whether transmission is automatic or on request. It is noteworthy that quite a number of agreements provide for the automatic transmission of decisions or information. Decisions which are automatically communicated are principally those intended to produce effects in whatever State the person concerned may be residing in; e.g., decisions concerning his civil status, nationality, fitness to drive a car. Information transmitted automatically is usually something which must be made known without delay: information concerning public health, the state of the labour market, etc.

On the other hand, it is rather remarkable that the transmission of decisions or information on request has not been the subject of any Convention. Such transmission often takes place, but it is based on established practice alone and thus leaves it to States to decide on the merits of each request. There are very few agreements which require States to comply with a request. Here, there is a considerable

./.

contrast with the domestic law of certain countries, particularly Austria and Germany (5): this contains detailed rules concerning the request, its acceptance and the costs entailed. Therefore, it has to be considered whether a Council of Europe Convention might not establish the principle of the transmission on request of all decisions and information and define the broad outlines of the procedure to be followed and cases where refusal is possible.

As for passive mutual assistance, the only form which is of practical importance is that concerning the recognition of foreign administrative acts.

The principle whereby an administration accepts facts established by a foreign administration seems to be generally admitted. However, that principle often rests on mere administrative practice, and it should be covered by a Council of Europe Convention.

On the other hand, a true foreign administrative decision taken under a foreign law is not recognised in all cases. In fact, it seems to be restricted to the following two cases. The first is that of any decision intended to apply to all nationals, wherever they reside (e.g. civil status, national service, nationality), or even to all persons who have committed an offence which must be penalised in all countries (e.g. withdrawal of driving licence). The second is that of certificates or diplomas issued under a national law which is similar to foreign laws (e.g. driving licences, school leaving certificates, vaccination, vehicle testing); in that case, the national legislation of each State must contain equivalent provisions so that serious discrepancies do not occur within the same State.

B. The fields of mutual assistance in administrative matters

The fields within which mutual assistance in administrative matters has been especially developed are clearly indicated in the questionnaire drawn up by the Secretariat of the Council of Europe and the States' replies.

I should like to set forth the concepts around which the main instances of mutual assistance could be grouped. In my view these are the status of persons, which must be the same in all countries, a European "ordre public", and perhaps a European status for migrant workers.

The first concept is that individuals must enjoy the same personal and family status, whatever country they may reside in. It corresponds to a definite European need and would

./.

(5) For German law, see Section 35 of the Basic Law and the Federal Bill on Administrative Procedure (Entwurf eines Verwaltungsverfahrensgesetzes, Drucksache VI (1173)).

appear to be justified by the following two considerations. First, it is imperative to respect the human being and his basic attributes in modern society; in short this is a new aspect of the desire to protect human rights. Second, European laws concerning the individual are based on the same fundamental principles and, in these matters, national "ordre public" must not conflict with a co-ordination of the application of the legislation of the different States. These two considerations are all the more imperative in that the movement of persons between States is increasingly common and must not be hampered by the reciprocal ignorance in which national administrations would continue to function.

The second concept is that of a European "ordre public". The various European States have very similar notions on safety requirements (particularly with respect to road traffic) and public health requirements. Therefore, it is desirable that national administrations should assist one another in order to prevent individuals evading certain restrictions by changing their country of residence. The activities of police forces in the various States must be co-ordinated whenever they do not have any specific political significance; such co-ordination is all the more desirable in that the various States have the same concern for the dignity and freedom of the human being.

Lastly, the third concept is that of a European labour market. It is in order to prevent migrant workers from experiencing many disappointments that the States agree to assist one another in order to co-ordinate supply and demand in employment and to ensure that migrant workers do not forfeit social security rights because they have not always worked in a single country. To be sure, these considerations are particularly valid for smaller groups, such as the Scandinavian States or the member States of EEC. But they also apply to all the member States of the Council of Europe, as is shown both by the European Social Charter and by the United Kingdom's reply to the Council of Europe's questionnaire.

It may be objected that the first two concepts are common to all the States of the Western world and that the third points rather to mutual assistance in administrative matters between States which supply and those which receive migrant workers. I do not think these objections are decisive, for these concepts are even more firmly established in the member States of the Council of Europe. Moreover, these States share similar social structures and similar administrative traditions, besides being in geographical proximity.

./.

CONCLUSION

Mutual assistance in administrative matters should be developed more systematically than hitherto. Therefore I propose that:

1. The principle that national administrations must assist one another be established;

2. The procedure whereby one State requests another to transmit documents and information, and the latter's method of reply, be defined;

3. The principle that an administration accepts without question facts established by a foreign administrative authority be established;

4. The principle that the personal and family status of nationals from the member States of the Council of Europe may vary with respect to nationality but not to residence be established, and that mutual assistance in related administrative matters be organised;

5. Attempts be made to develop the co-ordination of certain police activities in order to ensure the observance of minimum requirements concerning matters of safety and public health.

6. Attempts be made to develop mutual assistance in administrative matters concerning the social field.

./.

Report presented by
Mr. Jørgen Gersing
Under-Secretary of State, Danish Ministry of Justice

I. Introduction

In its report of 20 March 1970 the Sub-Committee charged with reviewing the work programme of the CCJ proposed to include in this programme the problem of mutual assistance in administrative matters. It rightly pointed out that, as a rule, international instruments do not contain appropriate provisions on mutual administrative assistance. International Conventions are concluded on clearly defined subjects, and such rules on administrative co-operation as they contain relate to these particular subjects.

It would therefore seem desirable to make the question of mutual assistance in administrative matters, which so far has been regarded rather as an incidental aspect of international instruments, the subject of a separate general evaluation, as it is proposed to do at this Colloquy.

II. Definition of the subject

As mentioned in the questionnaire (1) sent out in preparation for the Colloquy, the scope of the subject should be limited. There are numerous examples of international activity that may be taken to imply a mutual administrative co-operation. By way of example, mention may be made of international co-operation relating to postal matters, railway services and air services.

Between the Nordic countries there exists in other similar fields as well an extensive co-operation of that nature. Any person travelling between the Nordic countries will thus see one of the practical manifestations of such co-operation, as he may freely, without passport examination, go from one Nordic country to another. This is a consequence of the Nordic Agreement of 12 July 1957 on the abolition of passport examination at the common frontiers between the Nordic countries. Passport examination takes place only at a frontier between a Nordic and a non-Nordic country and is then carried out by the authorities of the Nordic country concerned on behalf of all of the Nordic countries.

Forms of co-operation of this nature, which are characterised by the co-ordination of common public services in various particular fields by means of international co-operation between the national authorities, will not be taken up for detailed discussion in this report, and the remarks in the introduction under Part I have no reference to such forms of co-operation.

./.

(1) See page 43

The need for mutual administrative assistance relates more particularly to the areas of administrative activity where administrative authorities enter into direct contact with the individual person, and is increasing with the continuous development of international travel and transport facilities. As a result of this development, people will in ever increasing numbers stay for a shorter or longer time outside the territory of their home country with the possibility of becoming involved in one way or another with the authorities of the country in which they are staying. As a consequence these authorities will often need data on the antecedents of an individual.

The problem, however, has another aspect as well as the authorities of the home country may also be in need of information on the situation of a person during his stay outside his home country.

In both cases the authorities are dependent on the administrative assistance that may be given by foreign authorities. For the time being, the most expedient way of exchanging information must be taken to be mainly in the form of documents. The question of mutual administrative assistance, then, will in this context relate to the problem arising in connection with the international exchange of information in the form of documents on the situation of individual persons.

The information that is exchanged will to a considerable extent consist in administrative decisions. In such cases, the question arises whether the foreign administrative decision is or should be recognised as valid and, if appropriate, enforceable.

III. The particular content of co-operation

In what follows an attempt will be made to define a number of problems that appear to be common in international administrative co-operation and which confront the individual official in his work.

1. In what fields is information supplied to a foreign administrative authority?

An examination of the replies to the questionnaire shows that the supply of information on the matters referred to in Head II of the questionnaire is largely regulated through Conventions between the member States of the Council of Europe. In other cases, it seems to a considerable extent to be a matter of current practice. There is, however, a wide variety of situations in this respect, and there appear to be no principles of general application.

./.

Given the relatively short time allowed for the preparation of this report, it has not been possible to make any systematic comparison between national practices. The data received seem to show, however, that a number of the co-operation arrangements existing between some of the member countries of the Council of Europe, either on the basis of a Convention or as a result of mutual practice, may be extended to more countries. In general, it is not so much because of considerations of principle that this has not been done but rather because the problem of mutual administrative assistance has not been viewed in the broader perspective that is the aim of this Colloquy. The replies to the questionnaire, however, constitute valuable material, which - systematically analysed - may form the basis of a study in greater depth of the mutual practice of the States.

Where information is being exchanged today, it seems in some measure a matter of chance whether the information is supplied to another administrative authority automatically or on request. The question is of considerable practical interest because authorities will often be ignorant of the fact that foreign administrative authorities are in possession of information relevant to the handling of a case. In those cases, the information will become available only if it is communicated automatically. The fortuitous character that may come to attach to an administrative procedure if there are no fixed rules on this question may be illustrated by an example from the Danish road traffic legislation. Here, provision has been made for disqualifying a person from holding or obtaining a licence to drive a motor vehicle by reason of incidents that have occurred abroad. The possibility of applying that provision is, however, in the vast majority of cases dependent on the automatic supply of information on such incidents to the Danish authorities. At present such information is received from but a few countries - a fact that gives the administration of that provision a somewhat unpredictable character.

It would be a definite administrative improvement if in such cases it was certain that information would automatically be communicated to the authorities concerned. Accordingly, it might be appropriate to examine to what extent automatic exchange of information between the administrative authorities is necessary and practicable.

The information which an authority will require will sometimes be obtainable only through inquiries abroad put in hand with a view to the particular matter in question. This will for example be the case where a claimant states that an event affecting his personal situation has taken place

./.

abroad and the authorities of his home country wish to verify his statements. Here, the necessary assistance cannot be confined to the foreign authority's stating whether it is in possession of particulars relevant to the matter, and if so, communicating such particulars; it will be necessary for an actual inquiry to be made abroad through examination of witnesses, production of medical reports, etc. Co-operation of that nature, which today seems to be largely based on considerations of courtesy, could probably be extended and come to follow more fixed lines through reciprocal agreements.

The available material contains no information as to whether the national authorities feel unable to supply information on some of the matters listed in Head II of the questionnaire, e.g., by reason of domestic legal provisions on official secrecy, etc. Nor is there any information as to the extent to which exchange of information actually takes place. A further elucidation of these matters would be valuable for any future study of the subject.

As matters stand, the overall evaluation of the question would seem to be that provision has largely been made for the exchange of information, in part on the basis of Conventions, in part through the mutual practice of the national authorities. On the other hand, there would seem to be a need to examine what type of information the national authorities are prepared to supply and to investigate the possibility of establishing uniform lines and principles governing the exchange of information between the countries in particular areas of administrative activity.

2. How to ensure the authenticity of a foreign document?

In so far as information is exchanged by way of documents, the general problem of the authenticity of the document arises.

In a number of cases the administrative co-operation based on Conventions that is mentioned in the replies to the questionnaire consists, inter alia, in the acceptance by the administrative authorities of the countries concerned, without verification, of the authenticity of foreign documents appearing to be issued by a foreign authority. Examples of such documents are certificates of birth and death, marriage certificates and certificates entitling a person to contract a marriage.

However, as far as most documents are concerned, the question of their authenticity is not regulated by a Convention, and the authority which is to make use of them is here faced with having to decide whether there is any reason to doubt their authenticity. Where a document is despatched through diplomatic channels, the authenticity of

./.

the document is normally likely to be taken for granted as a matter of course. The same is probably true where documents are sent directly from one administrative authority to another. The problem of the authenticity of documents arises in particular where a party to an administrative case produces a foreign document on which he intends to rely.

3. How to ensure the correctness of information contained in a foreign document?

The prerequisite of administrative co-operation is the existence of such a relationship of trust between the authorities that the authority making use of information given in a foreign document can count on the correctness of the information. As a rule, there is no possibility of verifying it.

It is not unusual, however, for an authority making use of information deriving from a foreign document in a decision, imposing a penalty or otherwise unfavourable to the citizen, to be met with the objection that the contents of the document are incorrect, the issuing authority incompetent, etc.

It would therefore seem desirable to consider the possibility of confirming the presumption of the correctness of the contents of the document, e.g. through the mutual exchange of information as to what national authorities are competent within a particular administrative area, responsible for providing information, etc.

4. What documents should be valid abroad?

Very often, national authorities are faced with the situation of having to decide on the validity of foreign administrative decisions. To the individual person it is very important that, while staying abroad, he does not meet with unpleasant surprises concerning the recognition of administrative decisions whose validity he has so far considered to be beyond doubt. Accordingly, it is absolutely necessary that authorities should recognise the validity of foreign administrative decisions to the widest extent possible.

On the other hand, it must be admitted, I think, that the question is a very difficult one and one that requires a close analysis of each administrative decision. Much work at the international level has been devoted to the question, and its detailed analysis would go far beyond the scope of this Colloquy.

./.

It may be of considerable interest, though, to attempt to draw up a general survey of the areas of activity in which each country recognises the validity of foreign administrative decisions, as well as a list of areas in which there is likely to be a need for and possibility of mutual recognition.

5. Enforcement of foreign administrative decisions

Given the increasing opportunities for the individual person to choose his own State of residence and State of employment that exist today thanks to international co-operation, an administrative decision whose enforcement is confined to the territory of the country giving the decision may quite easily be evaded by moving to another country. That form of evasion of administrative decisions may be prevented by international arrangements providing for decisions, enforceable in the country in which they were given, to be enforceable also abroad.

The question of the enforcement of foreign administrative decisions seems to have been taken up for consideration in particular as regards the enforcement of decisions relating to maintenance payments. As well-known results of that work, mention may be made of the UN Convention of 20 June 1956 on the Recovery Abroad of Maintenance, which binds the States not directly to enforce foreign maintenance orders, but to facilitate the recovery of maintenance through their own legal systems, and of the Hague Convention of 15 April 1958 on the Recognition and Enforcement of Decisions relating to Maintenance Liability for Children.

Co-operation with a view to recovery of maintenance has existed between the Nordic countries since 1932 in pursuance of the Nordic Convention of 10 February 1931. That Convention has now been superseded by the Convention of 23 March 1962 on the Recovery of Maintenance. The Convention is of considerable practical interest and is quoted as an example of the results of Nordic co-operation.

The content of its most important provisions may be summarised as follows:

Art. 1. Administrative decisions or written agreements regarding the duty to pay maintenance to a spouse, former spouse, child or child's mother, which are enforceable in the State where they are made, shall on request be directly enforceable in any of the other States.

Art. 2. Requests for enforcement shall be sent to the authorities in the Contracting State where the beneficiary is staying or in the State where the administrative decision was pronounced or the agreement was signed.

./.

If enforcement is to take place in a State other than that in which the request was made in pursuance of Section 1, the request shall be sent to the former State.

Art. 3. The authority instituting the recovery procedure may, if deemed necessary, demand a statement from the authorities of the State where the document was issued to the effect that the order is directly enforceable.

As will be seen from these examples, it is possible to achieve results in this field. The experience gained from international co-operation shows, however, that such co-operation is attended by such great fundamental and technical difficulties that a more thorough examination of the question can hardly be made within the framework of this Colloquy. The difficulties stated above under paragraph 4 relating to the recognition of the validity of foreign documents seem to be even more formidable in the context of enforcement. So the above observations are chiefly aimed at calling attention to the problems.

IV. Form of the co-operation

The Nordic Convention on Co-operation of 23 March 1962 provides in Article 38:

"The national authorities of the Nordic countries shall be able to correspond directly with one another in matters other than such as by their nature or for any other reason should be handled through the foreign service."

By this provision the Nordic countries have established in the form of a Convention an international form of co-operation according to which the competent national authorities of the countries concerned make direct contact with one another without using the usual diplomatic channels - a practice that seems to be continuously gaining ground.

The development of such a form of co-operation should be viewed in the light of the increasing international intercourse with the need for speedy communication and for relieving the national foreign offices and diplomatic representations of some of their duties. It must be a condition, however, that there is no need for the co-ordinating functions of the Foreign Office in the field covered by the co-operation.

But in those fields where the co-operation primarily takes the form of an exchange of documents on the personal circumstances of individual persons, very often the intervention of the Foreign Office seems unnecessary. So consideration might be given, after consultation with the national foreign offices, to selecting areas of administrative activity in which such co-operation might take place directly between the competent national authorities of the countries concerned.

./.

Direct co-operation between the member countries of the Council of Europe is to some extent impeded by language difficulties. In this connection, it should be pointed out that the fact that administrative co-operation between the Nordic countries can be carried out directly between the national competent authorities is largely due to the relative absence of linguistic obstacles to such co-operation. The national authorities of the Nordic countries may make use of their own language in matters covered by mutual co-operation, the language of each country being understood without much difficulty in the other Nordic countries.

The situation is a different one in the relations between the member countries of the Council of Europe, where there is no denying that language difficulties do exist. In so far as the competent national authorities of those countries get into direct touch with each other, they will have to do without the language assistance normally provided by the foreign offices and diplomatic representations of the various countries.

It is therefore necessary for the competent authorities to take concerted action in an effort to solve that problem. In this context, it would seem to be of considerable interest to examine national practice in this field to see whether a general solution of the problem is practicable.

V. Future co-operation

In the foregoing, attention has been called to a variety of problems affecting administrative co-operation between the national authorities of the member countries of the Council of Europe, and various solutions have been suggested.

The intention has been to point out that there is a need for developing the already existing co-operation and making it more effective, and that it is possible to do so in a number of fields.

One of the possibilities with a view to future co-operation might be to draft a framework agreement permitting the conclusion of administrative agreements between national government departments. Another possibility would be the organisation of more informal meetings of officials of the member countries for the discussion of administrative problems of common interest. This sort of co-operation already exists in the relations between the Nordic countries.

What should be the form of future co-operation is, however, hardly of decisive importance. What is more important is that the problems of mutual assistance in administrative matters are viewed jointly and are tackled in a more systematic way than has been the case so far.

./.

Report presented by
Dr. Edwin Loebenstein,
Federal Chancellery of the Republic of Austria

1. Introduction

1. The subject of the Second Colloquy on European Law, "International mutual assistance in administrative matters", is not new ground. In terms of both legal theory and international law it means studying a matter already extensively covered by the judgments of the ordinary, civil and criminal courts (on civil claims and the guilt or innocence of accused persons).

The more the administration, as a component part of the authority of the State, is subject to law and the principle of legality, the less the legal systems of different States reveal any qualitative difference (difference of degree) between the procedures of civil and criminal courts and the procedures which administrative courts and authorities have to apply in what are termed administrative matters. Procedures in both branches of the State - the judiciary and the executive - are becoming increasingly formalised and so bound by the law.

At the same time, the growing functions of the modern State entail a corresponding need to extend relations between States to areas that do not fall under the ordinary courts but under special tribunals, e.g. general or special administrative tribunals, social tribunals or administrative authorities bound by provisions of law.

We must investigate how far the principles that have evolved in intergovernmental mutual assistance apply to the needs of State authorities and institutions dealing with "administrative" matters. It is irrelevant in this context whether these State authorities exercise administrative functions iure imperii, i.e. applying coercive measures, or iure gestionis, i.e. under private law without coercion. Indeed non-coercive administration, carried out without recourse to binding measures, is particularly relevant to this study, because the modern welfare State far more commonly exercises government functions without recourse to State coercion. This is the basic difference between the modern State and the traditional authoritarian police State, which acted iure imperii, to a certain extent, in the administrative sphere.

It must also be borne in mind that the principle of legality in administrative actions follows theoretically from the basic principles set out in Articles 5, 6 and 13 of the European Convention on Human Rights and that, even for political and legal reasons, the administration must in general act in accordance with the axioms expressed in the Convention.

./.

2. The increasingly frequent conclusion of treaties on areas of law concerned with what are in substance administrative matters, in addition to the traditional mutual assistance treaties, may be seen as a characteristic feature of intergovernmental relations and as in accordance with public international law. It is only natural that these treaties - for instance those on matters of nationality, marital status, double taxation, social security or welfare - deal with mutual administrative assistance along the lines of the traditional mutual assistance treaties in the judicial field.

Even in specific administrative areas in which there are no mutual assistance treaties, intergovernmental assistance is frequently requested and granted as a matter of international courtesy. As we shall show later, there is no generally recognised rule of international law on the duty of States to grant each other judicial and administrative assistance. In the event, however, on the basis of international courtesy mutual legal assistance is granted even without any formal bilateral or multilateral treaty or any generally recognised rule of international law. This applies especially in matters involving the legal protection of citizens of the requesting State by the requested State. The giving of such assistance is not compulsory, and the decision whether or not to accord it is at the discretion of the State concerned. This practice is an expression of the sovereignty of States in this field.

3. Consideration of the substance and limits of national sovereignty of the requested State would take us beyond the scope of this report. These limits are, however, crucial to our subject because the granting of different forms of judicial assistance, or permission for the requesting State to institute legal action from its own territory constitutes a limitation on the sovereignty of States.

(a) The growing volume of State functions and the increasingly close international co-operation make it necessary for the State to assume functions not exercised by the courts. The State has to carry out such functions in order to satisfy individual claims, but is often unable to do so without assistance from the organs of another State. The idea of progressing from the idea of the State as an administrator not bound by law to the idea of the State based on the rule of law is gaining ground under the influence of Anglo-Saxon thinking, reflected in the European Convention on Human Rights. It is thus legitimate to ask whether it is in fact advisable to draw up international rules on mutual assistance in administrative matters which would oblige the administrative authorities of States to grant such assistance. Would it not be enough, given the efforts to achieve the transition

./.

to the State based on the rule of law, to step up judicial assistance, since it is the courts that must decide individual civil law claims in the broadest sense, in line with Article 6 of the Convention?

We believe that the answer to this second question is no, for the following reason. Although any attempt to bring the administrative actions of the State under the rule of law (the principle of legality) is to be encouraged, this does not mean that any function of the State could or should be carried out in the first instance, by a court. It would be fully in keeping with the spirit of the European Convention on Human Rights if the actions of administrative authorities were subject to judicial review. The welfare State cannot do without the executive element of State power. The more administrative organs there are carrying out administrative tasks, the more necessary it will be to organise, and to lay down in treaties, international assistance in administrative matters. It is indeed the State's most recently acquired functions in matters of social security and welfare e.g. health, welfare rights, labour law, industrial safety and the campaign against drugs - that fall to administrative authorities in most countries.

(b) Our long-term aim is a European Convention on mutual assistance in administrative matters covering all fields except judicial assistance for civil and criminal courts.

Given the existing discrepancies between the legal systems of member States of the Council of Europe, any overall settlement may of course seem difficult, or even pointless, at the outset. It would seem more reasonable and prudent to set limits at the start and to proceed by stages. More satisfactory results could be achieved in this way than by attempting to draw up an overall Convention at the beginning.

(c) The first obstacle to any overall solution to the problem lies in the differing concepts of administration in the various member States of the Council of Europe, both in terms of theory and in terms of positive law. This stems not least from the fact that in countries within the sphere of Anglo-Saxon law most State activities apart from legislation, which is enacted by parliament, fall within the province of the courts. Within the sphere of continental law - perhaps as a result of later historical development - administration has been defined as autonomous action by the State, not strictly bound by the law. In these countries, administration is regarded as a function on behalf of the community, with a special mandate of its own. This approach may be seen as a relic of the period of absolute rule, in which administration was the preserve of the absolute monarch. Countering this view

./.

is the idea that administration is a function of constitutional law explicable only in terms of the constitution. In countries adopting this approach, the administration executes the laws, acting through civil servants bound by instructions. This concept of administration is bound strictly in its form and admits of no exceptions. According to this approach, the one to which constitutional law and related theory in Austria incline, administration is closely bound by law, whereas in other countries of continental Europe it is regarded as action in the interests of society, the activities of the administration being restricted by law only in the case of certain administrative acts, notably where interference with liberty and property is concerned. Otherwise, the "freedom" of the administration is recognised.

The broad scope of the principle of legality which, under the influence of Articles 5, 6 and 13 of the European Convention on Human Rights, requires judicial review even of administrative acts, is leading increasingly to the integration of matters dealt with by the courts and by the administration and, hand in hand with this, to the conclusion that administrative procedure is subject to law. In this spirit, the difference between the functions of the judiciary and those of the executive is being cut to the minimum.

(d) In so far as, in the determination of civil claims or criminal charges, Articles 5 and 6 of the European Convention on Human Rights require the formal proceedings of a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the law, the rules of procedure to be applied by administrative authorities have become increasingly formal in recent decades. They are no longer lagging behind the rules governing ordinary courts. Rather, the regulations governing administrative acts are sometimes more rigid and bind the administration to much speedier and more formal procedures than those sometimes applicable to the courts.

This study deliberately excludes intergovernmental relations in the form of communities of States or joint bodies based on provisions of international law. For if a number of States establish common institutions to deal with railway traffic or aliens, such as joint frontier posts, etc., and undertake to link up with communications networks or set up joint bodies to this effect, such questions cannot be covered by mutual assistance in administrative matters.

We must also exclude from the study situations in which, for instance, one State permits another to carry out official acts on its territory. The fact that this is inadmissible in principle is the very reason why rules on the granting of assistance by the requested State are required.

./.

Similarly, this study omits cases in which administrative acts by one State constitute the basis for such acts by another - for instance, if a concession for hydraulic engineering work on frontier waters may be granted only where there is a similar concession by the other State.

Also beyond the scope of this study are cases in which a State is obliged by the acts of another State to accept deportees, in which guardianship is transferred from one country to another, or where there is a transfer of social security agreements between States - a matter of growing importance at a time of increasing mobility of labour.

2. The situation under national law - constitutional and ordinary law

There are now a few points to be made about the terminology of mutual assistance in judicial and administrative matters.

The use of these terms is far from uniform. Although the terminology varies even within the same legal system, the term administrative assistance, as opposed to judicial assistance, is often used to denote mutual assistance of authorities (administrative and judicial) among themselves, i.e. in their "internal" relations, though it should be used for assistance to third parties, i.e. as regards "external" relations.

The concept of assistance between authorities at national level, i.e. within the legal system of a given State, is interpreted in legal theory to mean assistance between judicial authorities, between administrative authorities or between the two kinds, either horizontally or vertically.

In national legal systems, the granting of judicial or administrative assistance of this kind covers primarily certain stages of administrative procedure. There are also constitutions that contain provisions on material assistance, in the case of natural disasters, for instance, or other cases of extreme need.

The present report deliberately excludes assistance of this kind, for relevant considerations of the foreign policy and international law implications of such assistance in intergovernmental relations are far too complex to be treated in detail in a strictly legal study such as this.

The following acts may be excluded from the concept of mutual assistance in administrative matters:

./.

(a) Acts by authorities at different hierarchical levels. These do not arise in intergovernmental relations, which as a general rule are based on equality, not superiority or subordination.

(b) There is no question of mutual administrative assistance if the requested authority acts not only in an isolated instance but replaces the requesting authority from the outset.

(c) Cases in which the departments concerned are auxiliaries of other authorities - for instance the criminal police serving the administration of criminal justice.

(d) Cases in which the requesting authority fulfils through the aid of another department functions devolving upon it by law or under special intergovernmental treaty. This is "extended administrative assistance". In fact there is an order by one authority to another, which acts by delegation.

3. The legal situation in intergovernmental relations

I have tried in this study to outline a general view of intergovernmental provisions on certain administrative matters. Such provisions exist mainly in the following areas: marital status, nationality, social security, public health, police law, the criminal law in connection with traffic offences, revenue, goods traffic and transport in general.

Although in legal theory it is held that the duty of courtesy between nations covers the grant of a certain minimum of mutual assistance, no generally recognised rule of international law has yet been developed, especially since it would be no easy task to decide what such a duty would actually entail. It could cover the extradition of criminals as well as the enforcement of judgments and decisions, the transfer of evidence and the mere procuring of information. Mutual assistance in judicial or administrative matters would thus be so diverse that no generally recognised rule of international law could be deduced from matters as they stand.

Any legal obligation to provide mutual assistance in administrative matters must thus be based on intergovernmental treaties.

The concept of "administration"

(a) The substantive approach;

(b) The organisational approach;

(c) The influence of Article 6 of the European Convention on Human Rights and Article 14 of the UN Covenant on Civil and Political Rights.

./.

A brief survey of the various theories on the concept of administration is now necessary in order to arrive at a common idea of what is covered by international mutual assistance.

(a) The substantive approach

When conducting basic theoretical research on mutual assistance in administrative matters, we need a clear idea of the concept of administration. We can leave aside the difficult question of the meaning of State power, because for the purposes of this study it is accepted that administration is one of the three functions of the State, as are legislation and justice. In Austria, particularly in the Viennese school of thought, State power is generally regarded as a function.

One question springs to mind at once: how are we to demarcate the three functions? We cannot reach any conclusions on what is covered by mutual assistance in administrative matters unless we know the exact scope of the legislative, the executive and the judiciary. Many attempts have been made to distinguish them by defining the substance of the concepts or by a breakdown of organisational units (e.g. the departments engaged in the activities in question), i.e. an organisational definition.

The system expounded by Montesquieu throws no light on the definition he favoured. The whole problem of demarcation is bound up with socio-political trends. The struggles of liberalism and constitutionalism against absolute monarchy concentrated on making certain areas the preserve of the legislative and the judiciary.

Any definition based on the substance means probing the essence of the executive sphere. It involves the content of this branch of State power. What is the role of the executive as a function of the State? Any investigation of the essence of the executive is inextricably linked with the content of legislative and judicial action.

It is very hard to describe the content of executive activity because such activity takes many forms and is constantly expanding. Legal theorists have simplified the task by trying to define the substance of the executive in negative terms, by subtraction: the executive is what is not legislature or judiciary.

Attempts are, of course, being made to find a positive definition of this fundamental branch of State activity, particularly since the separation of powers is the very essence of a State based on the rule of law.

./.

The general view, however, is that there is no generally applicable substantive definition. This is not because there is anything wrong with the theoretical formulation of the concept but because the characteristics of this function of the State defy definition and admit only of description.

(b) The organisational approach

An attempt has been made, using an organisational approach, to pinpoint what administration is by locating the bodies exercising this function, i.e. on the basis of formal factors governing the position of such bodies.

Within the executive there is a relationship of dependence, characterised by the right to command and the duty to obey. This relationship operates on hierarchical lines between different departments and between individual civil servants within the same department. It is recognised, of course, that in the modern State based on the rule of law any reasonable separation of powers must go hand in hand with some degree of co-ordination between them. It is mainly a matter of comparative emphasis. Neither the legislative nor the executive are confined to their original basic functions, namely the creation of general, abstract law in the former case and administration in the latter. Rather, they exercise functions falling within the sphere of the other two branches of State power, although the basic function remains the primary one.

It is thus not hard to define the three functions of the State in terms of formal organisation, with some claim to general applicability:

Legislation is all the general, abstract rules enacted by a freely elected parliament.

Justice is all the acts performed by independent law enforcement agencies enjoying security of tenure.

Administration is law enforcement by bodies appointed by parliament or responsible to it.

The substance of the three functions of the State is very hard to describe, and no definition can claim general validity.

According to the dominant school of legal thinking, the legislature, the judiciary and the executive perform three functions of the State and as such are proper subjects for the study of the law. Whatever the definition of the State, these three functions are substantially functions of the law for the simple reason that, in a State based on the rule of law with separation of powers, the legislature enacts general provisions of law, whilst the executive and the judiciary enforce the law, that is to say they apply general provisions of law to specific situations covered by those provisions and affecting specific persons.

./.

There is thus no difference of substance between the activity of the executive and that of the judiciary. Both have to take legally enforceable decisions on specific cases by legally constituted procedures. Their decisions may confirm existing rights and establish, amend or abolish legal situations.

Under the principle of separation of powers, administration is any activity of the State which devolves neither upon parliament nor upon an independent judiciary. In these terms, any definition of its substance is irrelevant.

Administrative assistance could thus cover any activities which under national constitutional law are not exercised by parliament or by the ordinary civil or criminal courts.

This definition is, or course, too restrictive if substantive administrative law covers functions to be classified as administrative jurisdiction. The activities of administrative tribunals should be included in the sphere of international mutual assistance in administrative matters.

What is wanted then, is a description of the areas requiring international mutual assistance in administrative matters and the bodies entitled to request or obliged to grant such assistance.

(c) Finally, we would draw special attention to Articles 6 and 13 of the European Convention on Human Rights, which have an important part to play in this study.

When defining international mutual assistance in administrative matters, and especially when investigating the concept of administration, we must bear in mind the provisions of Article 6 of the Convention, the substance of which is largely reproduced in Article 14 of the UN Covenant on Civil and Political Rights.

These provisions bear the stamp of Anglo-Saxon thinking on the relations between the powers of the State, and have helped transform relations between the State and its citizens through the evolution of the authoritarian State not accountable for its actions into a State based on the rule of law. Even in its executive function the State is subject to judicial control.

By ratifying these provisions, Contracting States that have not deposited reservations have restricted their freedom of manoeuvre. It is not possible for the State, if it abides by Article 6 of the Convention, to pass legislation placing decisions on civil law claims and obligations and on criminal charges in the hands of either courts or administrative authorities as it sees fit.

./.

Article 13 of the Convention lays down that, in case of violation of the rights and freedoms safeguarded by international law in Article 6, any person whose rights have been so violated is entitled to an effective remedy before a national authority, even if the violation was committed by persons acting in an official capacity.

These provisions of international law give the courts certain minimum powers that no longer depend on the national legal systems of the individual member States of the Council of Europe unless, as mentioned above, they made reservations when ratifying the Convention.

So far no satisfactory answer as to the interpretation of this provision has been consistently applied in the decisions of the bodies set up under the European Convention on Human Rights. The material distinction between public and private law is as hard to draw as that between criminal charges that only the courts may decide, and acts punishable merely as breaches of laws or administrative regulations.

We cannot claim to provide any conclusive answer for the purposes of this study.

There is no absolute and general reply to the question whether a case comes under civil or criminal law and is hence a priori to be decided solely by the judicial authorities. The question can only be answered in specific cases.

The codes of procedure of each country must ensure minimum standards covering the following points:

1. In so far as any general definition of civil law is possible, decisions on civil claims and obligations should fall within the exclusive jurisdiction of the courts.

2. Criminal charges covering serious offences against the legal systems of member States of the Council of Europe should fall within the jurisdiction of the courts.

3. Where no general European civil or criminal law concept is ascertainable, executive organs may exercise judicial functions. They must abide by the rules set forth in Articles 5, 6 and 13 of the Convention in their decisions or administrative arrangements or in the exercise of penal functions.

Conclusions

Care must be taken to include in the scope of any multilateral Convention on mutual assistance in administrative matters only those areas of administration in which national legal systems comply at least with the principles of administrative procedure which, under Article 6 of the European Convention on Human Rights, may be deduced to be basic rules of procedure in a State founded on the rule of law.

./.

This would not entail any new theory, but would merely take up a principle which is already embodied in international mutual assistance in civil and criminal law, especially assistance for the purpose of execution.

National systems of administrative law have been examined in detail, because a Party to the European Convention on Human Rights cannot be required to grant mutual assistance in administrative matters to a State that does not itself comply with the basic principles set forth in Article 6 of the Convention. If a State were to accept letters rogatory from another State whose procedures were not governed by the principle of legality, the requested State would be in danger of acting in violation of international law. It would thereby become, figuratively speaking, an accomplice of the requesting State in committing a breach of international law. Should a requested State therefore refuse to accept letters rogatory whenever it is convinced that the procedures of the requesting State do not comply with Article 6 of the Convention?

It would seem preferable to lay down multilaterally at the outset the principle already embodied in the European Convention on Human Rights as a condition for granting administrative assistance, in order to cut down as far as possible investigation of the request by the requested State.

(d) Both means of administrative action - jure imperii and jure gestionis - are relevant to requests for international assistance in administrative matters and the granting of such assistance.

4. Scope of future Conventions

It has already been stated that in any future Convention the subjects covered by mutual assistance in administrative matters would have to be described. Any such Convention would also have to define the authorities that might request or grant such assistance, using general or specific criteria.

Any definitions of the scope of future Conventions on international mutual assistance in administrative matters might combine the substantive and the organisational approaches to the concept of administration. Administration not exercised through binding acts could likewise be included. International mutual assistance in administrative matters could be requested or granted by administrative authorities or by general or special administrative courts exercising administrative functions.

Thus mutual assistance would also be granted in respect of the treatment of breaches of administrative regulations. This can be the more readily accepted in that we ask in our report that the proceedings of administrative bodies other

./.

than tribunals should be governed by the rule of law and comply with the basic principles set forth in Article 6 of the Convention. The enforcement of administrative regulations and the treatment of breaches of them is not a matter solely for tribunals but also for administrative bodies bound by instructions. Such enforcement thus forms part of administrative action. But even then the principles of the rule of law are observed in the activities of the bodies in question. They act in accordance with a procedure laid down by law and are thus under the control of parliament or a supreme administrative court, and are subject to legal and political control.

Administrative justice is sometimes exercised through administrative authorities rather than general or special administrative tribunals because of practical considerations. But the future undoubtedly belongs to special and general administrative tribunals. The administrative will gradually give way to the judicial.

Conclusions

Authorities entitled to request or grant mutual assistance in administrative matters should include the following:

(a) Organs forming part of the State administrative system, i.e. not legislative bodies or civil or criminal courts;

(b) General and special administrative tribunals of any level;

(c) Organs of autonomous local authorities;

(d) State-controlled institutions exercising State administrative functions, for instance artificial persons and public law bodies such as social security institutions, statutory or voluntary organisations for the defence of certain interests, etc;

(e) Public or private law bodies with responsibilities in given fields, e.g. post office, railways, radio and television;

(f) Public or private law bodies responsible for power supplies;

(g) Public or private law bodies responsible for administration of the labour market.

./.

I have tried in chapter 7 of my report to set out a pattern for the terms of organisation and substance of such a Convention. A discussion on these very specific points would certainly be valuable, and it is obviously easier to discuss subjects already formulated.

There is one difficult problem: should the treatment of breaches of administrative regulations be covered by international mutual assistance in administrative matters? In this context the European Convention on the Punishment of Road Traffic Offences of 30 June 1964 should be borne in mind.

Our answer to this question would be in the affirmative, but on two conditions:

(a) In States in which breaches of administrative regulations and related procedural matters are the preserve of executive authorities in the organisational sense, these two matters must comply with international law by virtue of an appropriate reservation to the European Convention on Human Rights.

(b) The law governing breaches of administrative regulations and related procedural matters in these States must comply - at least in its essentials - with the principles of Articles 5, 6 and 13 of the Convention.

5. Conditions for letters rogatory (connecting factors and the principle of just proportion)

Before an act desired by a State can actually be accomplished, it must be established that the State in question is competent to take such measures. This will be done by means of the rules of conflict of laws.

The aim of these rules is to indicate the system of law to be applied. Only after this has been established is there any point in asking whether the applicable system of law draws any distinctions on the basis of any connecting factors with other countries.

As a rule, the provisions of administrative law to be applied in cases in which the requested State is found to have jursidiction are that State's own, although in administrative proceedings foreign law may sometimes be applied.

In every case it will first be necessary to establish whether the State's own substantive rules are applicable to the facts. This is the same as the question of local applicability of the rules of the requested State, and must be investigated in each case as it arises.

./.

Administrative law can thus be applied only in accordance with the principles of conflict of laws concerning the jurisdiction of the State whose law applies to the case in point.

Like any other rule, the rules of conflict of laws may have personal, substantial, local or temporal application.

International law does not permit a State to intervene in the affairs of other States. The public law rules on conflict of laws refer in principle to one system of law, whereas the rules of private international law may refer to several systems. Here, too, there are exceptions, for national administrative law may refer to the administrative law of a foreign State and require its application (e.g. provisions on double taxation). We should not, however, be misled by the rules relating to persons and things in private international law, since the public law of the requested State is as a rule overriding and independent of a person's nationality.

For public law, the following simple formula should suffice:

Unlike private law, the question is not whether national or foreign law is applicable. Rather the question is as follows: is the administrative law of the requested State to be applied, or must that State declare itself neutral, i.e. not competent to carry out the administrative act requested?

The connecting factor for State action may be personal, material or local. Where the link is material the facts of the case are viewed in relation to those matters which it is for the State concerned to deal with: where local, what counts is the geographical aspect of the matters involved.

The State indicated by local and material factors has jurisdiction to deal with a given matter if all three factors are present. Because of the demarcation problems likely to arise in this connection it would be advisable to draw up intergovernmental regulations.

International law will, of course, be enough to oblige States to observe certain rules and restrictions where demarcation of their jurisdiction is concerned. But restrictions and regulations of this kind are still lacking in many cases in the field of administrative law. A State will frequently invoke connecting factors, which in its view justify the application of its own administrative law. For example, the place of an act or the nationality of a person involved in administrative proceedings may be regarded as giving one State sole jurisdiction in an administrative matter.

./.

The enforcement of such administrative acts is of special interest. In general this does not technically constitute mutual assistance: the State which is asked to enforce does so by virtue of its own law. It is only in order to prove that the conditions for enforcement have been fulfilled that it treats the foreign writ of execution as equal with its own.

These material considerations which under international law, provide a State with a connecting factor for enforcing a legal act are generally accompanied by other more special reasons. The reasons why a requesting State may need the assistance of another State in order to exercise its powers of jurisdiction may be summed up as follows:

(a) It may, for legal or material reasons, be unable to carry out the administrative act itself;

(b) It may be unable to carry out the act requested without incurring far greater expense than the other State would (principle of just proportion);

(c) In order to perform its duties it may need information on circumstances and facts not available to it, whereas the other State has the means to conduct the necessary enquiries;

(d) In order to carry out the administrative act it may need documents or other evidence in the possession of the other State.

It is clear that requests by letters rogatory (and compliance with such requests) are inadmissible whenever compliance by the requesting State with a similar request for judicial or administrative assistance would be likewise inadmissible.

It is also to be expected that the requesting and the requested State should have to observe the rules on secrecy in force in those States. Furthermore, it is essential that they should comply with any instructions that may exist in either State over and above the general provisions on secrecy: for instance, if information has to be transmitted about events requiring an even greater degree of secrecy.

It will also be necessary to abide by existing provisions on consultation of records in both States.

./.

6. Limits of mutual assistance in administrative matters (sovereignty, "ordre public", public safety, etc.)

I will now outline the complicated problem of the limitations on mutual assistance in administrative matters, especially those imposed by territorial sovereignty and "ordre public".

Territorial sovereignty is the right of a State under general international law to deal with a given territory as it sees fit. The State may exercise its full sovereignty over this territory and may exclude other States from its use or possession.

The aim of an agreement on mutual assistance in administrative matters, more specifically the recognition of foreign administrative acts, is to oblige one State to recognise on its territory the sovereign acts of another State or to grant it the assistance it requests in order that such acts may be effective. This is based on the idea that the requesting State has no connecting factor under international law enabling it to carry out the act in question itself.

The International Law Commission has now recognised a precept expounded by Verdross whereby there are, under any system of law, principles that are part of the "ordre public" and thus represent a particular jus cogens. I would refer in this connection to the deliberations of the Vienna Conference on the law of treaties and the draft prepared on the subject, with explanatory notes.

Verdross can thus rightly claim that, as the international community progresses in its organisation, the provisions of international law at the basis of the jus cogens valid for all Contracting States may be developed further.

We must therefore base our study on these principles of international law and accept a restriction, long generally recognised in private international law, precluding application or recognition of general or specific foreign law that is contrary to the "ordre public" of the requested State, this restriction being one of the limits that must be respected by the requesting and the requested State alike.

Any international Conventions on mutual assistance in administrative matters must in principle observe the limits of general international law. A treaty would therefore, because of its contents, not be binding if it were contrary to the binding provisions of international law or if it required things that were impossible or contrary to morality.

The "ordre public" clause, frequently cited and painstakingly investigated in legal writings and practice, does not mean only that a treaty must not aim at what is immoral. According

./.

to generally accepted opinion, and to the law as embodied in most treaties on intergovernmental mutual assistance, such assistance is limited by the sovereignty and, notably, the security or other vital interests of the State. This is similar to the honour and interests clause in numerous arbitration treaties. The rule has frequently been embodied in national systems of law where legal and administrative assistance are concerned.

It would, for instance, constitute an infringement of the binding rules of international law if mutual assistance in administrative matters were agreed for the purpose of extraditing nationals for infringements of regulations which in the requesting State were punishable as administrative offences by administrative tribunals or departments.

The requested State could invoke sovereignty ("ordre public") if the requesting State sought administrative assistance for an administrative act for which it was not competent, having no connecting factor, under international law (see Section 12). The precondition for administrative assistance would be, in principle, that the State requesting such assistance should have competence under international law to carry out the administrative act in question, i.e. it should have jurisdiction in the matter.

(a) Acts of sovereignty of one State can never be subject to the jurisdiction of another State. The State, as the embodiment of public authority, does not come under the legislation, jurisdiction or administration of any other State. This rule does not apply, however, when the State is acting not jure imperii but jure gestionis.

(b) More complicated, but of greater interest, are matters that fall outside jurisdiction because there is no real connecting factor between them and the requested State. When such factors are uncertain there may be conflicts of competence.

From the foregoing we may infer the following principles concerning requests for assistance in administrative matters:

(a) Any legal act which the requesting State may rightly perform on its own territory under international law must also be respected by the requested State.

(b) If, for the exercise of its jurisdiction, a State requests mutual assistance under a treaty, the requested State cannot refuse such assistance on the grounds that the requesting State does not have jurisdiction, if the latter has acted in accordance with the rules of international law in the broadest sense. It would, however, be contrary to international law for the requesting State to exercise sovereignty on foreign territory, unless it had obtained the consent of the State concerned in an intergovernmental treaty or such consent could be assumed under the general rules of international law.

./.

(c) The national territorial sovereignty of the requesting State is of course limited even in the performance of official acts on its own territory, since it is subject to the rule prohibiting misuse of its authority.

(d) The principle of international law that national law may not be used to the detriment of a neighbouring country applies.

(e) The grant of administrative assistance on the basis of the local competence of the requesting State is thus also limited by international law.

As mentioned above, the grant of mutual assistance is also limited by the domestic law and legal concepts of the requested State. Mutual assistance may not be granted if the act requested is inadmissible under the requested State's law. In each specific case there must be no grounds preventing action under that law. It would be inadmissible, especially, if the requested act violated an explicit rule in the law of the requested State. The act would not, however, be inadmissible or impossible for the simple reason that it was unknown to the requested State's law. It would be inadmissible and unlawful only if it constituted an infringement of the subjective rights of third parties in the requested State.

Yet another major limitation on the grant of mutual assistance lies in the fact that the procedure applied by the requesting State must comply with certain minimum principles as set forth in Article 6 and 13 of the European Convention on Human Rights. If the administrative procedure adopted by the requesting State is not in accordance with those standards, the requested act may be refused, and in terms of domestic law would have to be refused, by virtue of the "ordre public" clause. This clause as applied to mutual assistance in administrative matters thus constitutes a specific obligation on States to comply with certain minimum principles of the rule of law, since otherwise their requests for such assistance might be refused.

7. The requested authority's right to investigate the form and substance of the request

How far the requested State is entitled to investigate a request is a familiar problem in legal writings, and one that has been tackled in all mutual assistance treaties.

The main question is whether the requested authority is entitled to investigate the lawfulness of the procedures and substance of the application for assistance. A distinction must be drawn here between substantive law and procedure.

./.

(a) Form: the requested authority is undoubtedly entitled to investigate whether the requested administrative act falls within its local and material competence. If it does not, the authority may refuse the request or transmit it to the competent department after informing the requesting authority. Clauses to this effect are normally incorporated in treaties on mutual assistance in judicial matters.

(b) Substance: the requested authority's right to investigate the application is concerned mainly with the question whether the act it is requested to carry out has a basis in the general law of the requesting State. It is not entitled to investigate whether or not this source is lawful; that would constitute unwarrantable interference in the sovereignty of the requesting State, which is in principle competent to deal with the matter at the root of the application.

8. The law to be applied by the requested authority

Any treaty on mutual assistance must state the laws to be applied by the authorities receiving requests for assistance.

If we analyse existing mutual assistance treaties, it will be seen that the substance of the requested act is generally subject to the law of the requesting State, whilst the procedure to be followed is governed by the law of the requested State. One possible exception is where the requesting State has asked for the application of certain procedural rules which are not prohibited under the law of the requested State. As a rule, however, the requested authorities proceed in accordance with their own laws.

In the absence of any agreement to the contrary, the requested State will fulfil the request in accordance with its own law, unless the requesting State specifically asks for application of a different procedure not precluded by the law of the requested State.

Articles 3 (2) and 14 of The Hague Convention on Civil Procedure may serve as guidelines for the requested State.

9. Legal effects of administrative acts by the requested State

It is a debatable point whether it is necessary or expedient for treaties on international mutual assistance to include provisions concerning the legal effects of administrative acts by the requested State on the procedure of the requesting State. This question might reasonably be left to the legal system of the requesting State. It may well depend on whether or not States grant reciprocity. In any case, the theoretical starting point for an international agreement would be as follows:

./.

1. A State granting mutual assistance acts in the interests of a third party, but performs a function of its own. It engages in administrative activity, using its own authority;

2. Conversely, the grant of assistance is a foreign act for the requesting State. If its application is refused by the requested State, the requesting State may appeal to arbitration machinery under the mutual assistance treaty, or through diplomatic channels in the absence of any such treaty. There is one exception to this rule, where assistance is refused and domestic law explicitly provides a direct remedy for the requesting State and its authorities.

3. The substance of the assistance requested is always determined by the needs of the requesting State and hence, in principle, by its law. There is, however, some confusion among legal writers on this point: the distinction is not always drawn between the law governing the substance of the assistance and that governing the procedure for dealing with the application.

4. The question of the procedure followed by the requested authority is quite another matter. This entails action under public law instituted as a result of the application for assistance. The administrative action of the requested State and the procedure it follows pending completion of the necessary investigation are governed in principle by its own law.

5. Provisions to the effect that the requested State may not apply stronger coercive measures than those admissible under the law of the requesting State are in the interests of international mutual assistance. This underlines the principle of just proportion, which must be one of the guiding principles of international mutual assistance. It is precisely because it is hard to draw the line between substance and procedure that mutual assistance treaties specify that the procedural rules of the requesting State may be applied if a specific request is made to this effect, provided that these rules are compatible with the law of the requested State.

The assistance granted has the same result as a similar act by the authority of the requesting State. This result is the precondition for the legal effects to be given by the requesting State to an administrative act of this kind. It follows that it is the law of the requesting State that must be decisive as regards the effects of administrative acts carried out by the requested authority, even though these are the acts of a foreign State. This is obvious in cases when assistance consists, for instance, in the establishment of a fact and when the law of the requested State lays down rules for the assessment of such facts.

./.

10. Items covered by international mutual assistance in administrative matters

International mutual assistance as a whole may be broken down into different stages:

(a) the application for assistance, together with any necessary documents;

(b) performance of the desired act by the requested State;

(c) communication of the result to the requesting State;

(d) action by the requesting State on this result, in accordance with its own law;

(e) in some cases, the return of objects, the despatch of receipts and the refund of expenses;

(f) action by the requested State in connection with returned objects.

Three of these stages are administrative actions governed solely by the domestic law of either the requesting or the requested State. The three remaining stages involve contacts between independent States. Here public international law takes precedence over domestic law. These measures are subject to international law whenever there is a treaty obligation to grant mutual assistance, but not in the absence of any such obligation, where the requested State grants assistance voluntarily.

A clear line must be drawn between the two following main categories:

A. The assistance furnished by the requested State includes the despatch of material of concern to the requesting State. This category would cover the transmission of information on the registration of births, deaths and marriages, on criminal records or on census results and the mutual transmission of information between public health departments on epidemics and between security departments on criminal prosecutions, etc.

All such action falls within the broad range of administrative assistance that might be termed factual information.

./.

B. The second type of assistance consists of measures which the requested State has to take in respect of third parties within its territory in order to enable it to inform the requesting State about provision of the assistance requested or to transmit to it the material if required. Such assistance might include the serving of writs and other documents, the notification of decisions and the obtaining of evidence by hearing witnesses, informers and experts and by inspecting premises. In such cases the parties to the proceedings of the requesting authority must be given the opportunity to take part, in accordance with the principle that parties must be heard.

When the request for assistance relates to preparatory proceedings conducted by an administrative authority, and when the authority requested is competent to meet the request, the following basic principle must be followed: the requesting authority must be informed of the date and place for taking the evidence requested in order that the persons concerned may be able to attend. Where international mutual assistance in judicial matters is concerned, this principle is embodied in Article 11 (2) of the Hague Convention on Civil Procedure. The seizure of objects, house searches and preventive confiscation also fall within the sphere of international mutual assistance in administrative matters. Special importance is attached to the recognition and performance of administrative acts between States. This practice is well established in the field of civil and criminal law and fiscal and customs matters. As regards the administrative sphere, the recognition and enforcement of the decisions of one State by another State are still the exception - except in fiscal matters.

What is needed, then, is a thorough overhaul of our whole thinking on sovereignty and national prestige, which in principle render impossible the recognition of foreign administrative judgments and decisions. The Hague Convention of 1 March 1954 on Civil Procedure and the Convention of 15 April 1958 on the recognition and enforcement of decisions relating to maintenance liability to children may be seen as paving the way for a change of attitude. A decisive step forward was taken with the European Convention on Extradition of 13 December 1957, the European Convention - referred to above - on mutual assistance in criminal matters and, more recently, the European Convention on the International Validity of Criminal Judgments, signed on 28 May 1970 by Austria, Belgium, Denmark, the Federal Republic of Germany, the Netherlands, Norway and Sweden. The signature of this last Convention, especially, may be seen as the symbol of a new kind of co-operation between States. The last two Conventions have demonstrated that the mutual recognition and enforcement of criminal judgments is no longer Utopian. If a foreign judgment entailing the most serious of sanctions, namely deprivation of personal liberty, can be recognised and enforced by another State, it is legitimate to ask why it is not possible to arrive at an international settlement of the problem of recognition and enforcement of decisions in administrative matters, which by definition entail far less serious intervention by the State.

./.

Legal writers and the courts, however, differ on the following point: are recognition and enforcement of a foreign legal title to be decided by the procedures of a foreign State, or is it an autonomous function of each State to uphold claims that have not been satisfied when the object of enforcement is on its territory?

I will confine myself to the basic principles that must be observed, in terms of form and substance, in cases when the recognition and enforcement of a State's administrative decisions may be requested.

(a) It is not possible at this stage to lay down any general rule on the recognition and enforcement of administrative decisions, given the great disparity of subjects covered by administrative law in the member States of the Council of Europe.

An analysis must therefore be made of those administrative areas that have already been substantially brought into line or where harmonisation is bound to occur soon, and those in which there is a special need for reciprocal recognition and enforcement.

(b) As regards persons, attention should first be paid to administrative measures relating to a State's own nationals. Under international law each State determines as it pleases the civil status of its citizens (marital status, nationality, capacity to contract and act, etc.). Decisions concerning persons should therefore be regarded as valid abroad.

(c) The requested State could therefore refrain from investigating such decisions on the following conditions:

1. the decision-making authority must be competent under intergovernmental agreements;

2. the persons concerned, the parties to the administrative proceedings must have been summoned and represented in accordance with the law;

3. the procedural rules which have led to the administrative decisions must comply with the principles set forth in Article 6 of the Convention. There should be no recognition and enforcement of any administrative act effected by procedures in absentia if one of the parties had no knowledge of the proceedings or was not represented through no fault of his own;

./.

4. the administrative act whose recognition and enforcement are requested must be final and enforceable. When an administrative decision for which enforcement is requested is only provisionally enforceable, administrative assistance should be granted only if the authority requested to execute it provisionally is likewise competent to decide and enforce such acts on a provisional basis;

5. the administrative act in question must not be contrary to any existing administrative decision taken on the same matter and concerning the same persons by the requested State.

The "ordre public" clause is, or course, of special importance.

./.

Questionnaire

I. The present questionnaire does not cover all the problems connected with international mutual assistance in administrative matters. It appeared to the authors that the scope of these problems and their uncertain limits imply the necessity of making a choice. Certain areas of administrative activity have been deliberately excluded. These are, in particular:

(a) fiscal questions (double taxation and others);

(b) matters falling within consular functions.

II. The information to be supplied should concern administrative activities in the following fields;

(a) the personal or family situation of an individual (civil status, nationality, morality, confinement for mental illness, etc.);

(b) health (e.g. vaccinations, mental illnesses);

(c) social security (e.g. assessment of insurance periods abroad, certificates concerning validity);

(d) education (compulsory schooling, diplomas, etc.);

(e) labour and professions (e.g. certificate of professional practice);

(f) road traffic (e.g. validity, limitations and withdrawal of driving licence);

(g) military service (search for the person concerned, notification of documents);

(h) other matters to be included because of some particular form of mutual assistance.

III. It is requested that the information to be given in answer to the present questionnaire should be limited to cases of mutual administrative assistance properly so-called, to the exclusion of cases of co-operation, that is to say where the administrations of different States agree to rationalise certain of their activities (e.g. common use of railway rolling-stock, joint customs office).

./.

In each of the fields set out under Head II above, you are kindly asked to supply information about:

(a) arrangements already in conventional form whether bilateral or multilateral;

(b) any practices which exist in the relations between the administration of your State and those of other States.

IV. In each of the fields set out under Head II above, the information to be supplied should concern the following types of acts of mutual assistance or situations in which mutual assistance is requested:

(a) notification to an individual of acts or decisions of a foreign administration at the request of the latter (including, where relevant, search for the individual in question);

(b) automatic communication to a foreign administration of information which might be of interest to it (e.g. information about an adoption sent by the authorities where the adoption takes place to the State of which the adopter or adopted person are nationals);

(c) situations in which information is received automatically from a foreign administration concerning the acts or decisions of this foreign administration;

(d) communication of information to a foreign administration at its request;

(e) situations in which information is generally sought from foreign administrative authorities in the course of handling individual cases;

(f) recognition of foreign administrative acts and decisions; application of the principle according to which an administration accepts as proved facts stated by a foreign administrative authority.

V. So far as concerns the practices which exist in the relations between the administration of your State and those of other States (item III (b) above):

(a) please indicate which of these practices might or should, in your opinion, be set out in the form of a treaty.

(b) what other methods there might be for confirming these practices.

./.

Conclusions

The participants in the Colloquy, after taking note of the information supplied by the national authorities and the reports presented by the rapporteurs, and after recalling that their discussions would not cover mutual administrative assistance in fiscal matters, adopt the following conclusions and express the wish that the competent organs of the Council of Europe take into consideration, in their future work, the principles set out below:

1. The work to be undertaken should, while respecting existing Conventions and arrangements dealing with certain fields of mutual assistance in administrative matters, be aimed at preparing new ones in order to cover the whole field of administrative activity, or better still, given the solidarity which binds the member States of the Council of Europe, at making the solutions already adopted generally applicable.

2. It would be desirable that the Secretariat General of the Council of Europe be instructed to draw up, on the basis of information supplied by the member States, a complete inventory of international Conventions and administrative arrangements as well as practice concerning mutual assistance in administrative matters between the member States. In drawing up this inventory, the Secretariat General should ask member States to indicate quite clearly where they have found a need for additional Conventions and arrangements on mutual assistance.

3. In principle, a foreign administrative authority which requests information from an authority which possesses it should be treated in the same way as an administrative authority with the same competence in the State to which the request is addressed.

This principle of equal treatment must be subject to exceptions only to the extent necessary to ensure respect for the right to privacy or to safeguard a vital interest of the State to which the request is addressed.

4. The communication without prior request of information concerning specific matters could be dealt with in bilateral or multilateral Conventions and arrangements.

5. Conventions and arrangements should be concluded enabling an administrative authority to request that of another State to make enquiries, take evidence or collect information on its behalf for the purpose of exercising its functions.

./.

This form of mutual assistance raises a problem which should be the subject of special study when it concerns relations between, on the one hand, an administrative authority, and, on the other, a court or an administrative tribunal. On the other hand mutual assistance between two administrative tribunals could be organised on the lines of the existing mutual assistance between courts.

6. With a view to simplifying the procedure for mutual assistance, direct contacts between appropriate authorities should be developed on the basis of special Conventions or arrangements in those fields where exchanges are most frequent; in other cases, a single central organ should be designated in each State to receive requests for assistance (this organ could for example be the Ministry of Foreign Affairs).

7. It would be desirable to abolish formalities for the establishment of the authenticity of documents and the correctness of their translation.

8. The use of all documents in a State other than the originating State should be facilitated. In order to overcome difficulties of a linguistic character, the use of multilingual forms should be encouraged in certain fields.

9. It is desirable to facilitate the notification abroad of the administrative decisions of a State.

The most satisfactory solution which States could adopt would consist in permitting notification in the manner normally adopted in the State from which the decision emanates.

Another solution, ensuring greater respect for the legal system of the State where the notification takes place, would be one based on agreements concerning notification of judicial decisions, for example the Hague Convention on Procedure in Civil Matters of 1 March 1954.

10. As a general rule, the validity of a foreign administrative decision is determined by reference to the law of the State which issues it; however, the State which is requested to recognise the decision may invoke the necessity of the essential principles of its own law or of international law being respected.

11. The problem of the recognition of foreign administrative decisions arises in a different way in different cases.

The following cases should, in particular, be distinguished:

./.

(a) decisions which impose obligations on individuals: their recognition and execution are closely linked and it therefore seems difficult to arrive at a general solution at the present time;

(b) decisions which require implementation abroad, but not the discharge of obligations imposed on an individual: their recognition may be acceptable in a larger number of cases;

(c) decisions which confer on individuals a favourable status and, for example, authorise them to do something: their recognition implies that other States agree to grant to such individuals the same advantages; it would be desirable to delimit the fields where such recognition could be accorded by all States;

(d) decisions which establish bare facts having certain legal effects: their recognition seems to be readily acceptable and is particularly important for individuals; it would be desirable for such recognition to be widely accepted.

Moreover, the following principles may be stated:

(a) decisions relating to personal status should generally be recognised;

(b) decisions given under the law of a State should be recognised by States having similar or equivalent national laws;

(c) whatever may be the field in which they operate, decisions establishing bare facts should be recognised by all States.

12. The form of the legal instruments relating to mutual assistance in administrative matters depends on the content of the principles to be adopted. The most appropriate procedure seems to be the preparation of a framework Convention which would not contain detailed rules but rather essential principles; these could be implemented by Conventions or by less formal arrangements which could concern only certain fields or certain States.

./.

AUTRICHE AUSTRIA	Dr E. LOEBENSTEIN Rapporteur	Bundeskanzleramt Republik Österreich WIEN
	Dr W. PAHR	Chef du Département international de la Chancellerie fédérale Ballhausplatz 2 1010 WIEN
CHYPRE CYPRUS	Mr C. TORNARITIS	Attorney-General of the Republic of Cyprus NICOSIA
DANEMARK DENMARK	Prof. M. SØRENSEN Président/Chairman	University of Aarhus AARHUS
	Mr J. GERSING Rapporteur	Deputy Under-Secretary of State Ministry of Justice Slotsholmsgade 10 1216 COPENHAGEN
	Prof. C.A. NØRGAARD	University of Aarhus AARHUS
FRANCE	Prof. M. FROMONT Rapporteur	Professeur à la Faculté de Droit de Dijon 35, Bd. François Pompon 21 DIJON
	M. L. CHATIN	Magistrat chargé des Affaires civiles et du Sceau Direction de l'Entraide judiciaire internationale Ministère de la Justice Place Vendôme PARIS 1er
REP. FED. D'ALLEMAGNE	M. W. von DREISING	Ministerialrat Bundesministerium des Innern 53 BONN

./.

ITALIE ITALY	Prof. R. MICCIO	Professor of Commercial Law University of Rome Via Polibio 15 ROME
	Dr G. POTENZA	Président de Section du Conseil d'Etat ROME
LUXEMBOURG	M. F. SCHOCKWEILER	Conseiller de gouvernement adjoint Ministère de la Justice LUXEMBOURG
PAYS-BAS NETHERLANDS	Mr J.A. BORMAN	Councellor at the Directorate of Legislation of Public International Law Ministry of Justice THE HAGUE
NORVEGE NORWAY	Mr S.V. HAGEN	Secretary Department of Legal Affairs Ministry of Foreign Affairs OSLO
SUEDE SWEDEN	Dr F. KAIJSER	Assistant Professor of Public Law University of Stockholm STOCKHOLM
	Mr N. WENTZ	Head of Department Ministry of Justice STOCKHOLM
	Mrs M. DJURBERG	First Secretary Ministry for Foreign Affairs STOCKHOLM
SUISSE SWITZERLAND	M. P. MOOR	Professeur de droit administratif à la Faculté de droit de l'Université de Lausanne LAUSANNE
TURQUIE	M. B.S. KÖKSAL	Président de la 5e Chambre du Conseil d'Etat ANKARA
	M. M.A. CELTIK	Membre de la 1ère Chambre du Conseil d'Etat ANKARA

ROYAUME-UNI UNITED KINGDOM	Mr H.V. RICHARDSON	Head of the Nationality and Treaty Department Foreign and Commonwealth Office Clive House Petty France LONDON S.W.1

OBSERVERS

FINLANDE FINLAND	Mr T. HOLOPAINEN	Acting Professor of Administrative Law University of Helsinki HELSINKI
ESPAGNE SPAIN	M. L. PEREZ RODRIGO	Secrétaire à l'Ambassade d'Espagne H.G. Almar-Brandings Plads 1 COPENHAGUE

SECRETARIAT GENERAL

M. H. GOLSONG	Directeur des Affaires juridiques
M. J. RAYMOND	Chef de la Division II Direction des Affaires juridiques
M. M. EVANS	Administrateur Direction des Affaires juridiques