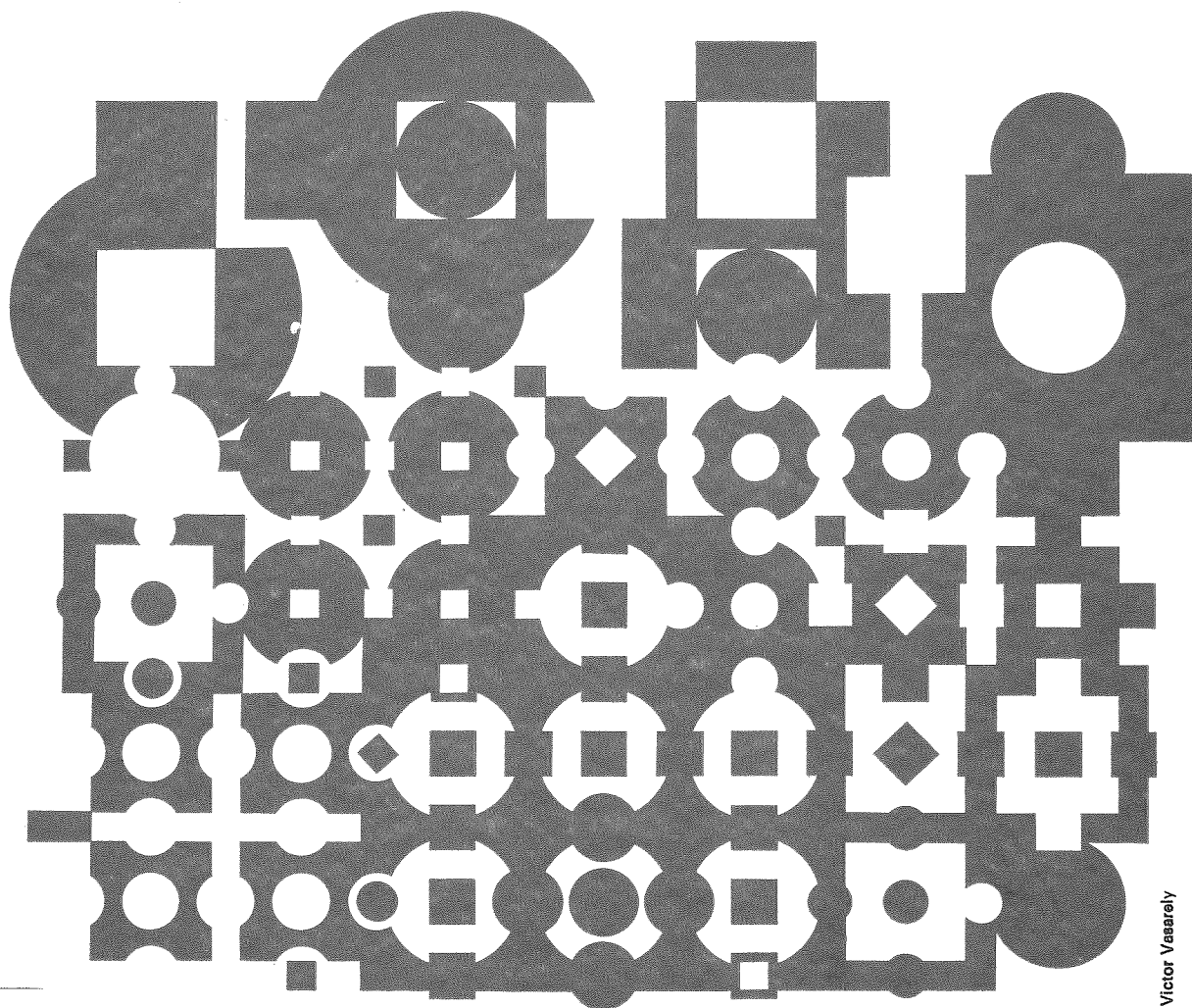


*Co-operation  
between local authorities  
in frontier regions*



Victor Vasarely

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DIFFICULTIES IN CO-OPERATION BETWEEN  
LOCAL AUTHORITIES AND WAYS OF SOLVING THEM

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prepared for the  
Committee on Co-operation in Municipal and  
Regional Matters

by

Professor P. Orianne  
of the Catholic University of Louvain,  
Consultant

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## INTRODUCTION

The pressure which circumstances exert on legislation is manifest in a great many fields, and nowhere more so than in that of transfrontier co-operation. Time and mankind patiently strive to put together again what treaties and systems of law once tore asunder to meet the requirements of a particular type of political organisation.

Even where the organisational system which it underlies has gradually changed, both in reality and in men's minds, the legal rule often survives as an ultimate obstacle to a development for which the need is obvious.

To begin with, this resistance to change is beneficial. The security and order which rules are expected to provide imply a minimum of stability by reason of them. But the time eventually comes when the rules no longer appear to serve society's needs. There is then a temptation to "bend" the rules or disobey them. This is the point at which their nature or purpose has to be reconsidered.

Moreover, on closer inspection it is often discovered that what is being questioned is not the underlying rules themselves but the particular manner in which they are interpreted and applied. Strictly speaking, it is not a rule but a legal habit that is at stake. In extreme cases, habits can survive even when the rule has been changed.

It is therefore advisable to check whether we are really dealing with rules or with habits. And perhaps, before attempting to adapt the former, we should see how the latter might be changed.

The legal and institutional problem of transfrontier co-operation is essentially simple. It stems mainly from the restrictions which result from the principle of nationality and from differences between systems of law.

- a. Each state has its own system of law. Within its frontiers it holds sovereign sway over the legal situation and relations both of individuals and of public bodies and authorities. The geographical region through which a frontier passes is thus subject to two or more fundamentally different legal regimes communicating with each other only via the channels of international law. The latter is relatively generous towards private individuals, who are regarded as affecting State sovereignty only very incidentally, but infinitely less liberal where the actions and relations of public authorities are concerned.
- b. The trends towards decentralisation and regionalisation now apparent in the majority of European states entail transferring certain powers and prerogatives to regional and local authorities. This very fact leads to the definition of new areas of responsibility which can themselves appear arbitrary in relation to certain requirements. Machinery therefore needs to be designed to provide the necessary concertation and co-operation between regions and local authorities within a country.

Frontier municipalities and regions are themselves without the means of dealing with their counterparts abroad, to the extent that competence in the field of "foreign policy" is the exclusive preserve of the supreme authority.

From the legal and institutional angle, transfrontier co-operation is seen as the working together, along agreed lines, of persons and organisations with certain powers of action in the areas lying on either side of a frontier.

Careful attention therefore needs to be paid to the different aspects of the problem of co-operation which may arise, depending on the decision-making level at which it takes place, the status of the organisations concerned and the nature of the questions to be resolved.

The first step must be to observe the various difficulties actually encountered by local and regional authorities in their efforts at co-operation (1), to see what kind of problems they are and to look for the solutions - probably of various kinds - which might be adopted in order to overcome them.

After giving a general survey of the position of local authorities in frontier areas, this paper goes on to describe the difficulties with which they are faced, to establish the real legal and administrative origins of those difficulties wherever possible, and to consider the multifarious solutions that might be applied to them.

In drawing it up, account has been taken of all the information available, and of the following in particular:

- a. The notes and replies to the questionnaire sent to the Secretariat by the delegations of Austria, Belgium, France, the Federal Republic of Germany, Italy, Luxembourg, the Netherlands and Switzerland, together with the supporting documentary material supplied.
- b. The information gathered by the European Conference of Local Authorities from European frontier regions and local authorities.
- c. The reports presented to the European Symposium on Frontier Regions (Strasbourg, 29 June to 1 July 1972), the statements made at that symposium and the resolutions adopted by it.
- d. The observations and conclusions of the Committee on Co-operation in Municipal and Regional Matters.

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(1) Although this report is essentially concerned with co-operation between "local" authorities, it was thought best not to adopt too narrow an interpretation of this term, so that the search for solutions to this very concrete problem might not be trammelled by the possible ambiguities of the concepts "local authorities" and "regions", and especially by the disparities between national systems governing the vertical allocation of powers.

# I. GENERAL SURVEY OF THE SITUATION OF LOCAL AUTHORITIES IN FRONTIER AREAS

In essence, the situation of local authorities in frontier areas must be assessed in the light of the general conditions in which they function.

Thus it is perhaps worth recalling the basic factors.

From the point of view with which we are concerned, and leaving aside certain features peculiar to each national system, a number of obvious basic characteristics can be detected concerning the conditions in which local authorities function.

1. By definition, local authorities are responsible for problems peculiar to the territory and geographical region which they administer and the specific interests of the local population.
2. To a fairly large degree, they enjoy the benefits and suffer from the disadvantages of their geographical situation and the associated economic possibilities.
3. They are subject to the favourable and unfavourable effects of the natural attraction of centres, which are more or less accentuated or attenuated by measures to promote decentralisation.
4. They have a number of privileged links with the surrounding region, and they benefit or suffer from the effects of these, particularly in the fields of communications, employment, housing, tourism, pollution, educational and hospital facilities, etc.
5. Particularly in the case of municipalities below a certain size, it is only by coming together at regional or subregional level to exploit the services for which they are responsible that they have succeeded in adapting themselves to technological progress and been able to satisfy some of the needs of the local population (particularly as regards the provision of water, gas, electricity, etc, medico-social and cultural facilities, industrial estates, etc). That is why the European Conference of Local Authorities included the right of association in its declaration of principles on local autonomy (Resolution No. 64).
6. Local authorities are supervised by a higher authority and must comply with the rules it lays down and refrain from any action prejudicial to the general interest. On the other hand, the higher authority may not act on behalf of the local authority in matters for which the latter is responsible. Thus there must be collaboration so that the combined resources of the central and the local authority can promote the welfare of the public.
7. Since they are responsible for satisfying local interests, local authorities have to make the best possible use of all available facilities. Uncertainty as regards the legal means available to them may either paralyse their efforts or lead them to exceed their powers.

The work of regional authorities is characterised by similar features, depending on the degree and forms of organisation present in them.

In theory, local authorities in frontier areas have the same rights and duties as the others.

In general, however, and apart from certain specific circumstances (frontier town, port, frontier station, tourist resort, etc), local authorities in frontier areas are, by definition, at a disadvantage as compared with others. Their handicap is threefold:

- a. Usually they are farther away from the centre (capital or regional centre);
- b. Their most favourable trading area is largely abroad;
- c. Some of the local authorities which by their nature are called upon to co-operate with them, are in another country.

In short, to use a familiar expression, to a certain degree they have their backs to the wall.

All other things being equal, their population and the whole region to which they belong are bound to suffer from this.

If therefore, in other fields, international co-operation may simply be useful or desirable, here it is an absolute necessity insofar as it is felt that frontier regions and municipalities must, like others, have the best possible opportunity for development. A particular effort by the states is thus justified, for reasons similar to those which led them, for example, to introduce forms of effective international co-operation for the benefit of frontier workers.

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## II. DIFFICULTIES OF LOCAL CO-OPERATION IN FRONTIER REGIONS (1)

### 1. ACHIEVEMENTS IN TRANSFRONTIER CO-OPERATION

Abundant documentation is available today on European regional trans-frontier co-operation efforts.

In this respect, the basic report submitted by Mr von Malchus to the European Symposium on Frontier Regions constitutes a remarkable working instrument. The other documents enumerated above also contain much information of great interest. These indicate that at all levels and in many fields there has been co-operation, with undoubtedly useful results.

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(1) The documentation already available on this subject is too abundant for it to be possible to give a complete view in this report, which therefore merely indicates certain features selected as particularly indicative of the general difficulties.



Some of this co-operation is based on agreements concluded between states or parts of states; some on agreements concluded between parts of states at supra-regional level; some, finally, is the result of agreements between local authorities concluded on clearly defined contractual bases or in the framework of more or less clearly structured organisations.

There seems to be no point in listing these many examples here; what is significant is whether the experiments made have given full satisfaction and whether, in a general way, it has proved possible to meet the specific problems of frontier areas in general.

## 2. DIFFICULTIES OF REGIONAL CO-OPERATION IN FRONTIER AREAS

### A. General

At the end of his comprehensive report, Mr von Malchus states (pages 85 and 86):

"Neither in judgements rendered under international law nor in legislation on local authorities enacted by the various states are there any provisions governing relations between local and regional authorities in different countries. It is generally recognised that this omission must be remedied, but there is, even now, usually plenty of scope for contacts between the regional authorities of different countries, though these do not, of course, carry full weight of official sanction. Final decisions are taken by the states alone on the basis of international law and the determining role is normally played by the ministries of foreign affairs.

As our analysis of activities in border regions has shown, regional and local cross-border co-operation is usually determined on the basis of the mutual advantages accruing to the local communities and their populations.

It is thus desirable that current national legislation should be modified as soon as possible to remove any checks which it places on international co-operation.

Regional co-operation is also favoured by the setting up, in accordance with the conclusions of the first Conference of Ministers responsible for Regional Planning, of international regional planning commissions on all frontiers to support existing co-operative schemes between communities and to help bring co-operation about in those cases where no such schemes exist. The chief problem faced by the international regional planning commissions is, however, their relatively ponderous procedure. This is partly due to the size of the commissions which makes it almost impossible for them to function, and partly to the lack of personnel in the relevant departments, which are obliged to take on responsibility for cross-border development and co-ordination with no increase in their existing staff.

The co-ordination of measures for cross-border development has become, in the meantime, one of the chief problems of co-operation, the main difficulty being that of co-ordinating specialist departments among themselves and at international level. (This is also the conclusion drawn by the European Investment Bank in its annual report for 1969, pp. 152 to 155.)



The work of the international regional planning commissions will become even more complicated when they begin to operate on the basis of international agreements, because the relevant foreign ministries will then have to be involved in these activities, of which they know absolutely nothing. It is thus not surprising that many border regions complain of the long drawn-out and ponderous way in which the commissions work. Cross-border work in the Öresund region, CIMAB and the Regio show, however, that cross-border co-operation at regional level on the introduction of medium and long-term measures is only possible and meaningful when state departments participate. This means that the work of the international regional planning commissions must be organised in a way that allows them to work fast and efficiently, that reduces disputes on competence to a minimum and ensures adequate participation in cross-border activities by the local populations through their elected representatives and communities."

Reference must also be made to the comments made by the author on page 12 (part II) of his report:

"In practically all the frontier regions of Europe, there are agreements between individual municipalities for the completion of specific projects. There are so many examples of this kind of transfrontier co-operation that there can be no question of giving an account of them here. It must, however, be pointed out that transfrontier co-operation agreements between individual municipalities or groups of municipalities nearly always come up against legal difficulties, whatever the frontier. National regulations governing local authorities seldom if ever contain provisions governing co-operation between authorities in different countries. Local authorities therefore have no powers to establish international relations that are in any way binding. These powers are retained by the national governments on the basis of international law.

Most governments consider that the law is deficient on this point, since transfrontier co-operation between local authorities over matters such as water supply and drainage, waste disposal, transfrontier bus services, economic development and environmental conservation is in many cases not only desirable but indispensable. So far, however, it has proved impossible to achieve international agreement on these questions."

Lastly, reference should be made to the comments on town and country planning made in the report of Mr Jules André, also submitted to the European Symposium on Frontier Regions (page 17):

"But there should be no illusions. Although most frontier problems are strictly local, their solution still remains for the most part the concern of the central authorities. Therefore it must be expected that the politico-legal obstacle will remain fundamental. In Belgium, for example, decisions are taken at three levels: the municipalities, the provinces and the state, but, because of the machinery for supervising subordinate authorities, many problems remain in the last resort a matter for the central authorities, despite all appearances."

B. Difficulties noted by national delegations and local and regional bodies

a. Austrian delegation (doc. CE/Loc (72) 34)

- Transfrontier co-operation between municipalities is a new field and is approached with great caution. It is made more difficult by lack of experience, especially where the municipalities concerned are subject to different political systems.
- No cases are known of legal or institutional obstacles to the completion of a co-operation project. No projects likely to come up against such obstacles have been undertaken.
- The conclusion of an international agreement would greatly contribute to the development of co-operation across frontiers.

b. Belgian delegation

- At a time when the EEC countries are preparing to intensify their co-operation with the aim of achieving greater union, it would be paradoxical, to say the least, if political and psychological barriers were to remain at the frontiers and regional or local authorities which geographically, sociologically and economically form a single unit to be prevented as a result from acting as such.
- The main obstacles to co-operation between them are due to differences in legislation and regulations and to the over-centralising policies of some governments.

c. French delegation

- As part of the development of relations between European states, it would be desirable to encourage the search for arrangements whereby such co-operation between authorities in frontier areas might be facilitated.
- The main obstacles to transfrontier co-operation are legal ones. The local authorities are not empowered to deal directly with their counterparts across the frontier, even to settle problems of local concern. They consequently have to act through the intermediary of the state (Ministry of Foreign Affairs), and to resort to international agreements which often have to be ratified by parliament.

d. German delegation (doc. CE/Loc (72) 9)

- In the Federal Republic of Germany, a number of transfrontier links exist, particularly between local communities, some of them established in the form of state agreements on the basis of public law. The Länder are competent to conclude such agreements, but they require the Federal Government's approval.
- Transfrontier co-operation in the sector of private law shows a very favourable development and involves relatively few problems.
- No major obstacles have been observed (1)

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(1) The German delegation is of the opinion that the system proposed in Consultative Assembly Recommendation 470 deserves investigation as a matter of priority.

e. Italian delegation

- Given the size of the problems awaiting solution, co-operation still seems to be a hit and miss affair, and to have a lot of ground to cover. It is not only desirable, but essential to try to find means of promoting co-operation between local authorities in different states.
- Local authorities are naturally disposed to further transfrontier co-operation; the obstacles encountered are essentially legal and political.

f. Luxembourg delegation (doc. CE/Loc (72) 7)

- The main obstacles to transfrontier co-operation are of a legal nature.
- National authorities hesitate to resort to transfrontier co-operation in order to settle questions which generally fall within purely local jurisdiction.
- Under private law, co-operation is possible, but there will be numerous obstacles to be overcome (particularly where participating in companies is concerned).
- Frontier communes are inclined to resolve their problems at national level, as recourse to transfrontier co-operation would entail difficulties, primarily of an administrative nature, and would involve delays of several years.

g. Netherlands delegation (doc. CE/Loc (72) 8)

- It is repeatedly stressed by regional and local communities on either side of a national border that owing to their geographical situation they encounter difficulties in co-operating with each other. The difficulties are sometimes attributed to insufficient consultation and contact between the competent bodies and sometimes to the fact that bodies in different countries have different areas of competence and that there are no formal opportunities for international co-operation based on public law.

h. Swiss delegation (doc. CE/Loc (72) 18)

- A number of frontier local authorities mention difficulties peculiar to their position.
- The obstacles mainly stem from the diversity of legal and administrative regulations and, in certain cases, from the difficulties inherent in the topographical features of the territory.

C. Consultation of regions and communes by the European Conference of Local Authorities

a. Austrian regions

- The obstacles arise mainly from questions of competence.
- There are virtually no institutional bases. Informal action has nevertheless been taken on questions of common interest.
- The Land of Tyrol notes that the agreement concluded at the highest level between Italy and Austria has opened up a considerable field of co-operation. Nevertheless, the remaining legal and administrative difficulties militate against the solution of problems, which could possibly be resolved on a simpler basis, without recourse to inter-state agreements. It considers that an agreement should be concluded, or a general instrument prepared, defining general principles for co-operation in frontier regions in line with the principles already indicated by the Council of Europe.

b. Regions and communes of France

- The communes complain of lack of interest or pure and simple opposition by the central government.
- Practical co-operation is often confined to cultural exchanges and common action to promote tourism. Failures and impossibility to take action have been reported all round, and are due to political, legal or institutional reasons. Other failures have financial causes.
- Mr Palermo, Mayor of Menton, mentioned in his report to the European Symposium on Frontier Regions some examples of what he called "the extraordinary difficulties which have to be overcome to provide frontier regions with essential public services".
- Some municipalities (Strasbourg, Drusenheim and Metz) appear to have no legal basis for frontier co-operation. Others can have recourse to transfrontier associations of communes or transfrontier commissions. Most communes would like to have such legal support.

c. Regions and communes of the Federal Republic of Germany

- Most of the replies note that co-operation in frontier regions is likely to offset the disadvantages of situation from which frontier local authorities generally suffer.
- The Chancellery of the Land of North Rhine Westphalia particularly stresses that co-operation between local authorities is insufficient and should be improved, indeed arranged for, through the co-ordination of plans and frontier activities at regional and supra-regional level.
- The Minister of the Interior of Baden-Württemberg refers to the differences in administrative structures, particularly French centralisation and German federalism.
- The town of Kehl would like a body to be set up for supporting co-operation.

- All regions are in favour of a European arrangement likely to facilitate co-operation among local authorities.

d. Italian regions and communes

- While mentioning important achievements in the field of co-operation, Italy lays emphasis on the gaps in basic legal regulations (international law gaps), institutional differences between local authorities and the lack of funds.
- It is above all lack of the necessary authority at local and regional level to conclude direct agreements and excessive State control which impede such contacts.
- It is primarily a question of "legitimising" present co-operation, which can only be based on the goodwill of the parties concerned.
- Present contacts are limited to discussions and exchange of information, and to some instances of co-ordination and joint reference to the competent national organs with a view to the solution of various problems.

e. City of Luxembourg

- The principal obstacle at present seems to be the lack of a real will to co-operate. Practical or technical obstacles, or indeed financial obstacles, may also impede closer co-operation.
- The local authorities do not have an autonomous legal basis, as such. On the other hand, they do receive assistance from the appropriate departments of the central administration.

f. Province of Noord Brabant (Netherlands)

- The Queen's Commissioner mentions difficulties arising from differences in legal systems and terminologies, particularly as regards planning.
- In the present context it seems that frontier regions seeking to co-operate, are trying to resolve on their own the legal problems facing them.

g. Norges Byforsfund

- In a number of directions (roads, electricity, water supply, nature conservation, etc) the desirable measure of co-operation has not yet been attained.
- The obstacles are partly political, and there are no legal or institutional obstacles.

h. Association of Swedish Local Authorities

- Legislative differences make co-operation difficult in the fields of local competence governed by law.
- For the moment, however, the necessity for co-operation appears most marked in other fields.

- It would not seem to be a matter of extreme difficulty to amend the law to permit co-operation by means of societies, associations or foundations.

i. Swiss regions and communes

- In general, emphasis is laid on the importance of the problems to be resolved and the usefulness, if not obligation, to seek many solutions in the context of transfrontier co-operation, particularly as regards roads, inland waterways and pollution control, and the co-ordination of policies governing the creation of industrial zones and green spaces.
- In Geneva, a number of agreements have been concluded between Switzerland and France since the thirties. Moreover, Geneva lists a series of local arrangements in the field of education (French children attend school in Switzerland and vice versa, apprentices and students from frontier areas attend courses in Geneva), public transport (Swiss buses go into France), health measures (seriously injured persons are hospitalised in Geneva), assistance in case of fire or air disasters.
- The obstacles encountered by the cantons of Schaffhausen and Neuchâtel are to a great extent legal and institutional, but in some cases practical and administrative. In both of these cantons attempts at co-operation in certain directions, hospital services for example, have not yet produced results.

j. Regions of the United Kingdom

- Stress is laid there on the utility of certain harmonisations (diplomas).
- A European arrangement would be of limited interest to the United Kingdom because of its geographical situation, except perhaps in the case of pollution and tourism.
- British entry into the Common Market and the construction of a Channel Tunnel might change this situation.

D. Documentation assembled by the Belgian delegation

This mass of documentation, drawn largely from the ministries of economic affairs, public works, agriculture and foreign affairs, and from provincial governments, contains a great many observations which echo and amplify those in the replies received from other national delegations. The following are just two of the most significant conclusions:

- generally speaking, regional and local authorities in frontier areas are placed at a disadvantage by their peripheral position;
- it would seem to be practically impossible now to solve the economic and social development problems of the frontier regions in a purely national context; what is needed is a co-ordinated transfrontier policy to implement those projects which complement each other best, and especially those which are least competitive.

E. Conclusions of the Conference of the Regions of North-West Europe  
(4th study day, 1970)

1. Hasselt-Liège-Maastricht-Aachen area

(p. 41) " ... To carry out this detailed planning and implementation, a responsible authority must be set up. Temporary resort might be had to the official international commissions concerned with regional planning in frontier areas, including the Benelux Regional Planning Commission ...

One can conceive of a contact commission being set up from these three commissions to elaborate the study and ideas outlined above. However, the final objective should be the setting up of a permanent international commission with its own office, based on multilateral agreements or operating in the EEC framework. The commission would need to have certain powers if its projects are to be realised. This is a legal and administrative problem which has not yet been solved. The importance of this question cannot be emphasised sufficiently, but it rests with persons more competent than the rapporteur to make concrete proposals on the subject.

Meanwhile all the planning experts can do is to continue to emphasise the need for an integrated approach and to prepare the ground as far as possible through their contacts with colleagues and the contacts maintained by the administrative authorities on both sides of the frontier."

2. Franco-Belgian region

(pp. 118 and 119) " ... However, this does not prevent the local authorities on either side of the frontier from agreeing to ask that joint town and country development plans be prepared on the basis of joint studies - this would be our maximum proposal - and that there should be forthwith a systematic exchange of observers between the Belgian inter-municipal bodies and planning offices and their French counterparts, ie planning agencies and research and programming groups.

... But this will of the French and Belgian local authorities to work together, either directly or through their research bodies, to determine what action they can take of their own authority, should be the guiding principle and form the subject of a governmental measure which would considerably change the development of our frontier area: the creation of a 'common free zone'.

By 'common free zone' we mean a specified area astride the frontier where local initiatives can be taken and the provision of common facilities can be planned coherently."



3. PRIORITY NEEDS TO BE MET

- A. In the opinion of the Austrian delegation, co-operation between local authorities would seem particularly necessary in such matters as action in the event of natural disasters, the control of effluent, water supply, road building and the promotion of tourism.
- B. The Belgian delegation places the emphasis on regional planning co-ordination and on the problems of communications and public transport, water supply and sewage treatment, refuse disposal, industrial estates, hospitals and frontier workers.
- C. In the opinion of the French Government, the main problems arise in connection with drinking water supplies and the treatment of effluent. Matters relating to the common use of facilities are also important.
- D. In view of the delegation of the Federal Republic of Germany, the following subjects seem to be of primary importance:
- public transport
  - environmental protection
  - fire-fighting
  - water supply and drainage
  - hospitals.
- E. The Italian delegation gives priority to the following problems:
- water and energy supply
  - local road network
  - public transport
  - sanitary equipment.
- F. The Luxembourg delegation consider that co-operation should apply essentially to questions of common interest. The most urgent of these include, in order of decreasing importance:
- mutual assistance in case of need
  - the provision of public services
  - the co-ordination of communal activities and plans
  - the pooling of certain communal services and the provision of common facilities.
- G. In the view of the Netherlands delegation, co-operation should be confined to concrete, precisely-defined subjects. Priorities must be carefully considered in each sector.
- H. The Swiss delegation considers that, subject to the addition of the problem of frontier workers, the list of subjects appended to the questionnaire is fairly exhaustive.

4. PROCEDURE TO BE FOLLOWED

1. The Austrian delegation considers that an international ruling at European level is both desirable and necessary. It should enable co-operation to be simplified, intensified and accelerated in several fields.
2. The Belgian delegation gives priority to the study of model bilateral conventions or transfrontier co-operation agreements relating to particular regions or particular problems. Stress is also laid on the need for harmonisation of internal legislation.
3. Lastly, the French delegation points out that an interesting step forward would be the study of model bilateral international conventions or agreements on transfrontier co-operation.
4. In the view of the delegation of the Federal Republic of Germany, the system proposed in Recommendation 470 should be studied as a matter of priority. New national or international institutions would not necessarily guarantee the best results.
5. The Italian delegation considers that, while a general European Convention would be the optimum solution, the pursuit of partial solutions by way of bi- or multilateral agreements should not be excluded.
6. The Luxembourg delegation gives priority to the consideration of a general convention; at a later stage, bilateral conventions and statutes could be considered.
7. The Netherlands delegation propose that a case-by-case study be made with a view to defining the content of bilateral agreements; after a number of experiments of this kind, the question of more general arrangements could be studied.
8. The Swiss delegation also feels that priority should be given to attempts to make bilateral arrangements.

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III. TYOLOGY AND LEGAL CHARACTER OF THE DIFFICULTIES

This chapter will endeavour to give an overall, synthetic, clear and coherent picture of the problems. For this purpose, consideration will be given successively to the types of difficulties, the fields in which they are most frequently encountered, and the means to be employed for resolving them nationally and internationally.

Two preliminary remarks are called for. The difficulties of transfrontier regions here being discussed are solely those which are inherent in their frontier situation. It follows that there is no intention to deal with general problems which could equally affect any region in a difficult situation, nor

yet to assume that frontier regions are the only ones, or the first, worthy of the attention of the authorities. It is desired here simply to consider the handicaps which, other things being equal, they suffer by reason of their situation, and the specific remedies which such a state of affairs cannot fail to call for.

Further, it should be made clear that a completely rational classification is out of the question in this matter. The distinctions to be drawn, for the sake of clarity, must not make us unmindful of the fact that these are in the first instance overall situations which it is sought simply to understand from various angles and on the basis of distinctions which, far from being mutually exclusive, should in the end result in their regrouping.

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## 1. CLASSIFICATION OF DIFFICULTIES

The difficulties exposed in the various information documents analysed above can be divided into four categories.

### 1. Technical difficulties

By these are meant the factual obstacles to co-operation which relate to:

- the lack of information on the problems, factual situations, techniques of solution, and legal systems;
- psychological resistance bound up with tradition or indeed routine, the fear of authority, or suspicion of innovation;
- the lack of material resources (documentation, personnel, funds);
- the lack of qualified technical assistance.

### 2. Administrative difficulties

By these are meant the obstacles resulting from rules, traditions and practices, the establishment and modification of which falls within the competence of the administrative authorities, by way of decree, regulation or even by simple circular letter.

These difficulties often relate to procedure, where the deterrent effect of delay and red tape may be as great as would a formal prohibition.

This applies, for example, to the type of hierarchical system, the delegation of powers, the division of responsibility vertically and horizontally, the composition of files, the length and form of procedures of governance and supervision.

### 3. Legal difficulties

We refer here to the obstacles of legislative or possibly constitutional origin which may derive, for example, from:

- disparity of legal systems;

- the manner of exercising power and authority as provided by law;
- the legislative basis of territorial decentralisation;
- the legislative basis on which regional and local departments operate and on which access to them is provided for (1).

#### 4. Political difficulties

Here it is a question of unreadiness to co-operate, expressed in various forms according to time or place, which may or may not rest upon legal rules or principles but stems from a particular concept of sovereignty, of decentralisation and of international relation. Hand in hand with it goes the fear of seeing the present position gradually modified or eroded by the very process of co-operation and the action of the officials who are engaged in it.

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## 2. ASSESSMENT OF THE DIFFICULTIES

A distinction must be made here between forms of co-operation based on an international treaty or agreement and those resulting from the application of domestic public or private law.

### A. International treaties

It is known that a specific intergovernmental treaty or agreement was necessary to implement certain transfrontier enterprises.

That is true of the arrangement on water between Denmark and Schleswig-Holstein, concluded in 1965; the treaty between the Rhineland-Palatinate and Luxembourg, on the setting up of a natural park and the building of frontier bridges (17 April 1961); the treaty between the Federal Republic of Germany and the Netherlands on the administration of water resources (Grenzwasser Ijssel, Grenzwasser Emmerich-Kandia - 1965); the three international agreements concerning respectively the Federal Republic of Germany, Belgium and Luxembourg in respect of regional planning and the setting up of natural parks (1964-71). But such agreements sometimes result only in the setting up of a joint commission without specific powers, whose sole aim is to promote co-operation and harmonise measures taken on the subject (the Germano-Belgian Agreement of 3 February 1971 and the Germano-Netherlands Agreement of 17 April 1964).

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- (1) The "administrative" difficulties are also for the most part "legal" ones. The legal obstacle is, however, in this context, relatively weak, it being here a matter of norms which it is within the competence of the executive to establish or to modify.

An intergovernmental agreement will not suffice when it is desired to set up a body with a legal status and able to perform a task which has active or passive effects on the legal situation of the citizens. It will then be essential to appeal to the legislature even if, in fact, the problem is only of local interest.

It is clearly contrary to efficient organisation and the principle of economy of resources to require the intervention of the government and parliament of two states in order simply to ensure, for example, the provision of local water supplies or the management of transfrontier sports centre. In this respect it is fortunate that the provisions of the constitutional law of the Federal Republic of Germany permit the Länder to conclude an international treaty on co-operation with foreign municipalities. Such treaties usually require the approval of the governments and parliaments of the Länder.

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#### B. Application of domestic public law

In general, in the absence of an international treaty, transfrontier co-operation on the basis of public law seems extremely difficult.

The principles stated in this matter by the German delegation apply to numerous countries:

"German domestic legislation alone cannot cover the activities of a German municipality or association of municipalities on foreign territory, nor, conversely, the exercise of an autonomous activity on German territory by a foreign local authority. Domestic law controls only the establishment and legal status of public law bodies whose members are municipalities situated in the national territory. Thus far, the principle of territoriality applies as in international law".

The only clearly positive indication is to be found in the United Kingdom memorandum, which reveals that the principle of territoriality has been set aside in legislation in order to permit the solution of a certain number of problems in the frontier areas of Ireland (water supplies; the use of water power as a source of energy; drainage and irrigation; electricity supply; roads, railways, bridges and drains).

In the other countries where the position is known the only system of co-operation based on public law to have been introduced successfully has consisted in the creation of two "twin" bodies on either side of the frontier. Such is the case with the Twente-East Gelderland (Netherlands) and Rhine-Ems (Germany) communities of interest.

The memorandum presented on this subject by Mr Ravesloot, on 17 October 1963, to the Joint Committee on European Regional Planning is particularly interesting. It reveals:

- the importance of co-operation for the areas concerned;

- the difficulties encountered in finding an adequate legal basis for the necessary co-operation;
- the disproportion between the resources required and the legal basis for co-operation as such.

In the last resort this can only be achieved by concerted, similar and concordant decisions by municipalities on each side of the frontier.

It is beyond dispute, however, that such an experiment has contributed to a realisation of the need for and the possibility of transfrontier co-operation, whatever the legal and political difficulties. At the installation of the general council of the Netherlands organisation, one of the Queen's Commissioners stressed the importance of wide co-operation in European reconstruction, and therefore the indispensable function fulfilled by local communities working together (Ravesloot report, page 19).

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#### C. Co-operation based on private law

Having regard to the difficulties arising out of the use of public law, the local authorities which are obliged to engage in transfrontier co-operation have had to resort to private law.

There are quite a few examples of this.

Most of the memoranda presented by the national delegations seem to view such methods of collaboration as possible, but some of them have reservations as to whether co-operation can include the participation of the local authorities concerned in a company or other institution with legal status, even if it is set up within the framework of private law.

Thus it seems that private law provides concrete facilities only in respect of commercial transactions (supplies), agreements on the apportionment of certain charges, common building plans, or the management of establishments (eg a library) which, by their nature, do not necessarily come under public law.

At best, local authorities are granted means of action similar to those available to private citizens. But there is clearly no question of them using this subterfuge to exercise their prerogative of public authority or of managing public interests as such.

Only a certain degree of tolerance on the part of the authority, faced with specific needs, could permit them to go beyond that limit.

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### 3. THE LEGAL PROBLEMS

We must now turn briefly to the problems of law which must be faced if transfrontier co-operation between local authorities is to be provided with a legal instrument able to cope with the most important everyday requirements.

#### a. Constitutional problems

The Netherlands delegation's memorandum refers to a difficulty which might result from Article 67 of the constitution according to which the transfer of legislative, administrative and judiciary competence to organisations coming under international public law may take place by, or by virtue of, an international treaty. Consequently a national law could not empower municipalities to transfer prerogatives to a body acting on both sides of the frontier which did not satisfy the concept of an organisation as recognised by international public law. A treaty would be necessary.

Could that treaty be general in character or must one be concluded separately in every case? In the first hypotheses it appears that in order to solve the difficulty it would be sufficient for the municipality to obtain by a treaty the right to participate in a joint organisation in order that the establishment of the latter could be regarded as coming under international public law, even if for the functioning of the organisation, reference had to be made to specific national legislation.

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#### b. Problems connected with the territorial competence of local authorities

The effectiveness of an intermunicipal transfrontier organisation clearly presupposes a certain extension of traditional idea that the local authority is competent only in respect of its own territory and population.

There we have the supreme justification for an international discussion of the problem.

I should simply like to point out that international co-operation between local administrations which is necessary to solve frontier problems would certainly not go beyond methods of co-operation, some of which are very old, found at the level of central administrations and their specialised departments. We only have to think of the very detailed arrangements for co-operation between central banks, postal services, railways, legal services, airlines, social security services and even police in the various states, to realise that at that level at least, inroads have already been made on the principle of territorial competence whose extent and consequences seem far more significant than those which would result from international co-operation between local authorities.



To get the problem in its right perspective, it should be recalled that in certain countries at least, and particularly in Belgium, the transfer of the management of certain services from a municipality to an intermunicipal association, or simply the conclusion of a supply contract between municipalities, has led in the past to very heated controversies and troubled even the most eminent of jurists. That was indeed a very important innovation which created quite a few problems of principle; but experience has shown today that there are far more advantages than disadvantages.

Since it is now generally recognised that municipalities need to settle particular questions in conjunction with other municipalities, the only difficulty still outstanding derives not from the principle of territoriality but from the state's traditionally exclusive claim to deal with all matters involving relations with a foreign country.

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c. Problems of supervision

Obviously the restriction of local autonomy by virtue of what are known as rules of "supervision" constitutes a specific aspect of our problem.

There can be no question of releasing local authorities wishing to engage in transfrontier co-operation from the discipline to which they are subjected in the general interest and which is supervised by the regional or national authority.

Nevertheless, there is nothing to suggest that this problem cannot be solved; sufficient proof of this can be found in the existence of a fairly large number of examples of co-operation on a private law basis, since it cannot be believed that they can evade that discipline because of that solution. What is to be hoped for, however, is that everyone should have a very precise knowledge of his rights and duties and their limits, and that there should be no need to seek special understanding or tolerance on the part of a particular higher authority to be able to engage in or pursue co-operation.

d. Problems connected with the differences between legal and institutional systems

By this I mean all those questions which concern international private law and rules governing the organisation of public services in each country.

These disparities can be such that co-operation is impossible in certain cases. Indeed, there can be no question of altering methods of decentralisation and administrative organisation in each country for the purposes of co-operation. It seems, however, that there are sufficient similarities to justify numerous forms of agreement. This problem should be considered country by country and service by service by means of a general arrangement and under the supervision of a competent national authority.

e. Problems concerning disputes and jurisdiction

The system set up will be effective only if it guarantees the local authorities and the population for which they are responsible, rights and remedies comparable to those they would have within the framework of a purely domestic organisation.

There is nothing to indicate that the problem will be more difficult in the case of local enterprises than, for example, in the case of railways, or social security. Here, too, although certain difficulties must be solved, they should be balanced against those which result from the absence of co-operation.

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IV. SOLUTIONS

1. CLASSIFICATION OF THE SOLUTIONS

A. According to their material objectives

Starting from the data contained in the documents to whose analysis the first part of the present report is devoted, an attempt has been made to reduce to eight categories the body of proposals, suggestions and desiderata explicitly or implicitly contained in the memoranda from national delegations and regional and local bodies.

1. Research and information

Action in this field should make it possible to remove the difficulties which are the concomitant of insufficient knowledge of the facts, the problems and their solution.

A research and information campaign, in this context, needs to be of a systematic and indeed permanent character. The field is too vast and the individual variations too wide for merely empirical or random action to be acceptable. What is contemplated, when it comes to the point, is nothing less than a veritable geographic, technical and juridical survey. That, it must be said, is a matter for specialists. It should be possible for the necessary initiatives to be taken at the appropriate level, with the requisite financial means and the co-operation of bodies specialised in this kind of work.

2. Technical assistance

Effective assistance can be furnished to those who co-operate or would like to, enabling them:

- to have access to the available information;
- to study, or to arrange for the study of, their co-operation problems;
- to cover secretarial, travelling and other expenses inherent in concerted action.

Specifically we have in mind the creation of one or more specialised offices, the assistance which internal specialised organisations (associations of municipalities, etc), even supervisory authorities of external relations departments can bring to co-operation and finally, the possible intervention of a secretariat or international office constituted to that end.

### 3. Harmonisation of legislation

Some forms of co-operation require for their realisation no more than a revision of statutory provisions, for example in the matter of the languages to be used, of recognition of diplomas, of school curricula, of taxation. Standardisation of the use of private law rules in connection with certain forms of transfrontier co-operation is also envisaged, as is the elaboration of standard nomenclatures and terminologies in regard to such matters as regional planning.

### 4. Promotion of transfrontier concertation

This is a matter of political will on the part of states to encourage the regional and local authorities and bodies to maintain regular transfrontier relations, in the expectation that these will lead to better co-ordinated action and planning, and fuller knowledge of the needs and of the possibilities of satisfying them. This applies particularly, for example, to regional planning programmes, road and transport systems, the abatement of pollution, hospital programmes and so on.

### 5. Adaptation of administrative procedures and organisation

This would involve an internal examination within each state of those of its rules which could be revised in the interest of speedier procedures, more efficient handling of problems and more effective decentralisation or de facto devolution of powers.

For instance, were state prerogatives in respect of frontier problems to be exercised by a single decision-making centre, this would without doubt help to cut down the circuitous procedures so time-consuming especially when, as most frequently happens, they have to be conducted simultaneously on both sides of the frontier.

There seems no obvious reason why the state should not concentrate the whole complex of transfrontier co-operation problems in the hands of a single authority under one Minister, or vest in its representative at regional level - for example the Prefect, in France, or the provincial governor, in Belgium - the responsibility for directly concerting action with his opposite number on the other side of the frontier, if need be under the overall direction of the Foreign Affairs Ministry; or again, why it should not entrust such a "governmental delegate or commissioner", operating from regional headquarters, with general powers of supervision and control over the various forms of co-operation. The principle of state sovereignty would not in any case be affected. Nor is there any apparent reason, at least where clear-cut technical questions are at issue, why states should not grant to regional and local bodies the right to deal directly with their foreign counterparts on the other side of the frontier, subject to proper control exercised, for example, by a government commissioner. This is precisely what happens in the case of highly important questions between central banks, public transport companies, and even between police forces and state customs offices.

6. Creation of "integrated" committees

What is intended here is the organisation of joint instruments of concertation, on the pattern of those already existing in a number of places. It is a question of setting up regional bodies, competent in matters of transfrontier co-operation, in which the state together with the representatives of the regions and local authorities concerned, would be permanently responsible for co-operating with their foreign counterparts on the other side of the frontier.

Such regional committees could afford technical backing and a legal framework for co-operation of a purely local (technical) character. At the same time, this would not rule out the use of such local committees likewise in regard to frontier problems which call for consideration in a wider context (the case of frontier towns, for example).

7. Establishment of transfrontier public authorities under state aegis

As noted above with particular reference to questions of a technical character, intermunicipal co-operation, within the framework of an association or consortium, for example, is virtually indispensable. This is one of the basic concepts embodied in Recommendation 470 of the Consultative Assembly.

It will also be recalled that in 1969 the Nordic Council decided in its Recommendation 22/1969 that it is for the governments of the Nordic countries to examine the necessity and the possibility of amending municipal law, and other legal questions, in order to facilitate the institution of legal forms of transfrontier intermunicipal co-operation. A committee on municipal questions in frontier zones was set up with a mandate to study the legal aspects of the question (von Malchus report, page 19).

8. Establishment of transfrontier public authorities with state participation

This formula derives from the preceding one, to the extent that the state might not consider it possible to leave to the local authorities, even though duly recognised, the solution of a specified transfrontier problem or a group of such problems.

In that event, it would be necessary to envisage either the establishment of a body directly linked to the state, such as a foundation having the duty to come into action at the request of the frontier local authorities, or the direct participation of the state in a local transfrontier body.

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B. According to the objectives of co-operation

Without going into details, it will be seen that co-operation may take place at different levels:

- regional;
- sub-regional (intermunicipal);
- local;

and may concern problems of:

- co-ordination of action (regional planning);
- technical co-ordination (road-works for example);
- reciprocal supplies and services;
- management of institutions of common interest.

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C. According to the methods to be employed by states

The following classification could be adopted for these means:

1. budgetary appropriations;
2. the use of centres, existing or to be set up, qualified to carry out research or to obtain technical assistance;
3. improvement of administrative practice;
4. modification of statutory provisions.

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D. According to the methods to be employed at international level

These methods are to be regarded as a function of the objectives of national law.

A suggested list is:

1. the creation of a special secretariat within the Council of Europe;
2. bilateral or multilateral agreements;
3. a general convention containing a set of model regulations;
4. a binding general agreement (standardising state action);
5. a resolution embodying a recommendation.

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## 2. TENTATIVE SYNTHESIS

The table which follows attempts a synthesis of the items set out above. The columns show respectively:

- Column 0: the eight types of solution enumerated.
- Column 1: the preferential functions of these solutions.
- Column 2: the territorial levels at which the suggested solution would be most useful.
- Column 3: the instruments to be employed by states.
- Column 4: international instruments.
- Column 5: the nature of the problems to be resolved, ie technical or financial (T), administrative (A), legislative (L) or political (P).

In a number of places, alternatives are proposed.

It goes without saying that such a synthesis can be of value only as general guidance. It highlights the dominant tendencies and the most frequent combinations, without claiming to be exhaustive. Thus, the case of a possible constitutional obstacle in certain states has not been mentioned.

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CONSOLIDATED

0. Solutions	1. Functions for which the solution would be particularly useful	2. Territorial
01 Research and information	11 All	21 All
02 Technical	12 All	22 Sub-regional and local
03 Harmonisation of legislation	13 a. Access to departments - private law rules b. Co-ordination	23 All
04 Promotion of concertation	14 a. Regional plannings b. Access to departments c. Co-ordination	24 Sub-regional and local
05 Administrative organisation	15 All	25 Sub-regional and local
06 Integrated committees	16 All	26 Regional
07 State-recognised public authorities	17 Management	27 Local
08 Public authorities with state participation	18 Management	28 Local



TABLE

3. National means instruments	4. International instruments	5. Nature of obstacles
31 a. Budgetary appropriations b. Research contracts	41 a. Budgetary appropriations b. Creation of a secretariat	T
32 a. Budgetary appropriations b. Specialist bodies	42 a. Creation of a secretariat b. General agreement c. Recommendation	TA
33 Legislative studies and action	43 a. General or bilateral agreements b. Recommendation	TL
34 a. Legislative provisions b. Administrative provisions	44 a. Conventions b. Recommendation	LP
35 a. Legislative provisions b. Administrative provisions	45 a. Conventions b. Recommendation	A
36 a. Legislative provisions b. Administrative provisions	46 a. Conventions b. With model regulations	ALP
37 Legislative provisions	47 a. Conventions b. With model regulations	LAP
38 Legislative provisions	48 a. Conventions b. With model regulations	LAP

3. THE SOLUTIONS PUT FORWARD BY THE EUROPEAN SYMPOSIUM ON FRONTIER REGIONS (Final Declaration of 1 July 1972)

The solutions recommended by this Symposium were comparatively precise and highly varied. They are quoted here as examples of what might be done.

1. Systematic and comparative studies should be undertaken with the assistance of specialist bodies with a view to obtaining precise information on the concrete problems caused by the proximity of the frontier to various regions and local communities.

2. In each state regional and local planning should take account of the particular situation of frontier regions. The necessary means both on the level of organisation and finances should be allocated to regional and local communities.

3. Within each state, an adequate organisation should be established with the participation of the state and of representatives of local and regional communities and in conjunction with the social and economic bodies and groups concerned, in order to ensure the supra-frontier concertation and co-operation required, particularly in the context of committees established on appropriate levels and of intermunicipal groups or unions working in conjunction with the latter. Priority should be given to functional problems which are of direct concern to the population.

4. Concertation between states for the solution of supra-frontier problems should be extended to the European level by the action, within the Council of Europe, of the European Conference of Ministers responsible for Regional Planning, as a permanent body possessing adequate means of research and secretariat facilities.

5. A specific body for the co-ordination of regional planning on the regional level, in which local and regional officials would participate, through the intermediary of the European Conference of Local Authorities, should be established within the Conference of Ministers of Regional Planning.

To this end, the European Conference of Local Authorities is requested to create within itself a committee for frontier regions, responsible for ensuring relations with the European Conference of Ministers of Regional Planning which would guarantee participation of representatives of local and regional communities in the activities of the Conference of Ministers of Regional Planning in this field.

6. The Council of Europe, which is the most appropriate body for dealing with the problems of frontier regions on the European scale, makes it possible, among other things, not to neglect frontier co-operation with non-member countries in the East and in the Western maritime area.

However, the enlarged European Communities, within which frontiers are likely to become increasingly the simple internal boundaries of a coherent political and economic system, could provide a particularly effective institutional form of work for co-operation between the frontier regions of the member states, as part of a community regional policy and the various joint policies, provided that adequate representation of regions and municipalities could be ensured, as it is in the Council of Europe.

7. The adaptation of the administrative regulations and practices necessary for cross-border agreements and co-operation, as well as their standardisation and legislative harmonisation, should be studied at inter-state level, by inter-state agreement and within the European institutions. It is desirable that the action taken within the Council of Europe, particularly by the Committee on Co-operation in Municipal and Regional Matters, should be continued and intensified.

8. On both sides of the frontiers, local authorities may go to the limits of their powers in concluding agreements on the problems of frontier regions. In the case of questions which lie outside their competences, each will submit to the minister responsible the projects which they have worked out together.

### Conclusions

As the Committee on Co-operation stated, the need for action to facilitate transfrontier co-operation between local authorities is scarcely open to question nowadays. The demand for it is a matter of pressing urgency to those most concerned by the problem.

The question, then, is what solutions to adopt.

In the light of the various data available and of the views expressed by the Committee on Co-operation in response to earlier versions of this report, I think I may conclude by laying emphasis on two types of action which could be embarked upon as a matter of priority.

#### A. Action to further transfrontier co-operation

States could resolve either to establish or to maintain and improve internal machinery for properly organised technical, financial and administrative assistance with co-operative ventures on the part of local and regional authorities in frontier regions. Needless to say, such an effort could succeed only if it were made simultaneously in the different countries concerned.

There would be no major obstacle to a decision of this kind, nor would it require much in the way of preparatory study or research.

It could be taken somewhat further if states also decided to examine the possibility of adapting national legislation so as to facilitate co-operation.

#### B. Action to develop suitable legal instruments

The aim here should be to arrive at formulae which, at least to begin with, would be most likely to find acceptance with a number of states.

Possible examples are:

- standardisation of the rules of private law;
- model regulations for integrated committees or intermunicipal associations;

- model agreements between local authorities in frontier areas, for example on the problems of frontier workers, mutual aid in case of need, and certain types of services.

The idea would be to make available, for the purposes of transfrontier co-operation, a number of well designed instruments drawn up in the framework of a general arrangement, without however requiring the parties to that arrangement to relinquish their power to decide, either in a general way or for each individual case, what use might be made of such instruments.

Such a solution would have the advantage of flexibility. It would provide those states which were anxious to encourage transfrontier ventures of this kind with one or more instruments which could be applied with a minimum of technical and legal disadvantages, either in the context of national legislation or on the occasion of a bilateral or multilateral agreement.

Louvain, 31 December 1972

(signature)

Hochsch. f.  
Verwalt. Wiss.  
Speyer