

# The Importance of State Borders in Western Europe

*Ivana Goranić*

## The European Outline Convention on Trans-Frontier Cooperation between Territorial Communities or Authorities

Just as an individual human being, at a certain level of his or her development, begins to feel his physical and mental boundaries less and less as a source of security and more and more as constraints and limitations that he would like to overcome, so also a state goes through a similar process in its historical development. Thus, some thirty or forty years ago, the European states entered the process of transformation of the meaning and purpose of their state borders.

In the wake of the collapse of the communist totalitarian systems, new states emerged in Central and Eastern Europe, which — unfortunately and as a logical consequence of their previous social system — began to display distinct nationalistic and even, to a certain extent, xenophobic traits. Such a development was predictable and understandable in the early stages of democracy and the rule of law, and Western Europe itself had taken centuries to progress gradually in its consciousness from the idea of closed national states with rigid frontiers to its present economic, cultural and political openness, the feeling of belonging to a single whole, and the sense of cultural identity. Notwithstanding all this, the countries which are only just beginning to move along this path should try, with the help of the international community, to shorten as much as possible the period of inward-looking historical introspection and insistence on their difference and they should realize that differences are enriching, that exchanges are beneficial, and that linkages with other countries and regions opens undreamt-of possibilities of progress.

We can follow the development of ideas about the state, sovereignty and state borders as boundaries from the very beginning of the European theory of state.

The European integration groupings, whose development has been particularly dynamic over

the last few decades, and which are gradually taking into their fold the former communist states, are very much aware of the importance of inter-regional cooperation in general and that taking place across state borders in particular. In an attempt to provide a legal framework for such cooperation, various conventions have been adopted, usually accompanied by sample agreements or treaties between local and regional authorities of different countries and also between countries.

Thus, the Vienna Declaration and Programme of Action adopted by the world conference of heads of states on 25 June 1993 stressed the development of transfrontier regional cooperation as a challenge for the emergence and growth of democracy: "37. Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of cooperation with the United Nations human rights activities. The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights where they do not already exist."

But before proceeding any further, we should define what is meant by "region" and, more particularly, "transfrontier region". According to some documents, there are over 100 transfrontier regions among the 500 regions registered by the Council of Europe. Clearly, Europe can be seen as a conglomerate of small entities linked by culture, economic and social interests, lifestyles, and various other shared characteristics. (Europe is understood here in a broader sense, such that it includes also the European parts of the states emerging from the disintegration of the former Soviet Union.)

In order to be able to discuss a concept, it is necessary to try to define it, so that reference is always made roughly to the same contents. Thus, transfrontier regions can be defined in terms of

their different properties, but the constitutive elements of such regions always include space (limited to a certain number of kilometers from the state border), people living in this space, and the state border dividing the region as a boundary. We can take Denis de Rougemont's definition as a good working definition: "A transfrontier region is a potential region. Inherent in geography, history, ecology, ethnic groups, economic possibilities and so on, but disrupted by the sovereignty of the governments ruling on each side of the frontier."

One of the early legal instruments to "soften" the state borders was the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities, open for signing since 21 May 1980. It had been preceded by the recommendation of the Committee of Ministers responsible for local self-government, which, at their first conference in December 1975, stressed the need for the creation of a broad legal framework for bilateral and multilateral cooperation of neighbouring regions, fully respecting state sovereignty and adjusting as much as possible to the specific requirements of states and regions. One of the aims of the Convention is to facilitate and simplify cooperation between regions divided by state frontiers but otherwise — in terms of their economic, social and other characteristics — very much dependent on each other. In order for such cooperation not to be perceived as a threat or nuisance by the central government, or give rise to fears for the state sovereignty, the Convention offers samples of different forms and modes of agreement, always providing for the control and supervision of such agreements by the sovereign state. Since states with different legal systems and degrees of centralization are involved, the Convention gives ample scope for different arrangements. It does not impose any solutions, but rather stresses the value of agreement and the importance of the domestic legislation. The model agreements leave open the possibility of new forms and arrangements in accordance with the needs of the states and of the (regional) territorial units and their authorities.

What causes particular concern among the states, especially the newly independent ones, is the question whether transfrontier cooperation could jeopardize, weaken or constrain their national sovereignty. The answer to this question given in the Outline Convention is unmistakably negative. Everything that the Convention regulates is "subject to the provisions of the domestic legislation".

Transfrontier cooperation is one of the key elements of democratization on the European continent as a whole and the development of democracy, economic, social and cultural life of the regions as the foundations of Europe. Such cooperation stimulates also inter-country cooperation, while the links of local and regional authorities across national borders help to develop relations between the countries on the basis of understanding, tolerance and neighbourly cooperation. This reduces the risk of misunderstanding, conflict and cooling of relations and facilitates the settlement of disputed issues, which often arise between neighbouring states (particularly in Eastern and Central Europe).

Although the Outline Convention does not envisage transferring any of the responsibilities of the central government to the regions, it does make possible the introduction of certain provisions into the domestic legislation. Otherwise, transfrontier cooperation involves only local and regional authorities, in accordance with their powers as defined in the domestic legislation.

The Convention envisages two types of activities within the framework of transfrontier cooperation: (1) less formal cooperation (exchange of information, joint projects, etc.), and (2) more strictly formalized cooperation (which presupposes a bilateral agreement). When reference is made to "territorial community" in the Convention, then the entire system of government on the local and regional level in the countries concerned is meant.

In my view, one of the most valuable features of the Convention is its flexibility and the great number of options that it offers, leaving it to each country to adapt and reconcile its application to its needs. Each country can draw up a positive or negative list of bodies and authorities included in, or precluded from, participation in transfrontier cooperation (in keeping with its domestic legislation and in the spirit of such cooperation). The Convention distinguishes between "agreement" (concluded between states) and "arrangements" (agreed between territorial units and authorities). The possibility given to the state to conclude an agreement enables it to define the scope of the transfrontier cooperation of its regions and local authorities. Model agreements offered by the Convention are in no way binding: they provide just a general framework in which the contracting states may introduce any provisions that meet their needs and the needs of their regions.

Equally, the Outline Convention in no way gives an international character to regional rela-

tions. The states retain their full rights, in accordance with the domestic legislation, to supervise and control the transfrontier cooperation of their territorial communities and their authorities. Any provisions in such agreements that violate the domestic legislation are null and void, which again confirms the supremacy of the sovereign state in determining the type, mode and scope of transfrontier cooperation. In order for transfrontier cooperation to proceed in ways that are as similar as possible to interregional cooperation within the country's borders, it is important that both sides to an agreement should have information about the bodies that supervise the work of the territorial communities and their authorities. For this reason, each country should make this information available to the Secretary General of the Council of Europe. The states undertake to promote and facilitate transfrontier cooperation, seeking to resolve problems and remove obstacles that may impede it and to bring such cooperation as far as possible in line with interregional cooperation inside the state borders. Therefore, the states agree to supply all the relevant information to their own local and regional authorities and to the foreign countries with which

they conclude agreements on transfrontier cooperation.

The provisions for the coming into force of the Outline Convention are standard provisions like those for all the other conventions of the Council of Europe.

Given the wide range of freedom that the Outline Convention on Transfrontier Cooperation leaves to the contracting parties on the local level, without at all affecting the state sovereignty and fully preserving the right of the state to supervise and control the implementation of agreements and arrangements between neighbouring regions in different countries, it seems reasonable to conclude that such cooperation can only be beneficial to the countries involved, since the development of each country, in the nature of things, is dependent on the development of its smaller parts or regions. Therefore, rather than viewing transfrontier cooperation as an attempt to destroy the central authority and deprive the state of part of its sovereignty, I believe that it is a step forward towards progress and democracy and a sure way for any country to integrate itself into a wider European community. ■

## Squaring the Balkan Circle

*Dražen Vukov Colić*

### **The Masses in the Streets of Serbia, Bulgaria, Albania and Romania Reveal Once Again the Balkans as a Hotbed of Danger to Europe's Security**

In four countries of Southeast Europe (Serbia, Bulgaria, Albania, Romania), thousands of angry people flooded the streets of Belgrade, Sofia, Tirana and Bucharest last autumn, turning the Balkans yet again into a new European neuralgic spot, in which old historical and political prejudices are permanently at loggerheads with new economic and democratic challenges. Once the Balkans always the Balkans, concluded many uninformed sceptics, although many of the major

differences that marked these tumultuous events may be as important as were their numerous similarities. At the same time, their main characteristics - social and political crisis, the defeat of the new elites and the general impotence of the West - have made manifest that this is a specific regional transition crisis, and is - as opposed to the inevitable collapse of Yugoslavia - only parenthetically marked by heated national, state or boundary issues, such as used to be considered crucial in the past in the theoretical assessments of similar violent syndromes in the Balkans.

After the collapse of communism, all of these countries found themselves in unknown territory (Europe) and a hostile environment (challenges of transition), and questions of everyday subsistence far outweighed matters of the heart and patriotic zeal. At the same time, the way in which power was exercised and the degree of respect for fundamental human and democratic