Three Key Concepts: Sovereignty, Intergovernmentalism and Supranationalism

As indicated in earlier parts of this book and throughout this chapter, much of the debate amongst practitioners and observers about the nature of the EU has centred on the related concepts of sovereignty, intergovernmentalism and supranationalism. These concepts therefore merit special attention.

Defining the terms

Sovereignty is an emotive word, associated as it is with notions of power, authority, independence, and the exercise of will. Because of its emotiveness and its associations, it is a word to which several meanings are attached. The most common meaning, and the one which will be employed here, refers to the legal capacity of national decision-makers to take decisions without being subject to external restraints. This is usually called national, or sometimes state, sovereignty.

Intergovernmentalism refers to arrangements whereby nation states, in situations and conditions they can control, cooperate with one another on matters of common interest. The existence of control, which allows all participating states to decide the extent and nature of this cooperation, means that national sovereignty is not directly undermined.

Supranationalism involves states working with one another in a manner that does not allow them to retain complete control over developments. That is, states may be obliged to do things against their preferences and their will because they do not have the power to stop decisions. Supranationalism thus takes inter-state relations beyond cooperation into integration, and involves some loss of national sovereignty.

The intergovernmental/supranational balance in the EU

In the 1960s the governments of five of the Community's then six member states were willing to permit, even to encourage, some movement towards supranationalism. President de Gaulle, however, who wished to preserve 'the indivisible sovereignty of the nation state', was not. In order to emphasise this point, and more particularly to prevent certain supranational developments that were due to be introduced, he withdrew France in 1965 from most of the Community's key decision-making forums. The outcome of the crisis that this occasioned was the 1966 Luxembourg Compromise (see Chapter 9) which, though it had no legal force, had as its effect the general imposition of intergovernmentalism on Community decision-making processes: the powers of the Commission and the EP were contained, and decisions in the Council

came customarily to be made – even where the treaties allowed for majority voting – by unanimous agreement.

The first enlargement of the Community in 1973 reinforced intergovernmentalism, bringing in as it did two countries – Denmark and the UK – where there was strong domestic opposition to membership and where supranationalism was viewed with suspicion. International economic uncertainties and recession also encouraged intergovernmentalism, since they forced states to look rather more critically at the distributive consequences of Community policies, produced a temptation to look for national solutions to pressing problems, and resulted in greater caution about the transfer of powers to Community institutions.

However, intergovernmental attachments and pressures were never able, and never have been able, completely to stop the development of supranationalism. The treaties, increasing interdependence, and the logic of the EU itself, have all ensured that national sovereignties have been progressively undermined. Indeed, not only has supranationalism become more embedded, but since the mid 1980s it has been given a considerable boost as the states have adopted a much more positive attitude towards its development. They have done so partly because the effects of the delays and the inaction that intergovernmentalism spawns have become more obvious and more damaging, and partly because it has been recognised that as the number of EU member states has grown, over-rigid intergovernmentalism is a greater recipe than ever for stagnation and sclerosis.

The EU thus displays both intergovernmental and supranational characteristics. The principal intergovernmental characteristics are as follows.

- In most of the major areas of public policy – including foreign affairs, defence, fiscal policy, education, health, and justice and home affairs – decisions are still mainly taken at the national level. Each state consults and coordinates with its EU partners on aspects of these policies, and is increasingly subject to constraints as a result of EU membership, but ultimately a state can usually decide for itself what is to be done.
- Virtually all major decisions on the general direction and policy priorities of the EU are taken in the European Council: that is, in the forum containing the most senior national representatives. Only rarely does the European Council take decisions by majority vote. As for EU legislation, all important decisions need the approval of ministers in the Council of Ministers, with some key Council decisions, including those of a constitutional or fiscal nature, requiring unanimous approval. Where qualified majority voting is permissible, attempts are always made to reach a consensus if a state declares it has important national interests at stake.
- The Commission and the EP, the two most obvious 'supranational political rivals' to the European Council and the Council of Ministers in that their responsibility is to look to the EU as a whole rather than

to specific national interests, are restricted in their decision-making powers and cannot impose policies that the representatives of the member states do not want.

Of the supranational characteristics of the EU, the following are particularly important.

- The Commission does much to frame the EU policy agenda. Moreover, though it may have to defer to the European Council and the Council of Ministers where major decisions are involved, it is an extremely important decision-maker in its own right when it comes to secondary and regulatory decision-making. Indeed, in quantitative terms most EU legislation is issued in the name of the Commission.
- In the Council of Ministers, qualified majority voting is now common. This is partly a result of changing norms and expectations, and partly a result of the treaty reforms that have brought about extensions of the policy spheres in which QMV is permissible.
- The EP may not enjoy the constitutional status and authority of national parliaments, but its influence over EU decision-making is considerable. This influence has been greatly enhanced by the cooperation and assent procedures created by the SEA, by the co-decision procedure created by the Maastricht Treaty and extended by the Amsterdam and Nice Treaties, and by a range of other powers it has acquired – including the right to confirm the appointment of new Commission Presidents and Colleges.
- The force and status of decision-making outcomes is crucial to EU supranationalism, for clearly the EU could hardly be described as supranational if its decisions had no binding force. Indeed, some do not and are merely advisory and exhortive. But many do, and these constitute EU law. It is a law that constitutes an increasingly prominent part of the legal systems of all member states, that takes precedence over national law should the two conflict, and that, in the event of a dispute, finds its final authority not in national courts but in the interpretations of the EU's own Court of Justice.

Both intergovernmentalism and supranationalism are thus important features of the functioning and nature of the EU. This is no more clearly demonstrated than in the influence exercised by the Commission: on the one hand it is an important motor in the European integration process, but on the other it is constrained by the preferences of the governments of the member states. As Mark Pollack has put it in analysing the role of the Commission in terms of principal–agent relationships, 'Supranational autonomy and influence... is not a simple binary matter of "obedient servants" or "runaway Eurocracies", but rather varies along a continuum between the two points' (Pollack, 1998: 218).

A pooling and sharing of sovereignty?

The EU is quite unique in the extent to which it involves states engaging in *joint* action to formulate *common* policies and make *binding* decisions. As the words 'joint', 'common' and 'binding' imply, the process of working together is resulting in the EU states becoming ever more intermeshed and interdependent. This is no more clearly seen than in the binding effect of many aspects of their relationships and shared activities: binding in the sense that it would not be possible for them to be reversed without creating major constitutional, legal, political and economic difficulties at both the EU and the national level.

Clearly a central aspect of the intermeshing and the interdependence, and one of the principal distinguishing characteristics of the EU, is the way in which the member states have voluntarily surrendered some of their national sovereignty and independence to collective institutions. However, viewed from a broader perspective, the EU is not only the cause of a decline in national powers but is also a response to decline. This is because much of the rationale of the EU lies in the attempt – an attempt for which there is no international parallel – on the part of the member states to increase their control of, and their strength and influence in, a rapidly changing world. Although all of the states have reservations about, and some have fundamental criticisms of, certain aspects of the EU, each has judged that membership enhances its ability to achieve certain objectives. The precise nature of these objectives varies from state to state, but in virtually all cases the main priorities are the promotion of economic growth and prosperity, the control of economic and financial forces that are not confined to national boundaries, and the strengthening of political influence. Insofar as these objectives are being attained, it can be argued that the diminution in the role of the state and the loss of sovereignty that arises from supranationalism is counterbalanced by the collective strength of the EU as a whole.

Indeed, since international change and developing interdependence have resulted in all of the member states experiencing a considerable *de facto*, if not *de jure*, loss of national sovereignty quite irrespective of the loss that is attributable to EU membership, it can be argued that the discussion about national sovereignty, in the classical sense of the term at least, is no longer very meaningful. Rather it should be recognised that the only way in which EU states can retain control of their operating environments is by pooling and sharing their power and their sovereignty.