44

EUROPEAN JCOMMUNITY STUDIES ASSOCIATION
Second International Conference
"The Challenge of a New European Architecture: Implications for the European Community's Internal and External Agendas"

May 22-24, 1991 George Mason University, Fairfax, Virginia

Panel on "The EC: Institutional Aspcets"

EFFECTIVENESS OF THE EUROPEAN COURT OF JUSTICE AND ITS ROLE IN THE PROCESS OF INTEGRATION

Presented by: Janet L. Kent

Department of Political Science
Vanderbilt University
Nashville, TN 37235
tel: (615) 322-6222

ABSTRACT

EFFECTIVENESS OF THE EUROPEAN COURT OF JUSTICE AND ITS ROLE IN THE PROCESS OF INTEGRATION

If the European Court of Justice is an institution, whose role is to promote political integration within the European Community then it must have two objectives that distinguish it from an international institution. The first is that it must promote the rights of individuals in their relationship with their nations, the EC institutions, and with each other. Secondly, it must increase the decision making authority of the common institutions as supranational institutions.

The rights of individuals and the authority of the EC decision making institutions are two of the fundamental variables that determine the progress and effectiveness of the integration process in the EC. The process of integration requires the dissolution of physical, technical, and fiscal boundaries. The walls of national sovereignty must be broken down to reveal the sensitive core of the state; the individuals through whom the implementation of the decisions of the supranational institutions operate.

International institutions are constructed to facilitate agreements between states not individuals. Though individuals may be affected by such agreements they have no internationally recognized rights. Furthermore, international institutions rely solely on the moral obligations of the participatory states to enforce decisions. There is no self execution of decisions on the nation states and no legally binding authority directing state action.

The role of the European Court of Justice, if it is an integrating institution, is to enhance the rights of individuals and increase the political authority of the EC decision making institutions. The degree of jurisdiction over matters other than state-to-state relationships is a measure of political integration. Another measure of integration is the degree to which the authority of the common institutions is legally binding by virtue of self executing judgements.

Findings based on data gathered from 1954 to 1968 indicate an emphasis on the rights of individuals within the Community vis-a-vis member states. The figures stress the primacy of cases won by individuals against member states(72%) which indicates that the Court focuses on individual rights. The data also stresses the Court's tendency to uphold the position of the common institutions. Therefore, we are definitely not dealing with an international institution. Out of 137 suits brought against the EC institutions the Court upheld the institutions 74% of the time. 87% of these cases were brought by individuals. On those occasions when a member state brought a case against the EC the Court held for the EC only 65% of the time. This indicates the Court's need to be cautious when dealing with complaints brought by the member states because of its reliance on them to incorporate its decisions into their national framework.

EFFECTIVENESS OF THE EUROPEAN COURT OF JUSTICE AND ITS ROLE IN THE PROCESS OF INTEGRATION

The world in which we live is a complex system wherein the dynamic forces of social and cultural change draw disparate groups together and yet separates others causing them to withdraw, to seek isolation and solitude in ethnic identities and traditional cultural norms. It is interesting to study the vast ironies in human reaction and interaction taking place on the European continent. While some groups seek secession from their national constraints others are trying to form a integrated system of nation states.

This paper deals with political integration in the European Community. The purpose is to determine whether it is possible to classify the European Court of Justice as an integrating institution as opposed to an international institution such as the world court. To accomplish this task will require precise definition of what integrating institutions and international institutions are through comparison and contrast of the two and a definition of what I mean by integration and effectiveness. The final step will be to measure how effective the European Court is in the advancement of integration.

The achievement of a fully integrated economic community by 1992 is the goal of the institutions and the member states of the Economic Community(EC). The question that needs to be addressed is whether or not the European Court of Justice is effective in accomplishing achievement of the 1992 goals. My hypothesis is that

the Court is an integrating institution because it does facilitate the integration process through the recognition of the rights of individuals and its pronouncement of the authority of decision making power to the EC institutions.

If the Court is an integrating institution it should promote two objectives that distinguish it from an international institution. One is the recognition of the rights of individuals in their relationship with their nations, the EC institutions, and with each other (recognizing them as participants in a unified community; belonging to an political entity that is beyond their own nationalistic ties). The other objective is to promote an increase in authority and decision making power of the EC institutions.

The rights of individuals and the authority of the EC decision making institutions are two of the fundamental variables that determine the progress and effectiveness of the integration process in the EC. The process of integration requires the dissolution of physical, technical, and fiscal boundaries. The walls of national sovereignty must be broken down to reveal the sensitive core of the state; the individuals through whom the implementation of the decisions of the supranational institutions operate.

International institutions are constructed to facilitate agreements between states not individuals. Though individuals may be affected by such agreements they have no internationally recognized rights. Furthermore, international institutions rely solely on the moral obligations of the participating states to

enforce decisions. There is no self execution of decisions on the nation states and no legally binding authority directing state action. I have distilled the variables of individual rights and institutional authority from the definition of political integration developed by Ernst Haas. The definition states that political integration is "the process where political actors in several distinct national settings are persuaded to shift their loyalties, expectations, and political settings to a new center, whose institutions possess or demand jurisdiction over the pre-existing national states. The result of a process of political integration is a new political community superimposed over the pre-existing ones."[1] Because EC policy is in affect domestic policy as it applies to specific sectors of society, individuals are assumed to be within the category of political actors because they are directly affected by the policy decisions of the supranational institutions. For example, EC policy is in affect domestic policy as it applies to specific sectors of society across all member states. (The classical functionalist model developed by Haas does not recognize individuals in this capacity.)

For integration to be a valid concept as distinct from international agreements, individuals must be affected by the policy decisions of the supranational institutions and they must have some input into the decision making process. The second variable, namely the authority of supranational institutions is

---

[1] Haas, Ernst, The Uniting of Europe, (Stanford: Stanford University Press, 1958, p.16).

paramount to creating a new political community. There must be respect for the authority of supranational institutions if political actors are going to shift their loyalty to the new central decision making institutions.

The role of the European Court of Justice, if it is an integrating institution, is to enhance the rights of individuals and increase the political authority of the EC decision making institutions. The degree of jurisdiction over matters other than state-to-state relationships is a measure of political integration. Another measure of integration is the degree to which the authority of the common institutions is legally binding by virtue of self executing judgements. Decisions are self executing because member states must provide for the implementation of EC decisions through national constitutional procedures. There a couple of ways in which constitutional implementation of EC decisions is carried out. There will be a thorough discussion of this later in the paper.

If, on the other hand the Court is an international institution like the World Court it will characteristically deal only with nation states and will play the role of arbitrator between them. An international court can make advisory judgements on conflicts between states but it has no legally binding authority by which to enforce compliance. In the international arena where the law is not self executing and binding on the parties to the suit there is no enforcement procedure. The final decision on the outcome of international conflicts resides with the individual states themselves. There is no higher authority to which they

pledge their loyalty.

The characteristics of an integrating institution include the following: 1)it functions outside of any specific national system; 2) it has authoritative decision making power, though jurisdiction may be specific and limited; 3) judgements are self executing; and 4) the rights of individuals in their relationship to their own nations, to each other, and to the common supranational institutions are recognized fully. These characteristics have been distilled from the classic integration literature by Haas and Deutsch.

If we accept Haas' definition of integration then we would expect an integrating institution to perform its tasks outside of any specific national jurisdiction; to encompass many national jurisdictions. The "new center" institutions in the European Communities do not claim total political sovereignty over the member states, the Treaties grant power and authority to the EC institutions only in specific areas of interest such as transportation, free movement of goods and workers, etc.. The Court has power and authority as do the other EC institutions via the treaty agreements of course, but the most important source of its power stems from the fact that decisions are self executing and the rights of individuals are recognized and upheld.

These last two characteristics are the main points of distinction between an integrating institution and an international institution. An international institution has absolutely no claim of authority or power over any aspect of state action. The states

are the primary actors in an international relationship. Any judgements made by an international institution rely upon state action for execution; these decisions are not self executing. Furthermore, the conflicts involving individual interests are not of concern for an international court. The states are the primary parties to suits and any corresponding decisions or actions may affect individuals but individuals are not allowed to participate in the decision making process.

The literature on integration illustrates a number of different perspectives on the definition of integration and on the role of international structures. Functionalism is one way of conceptualizing integration. "The functional approach emphasizes the common index of need...and...should help shift the emphasis from political issues which divide to those social issues to which the interests of the peoples is plainly akin and collective."[2] Political cooperation in areas where it is easiest leads to institution building which in turn leads to the destruction of state lines.

Functionalism bases its assumption of collective need and cooperation on Marxist ideology mixed with a belief in the good and altruistic nature of mankind. It is assumed that violence and power will become obsolete as a means by which to achieve ends and aspirations; they claim that group conflict is not inherent in humans once they realize that everyone shares common social goals

---

[2]Haas, Beyond the Nation State, (Stanford: Stanford University Press, 1964, p. 7).

and values. "What is required to give us a world rule of law is a change in the social substructure" such that "those who wield supreme power share certain common ethical convictions as to the basic principles of decency between man and man... The task, then, must be the creation of a world moral order."[3] Once common social needs are recognized organizations will be formed to provide for these and eventually will become institutionalized.

Functionalists assume that all political and social decision making is executed by political elites, completely overlooking the role of individual nationalists. Functional organizations develop in response to the common needs of the nations but they are appendages of the nation states. They have no authoritative base of power except that they become institutionalized over time. It is not clear how they would maintain themselves if the states no longer supported them or perceived them as necessary for the achievement of the pre-existing common goals. The functional model is not sophisticated enough to show the transfer of sovereign decision making authority from the states to a supranational entity; it shows more of a concept of cooperation between sovereign nations to resolve problems in common. It is a functional system of institutions that operate on a state-to-state relationship level. The political elites of each nation determine the areas of common interest and agreements are made on the national level. No recognition of the need to unify the citizens of the nations with the state agreements and the supranational institutions is

---

[3]Ibid., p.40.

demonstrated. Such characteristics pertain more to international institutions than to integrated ones.

Sovereignty of the nation states is a problem for theories of integration and some authors like Karl Deutsch emphasize the prevalence of sovereignty in integration. The pluralist theory states that there is coordination through a plurality of autonomous units. Mutual responsiveness is a measure of the reinforcing cycle of action and reaction which leads to trust which then leads to more action and reaction.[4] This theory does not import any substantive strength to institutionalization of the action\reaction mechanism. In actuality this theory is not much different from international agreements. Plurality theory describes the development of integration but it cannot explain the power and authority of supranational institutions. With the states functioning as self determining actors there is nothing that binds them to the previously described reinforcing nature of plurality. Good communication, understanding, and equal development does not preclude conflicts. The individual's sense of identity stems from nationalism not an affiliation with supranational structures.

Each of these theories explains integration in terms of international relations. Functionalism sets up a model in which nations either agree to cooperate with one another in a particular area where each has problems, yet there is no sense of continuity in their relationship; no assurance that once the problem is solved

---

[4]Karl Deutsch, Political Community at the International Level: Problems of definition and measurement, NY: Archon Books, 1970.

the relationship will be maintained. The pluralist theory does not consider it possible for sovereignty to be transferred away from the individual countries. The relationship is like an international agreement where cooperation is extended through trust and communication yet there is no institutionalized decision making apparatus to mediate between countries.

There are other kinds of relationships inherent in an integrated community that require mention since I have been the relationships between political actors. Hays mentions five relationships between political actors in a federal sysrem: 1) between the branches of government; 2)central/regional relationships; 3)between regional units; 4)between regional governments and citizens; and 5)powers of defense and diplomacy.[5] There are other important relationships that also exist between the citizen and the supranational institution and of the citizen to the central state institutions. The extent of this relationship is important in defining the effectiveness of an integrating institution.

To be integrated the nations and the individuals must feel a sense of complete interdependence between the nation and the supranational political community. The political community must have established institutions that organize and control decision making. The individual nations must be willing to relinquish sovereignty to the institutions such that they are dependent upon

---

[5]Hays, Peter, Federalism and Supranational Organizations, (Urbana/London: University of Illinois Press, 1966.)

them for guidance. International agreements are different because the state decides how far it is willing to go in a cooperative effort; all power and authority resides in the state. Of course the EC treaties were international agreements at their inception but the EC institutions have power and authority within a specified jurisdiction to make binding decisions that are self executing on the member states. Not only that, but the individuals have recognized rights which are applied and can be appealed to throughout the entire Community.

The raw definition of integration is the act or process of integrating; specifically to form a whole; to unite or become united so as to form a complete and perfect whole. The level of wholeness can be related to a number of different concepts. For example, it is possible to strive for social integration where wholeness is sought for all levels of society such that people of the various races and classes are recognized equally. The goal of the European Economic Community is to achieve economic integration by 1992. Technically this means having a common currency and complete dissolution of international boarders for the purpose of free movement of goods and people within the EC. Achievement of economic integration requires political integration. member states must be willing to give up sovereignty over their money supply and economic decision making. Political integration is a process whereby the characteristic legislative, executive, and judicial institution are elevated to a supranational status wherein they are given the power and authority to unify political and economic

decision making along lines of interest that are common to all member states. The member states do not relinquish their own government institutions; the supranational institutions only have power and authority to make decisions within specifically delineated fields of activity. For example, most states do not want to give up control over domestic monetary and economic policy as would be necessary if a common currency is to be attained. It is also imperative that individuals and laborers are recognized equally in all member states. Conflicts such as these make it extremely important to know how effective the supranational institutions are in achieving integration.

To be effective means to produce a decided, decisive, or desired effect. In the process of producing a result, to be effective emphasizes the actual production of an effect when in use. In terms of the process of integration, the desired result is unification of various spheres of interest employing supranational institutions to oversee the effect of collective action and cooperation in these areas of common interest. When the Court is in session is the actual production of integration emphasized? Do we see the previously described characteristics of an integrating institution stressed or does it act more like an international court where it plays the role of arbitrator?

The European Court of Justice, like United States tribunals of legal wisdom and justice has no means by which to enforce its decisions. The legitimacy of its decisions rests on logical reasoning and sound judgement. The authority of the Court is

explicated in the Treaty of Rome as the final interpreter of EC legal principles. The problem to be resolved is the determination of whether the European Court is an integrating institution whereby its relationship with the member states is interdependent and the authority of the Court is effective in maintaining that relationship. The first step to understanding the role of the Court is to discuss its legal foundations and then continue with the all important task of operationalizing effectiveness.

The EC treaties(ECSC and EEC) establish a means by which legislative, executive, and regulative power is conferred from the member states to the Community. EC powers are limited to the pursuit of specific objectives to which the members of the Community have relinquished sovereignty, an action that would not have been completed without a provision for judicial review. EEC Articles 169 and 170 oblige the Commission to refer cases to the Court when negotiation procedures have failed.[6] EEC Article 177 provides for referral to the Court by national courts to obtain a preliminary hearing for purposes of interpretation in the application of EC law to specific cases. The Court plays the role of an arbitrator in these cases much like an international court.

---

[6]Art. 169 reads as follows:

> If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion of the matter after giving the State concerned the opportunity to submit its observations.
>
> If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

It defines and interprets EC law for the referring party but the final decision rests with that tribunal and not with the European Court. EEC Article 173 provides for suits brought by member states, the European Council, and the Commission against the Council or Commission.[7]

The important characteristics of the Court include the following: the majority of the Court's subject matter concerns matters dealt with in national courts; it is important to note that member states and individuals have standing to sue; the Court operates within a continuing and developing legal order; it has multiple jurisdictions serving different purposes; and for the national courts it is an integral part of their legal system. The jurisdiction of the Court encompasses a variety of areas which can be classified into two categories. One is areas of direct judicial control and the other is indirect judicial control.

Under direct judicial control the Court interprets and applies EC law to a specific case to ensure legal expertise of EC legislative, regulative, and executive powers by EC institutions and also the respect of EC obligations by member states or individuals. (The Court is the Guardian of the Treaties). Direct control occurs when Article 169, 170, or 173 procedures are

---

[7]Art. 173, EEC: Supervision of the legality of the acts of the Council and the Commission other than recommendation or opinions shall be a matter for the Court of Justice. The Court shall, for this purpose have jurisdiction in proceedings instituted by a Member State, the Council, or the Commission on the grounds of lack of jurisdiction, substantial violations of procedural rules, infringements of this Treaty, or of any rule relating to effect being given to it, or of misuse of powers.

followed. Indirect control, on the other hand, is a result of the Court's interpretation of an EC rule upon request from a national court of last resort of from an individual via a lower level national court. The European Court's interpretation is then applied by the national court to the pending litigation within the country. Indirect judicial control was instituted to ensure uniform application and interpretation of Community law by national courts. This type of control is applicable through Article 177.

Regardless of the method of implementation within any one member state, all EC obligations are binding on member states. Slow legislation or other structural obstacles are not acceptable to justify delay.[8] The member states are required under EEC Article 171 to terminate a violation after the European Court of Justice has proclaimed the State's act invalid.

> If the Court of Justice finds that a member state has failed to fulfil an obligation under this Treaty the State shall be required to take the necessary measures to comply with the judgement of the Court of Justice.

The Court's decision is final and legally binding upon the member states. The court has gone to great lengths to ensure that community law is recognized as Supreme at the national level. In the early 60s when the Court first began hearing cases the judgement was declaratory. This means that the member state is required to take the necessary steps to clear up the infringement.[9]

---

[8]Judgement No. 30\72 (Commission v. Italian Republic) [1973] ECR 161,172,. See also Art. 171, EEC Treaty.

[9]Judgement No. 6\60 (Humblet v. Belgian State) [1962] ECR 449, 568-9.

As time progressed the Court allowed a more liberal interpretation of Article 171. In Commission v. Federal Republic of Germany, the Court emphasized the need for leeway in stating an operational decision that would allow affective changes.[10]

The final point that requires discussion before moving on to the measurement of effectiveness is the principle of direct effect. The principle of direct effect has been established to ensure the respect of Community obligations by member states. Community law is said to have supremacy if the directives of the European Commission are directly effective. The Term direct effect was coined by the European Court of Justice in a decision on a case involving France and Italy and the importation levy placed on beef cattle by the Italian government. The Court held that Community law requiring the lifting of such taxes is superior to Italian national law. The Italian government and the Italian courts were told by the European Court of Justice that Treaty initiatives grant rights to individuals which must be upheld by the national court system; Community law is directly effective on the State.[11]

There are two methods by which a MS can make provisions for compliance with the direct effectiveness of community law. The States that follow the monist doctrine have a national constitutional procedure for making EC directives and regulations immediately binding at the national level. France and the

---

[10]Judgement No. 70\72 (Commission v. Federal Republic of Germany) [1973] ECR 813.

[11]. Simenthal case, Case 106/77, [1978] ECR 629 at 651-2.

Netherlands both have national constitutional provisions that legitimize EC law as the supreme law such that legislative provisions for the transfer of power from the MS to the EC are not necessary. It is like a merge lane on the interstate; once the merge lane ends all traffic flows together in one direction there is no need to look for oncoming cars(hopefully).

The monist doctrine originates from the perspective that international law and national law are both part of a whole system. Once an international agreement has been consummated the principles are applied the same as national law; there is no distinction between international law on the one hand and national law on the other. Once a monist State has merged with the Community it is constitutionally bound to follow EC law.

These assumptions would lead one to believe that MS who operate monistically would be the least likely to break Community law because they are bound by their constitution to maintain their Treaty obligations. Historically this has not been the case. France has probably been the most cantankerous country as it has demonstrated numerous instances of noncompliance with treaty provisions. [12] The most famous of the non-compliance cases is the French sheep meat case. France refused to comply with EC and European Court of Justice decisions and enforcement was impossible, even constitutionally until French demands had been met.[13]

---

[12]. Italy has been equally troublesome because of its coalition government but France is unique in this argument because it employs the monist doctrine of incorporation of Community law.

[13]. More details of this case are on p.14.

Article 55 of the French Constitution clearly specifies that "Treaties or agreements duly ratified or approved shall, upon their publication, have an authority superior to that of laws, subject, for each agreement or treaty, to its application by the other party."[14] Once the treaty has been consummated the principles therein become supreme to other laws in France.

The dualist doctrine; the second method of member state integration of Community law means that the State wishes to maintain primary control over domestic affairs. Integration of EC law with national law occurs through the passage of national legislation; the state transfers power from a very specific area of interest to the Community. The Community is borrowing the right to make laws in place of the state but the state maintains its sovereign control. The relationship is a two way street where the EC must receive authority to act from the member state before it does anything. The distinction between this and the monist theory is that the dualist doctrine views national and international law as two distinct categories; when a conflict occurs between the two the national courts will uphold national constitutional law at the expense of an international treaty. Therefore, in order to implement international law constitutional provisions have to be made at the national level so as to legitimize the law in the eyes of the national courts.

If there is a direct provision for the transfer of power to the international organizations as is the case with Germany,

---

[14]. Safran, W., The French Polity, Longman Inc., 1985, p. 287.

Denmark, and the Netherlands then the terms of the Treaty can be given direct effect. On the other hand, if no constitutional provision exists or no constitution exists as is the case in Great Britain then an act of Parliament must ensue for international law to carry the force of direct effect.[15]

As was previously mentioned and as Hartley and others have pointed out the monist doctrine lends itself to a cleaner or purer application of Community law because there is no opportunity for the changing of provisions as could occur under the dualist doctrine; a state that must legislate before applying EC legislation has the opportunity to change certain words and meanings so that they may be interpreted differently than was originally intended. These two methods of compliance are important for the ease of application of Community law. From the Court's perspective it strives to ensure that Community law is superior in its interpretation and application regardless of how the state contrives to implement the laws.

Direct effect creates rights of individuals under EC law that national courts and authorities must safeguard. The principle of direct effect is the most important factor in defining integration. The fact that individuals are given rights under EC law to which they can appeal in the case of infringement of those rights by the national government creates a bond between the EC institutions and the populations of the member states. Individuals may go over the

---

[15]. Hartley, T.C., The Foundations of European Community Law, Clarendon Press, Oxford, 1988, p.220.

heads of the high courts in their countries and appeal to the European Court of Justice as a court of last resort. If the European Court rules against the nation in favor of the individual it would be a very unpopular move for the national institutional actors to resist the Court's ruling. At the same time individuals and member states can appeal to the European Court for a preliminary ruling on the validity of EC decisions or directives. In legal theoretical terms the Court is ideally situated as an integrating institution because it is directly involved in the affairs of members of the Community through the individuals of those states yet it relies on the national courts, the legislative, and the executive institutions to implement its decisions.

The effectiveness of an institution such as the European Court in promoting integration can be determined by looking at who the litigants are and how the decisions turned out. Five categories have been created to describe the litigants for the purpose of measuring the effectiveness of the European Court of Justice in the process of integration. One is a category in which EC institutions, specifically the Commission, sues a member state, usually under Art. 169. The second contains individuals or member states v. EC institutions. The third is EC institutions or individuals v. other individuals. The fourth is individuals against member states. And the fifth and final category contains applications for preliminary hearings which are important for insuring even application of EC law in the national court systems. One category in which data is provided but is not discussed here is

action by EC officials.

Effective integration will be signified if there is notable recognition of individual rights demonstrated by the admissibility of cases brought by individuals and also based on the success of individuals in the outcomes of the decisions. The degree of jurisdiction over matters other than state-to-state relationships is a measure of political integration, especially the number of cases heard where the applicants were individuals.

The second measure of the effectiveness of the Court on integration is the degree to which the authority of the common institutions is legally binding by virtue of self executing judgements. This can be roughly measured by the number of times in which the authority of the Common institutions is upheld over that of the state or the individual. Also, the number of applications for preliminary hearings indicates the extent to which the courts within the states rely on the authority of the Court of Justice to give them direction in applying EC law. A large number of referrals for preliminary hearings indicates national respect for the decision making authority of the Court.

Data gathered from 1954-1968 indicate the following:[16]

1. In suits against member states by the European Commission, the Commission won 100% of the time. In suits brought by individuals, the individual won 72% of the time against a member state. This demonstrates a significant emphasis on the rights of individuals

[16]Data Source: Green, A.W., Political Integration by Jurisprudence, (Netherlands: A.W. Sijthoff, 1968).

within the Community vis-a-vis member states. These findings indicate that the Court is definitely promoting integration by deciding cases in which individual have standing to sue.

2. In suits brought against the EC decision making institutions the EC institutions won 74% of the cases. 87% of the cases heard involved individuals and not member states.

3. In suits against individuals, 66% were brought by individuals. The defendant won 62% of the time. Cases in which member states brought suit against individuals the defendant won 50% of the them. There is no favoritism of the state in fact later figures indicate more success for the individual litigant than for the state.

4. Suits brought under Art. 177 showed that 50% of the cases were individuals against member states and the plaintiff won 70% of the time.

These figures stress the primacy of cases won by individuals against member states which indicates that the Court focuses on individual rights. The data also stresses the Court's tendency to uphold the position of the common institutions. Therefore, we are definitely not dealing with an international institution. Out of 137 suits brought against the EC institutions, the Court upheld the institutions 74% of the time. 87% of these cases were brought by individuals. On those occasions when a member state brought a case against the EC the Court held for the EC only 65% of the time. This indicates the Court's need to be cautious when dealing with complaints brought by the member states because of its reliance on them to incorporate its decisions into their national framework.

Table 1

Year	1980	1981	1982	1983	1984	1985
Total Cases	279	323	345	297	312	433
Commission v. member state	28	50	46	43	56	114
Member state v. EC institutions	4	4	7	7	8	27
Individual v. EC institutions	32	63	74	80	76	86
EC institution v. individual	-	-	-	-	140	229
Action by EC officials	116	94	85	68	43	65
Preliminary hearing	99	109	129	98	129	139

(Source: Synopsis of the Work of the Court of Justice of the European Communities, Luxembourg, yearly reports).

Figures in Table 1 represent a continued trend of high representation of individuals before the Court of Justice in recent years. When we compare the figures of the Individual v. EC institutions with the member state v. EC institutions there is a distinctive lack of representation of states before the Court. One reason for this apparent lack of state representation is that most state/EC institution conflicts are resolved through a negotiation process; only after negotiations have failed does the matter get referred to the Court. These figures are supportive of the hypothesis that the European Court of Justice is an integrating institution because it recognizes the rights of individuals as parties to suits with standing to sue within the Community. From

1980 to 1983, around 20% of the cases involved individuals as the plaintiff. Then in 1984 and 1985 there is an increase in the total number of cases involving individuals, to 69% and 73% respectively, as the Court begins to hear cases involving EC institutions bringing suit against individuals.

Table 2

Year	Type	Total Decided	In Favor Of			Dismissed
			Govn't.	Instit.	Indiv.	
1980	Art.169	62	-	55	-	7
	Art.173	194	5	1	46	142
	ECSC	239	5	-	41	193
1981	Art.169	79	-	71	-	8
	Art.173	201	5	1	47	148
	ECSC	241	5	-	43	193
1982	Art.169	122	-	93	-	9
	Art.173	219	6	2	49	126
	ECSC	252	5	-	43	204
1983	Art.169	122	-	110	-	12
	Art.173	248	7	2	56	183
	ECSC	270	5	-	47	217
1984	Art.169	140	-	127	-	13
	Art.173	270	34	5	231	195
	ECSC	295	6	-	56	231
1985	Art.169	165	-	149	-	16
	Art.173	297	13	2	70	212
	ECSC	313	6	-	62	241

The figures in Table 2 represent the yearly totals of cases decided by the Court under EEC Art. 169, 173, and ECSC cases. The significant characteristics that these figures demonstrate is that the Court rules in favor of the EC institutions(Council and Commission) 100% of the time when cases are brought by the institutions under Art. 169 and rarely are these cases dismissed.

This outcome unequivocally demonstrates the pressure for recognition of the superiority of the decision making power and authority of the Commission and the Council. There are also a large number of cases that were decided in favor of the individual which indicates that individuals have a significant opportunity to be heard before the court and that they also win. The impact of the state is much lower than might have been expected. This is prima facia evidence that the Court is not an international institution.

If effectiveness emphasizes the actual production of an effect when in use and the desired effect is integration, the elements of which are unification of the parts into a more perfect whole and the process by which this occurs is through the shifting of loyalty, expectations, and political settings to a new center, then the European Court of Justice has demonstrated its effectiveness. "The Court is a part of a new legal order of international law for the benefit of which the states have limited their sovereign rights...and the subjects of which comprises not only member states but also their nationals."[17]

There is much more work to be done on the effectiveness of the Court especially in the area of implementation of the Court's decisions. Implementation of the Court's decisions will be the final test of the power and authority of the Court. But for now, I have demonstrated that the Commission and the Council do make use

---

[17]Preliminary hearing No. 26\62 (van Gend & Loos v. Nederlandse Administratis der Belastingen)[1963] ECR 1 in Bebr, Gerhard, Development of Judicial Control of the European Communities, Martinus Nijhoff:The Hague (1981).

of the Court and that the Court does support them in their decisions which maintains legitimacy and continuity of EC policy. The data also shows that the relationship between individual nationals in the EC and the EC institutions is growing stronger as people feel confident that they will receive equal and just treatment from the Court. Such a response will help to solidify the legitimacy of the Court and the other EC institutions.

BIBLIOGRAPHY

Audretsch, H.A.H., Supervision in European Community Law, Europa Institute, Utrecht University, The Netherlands, Elsevier Science PUblishers, B.V., 1986.

Averyt, W.F.Jr., Agropolitics in the European Community: Interest Groups and the Common Agricultural Policy, Praeger Publishers, New York, 1977.

Bebr, Gerhard, Development of Judicial Control of the European Communities, Martinus Nijhoff Publishers, The Hague, 1981.

Bowler, I.R., Agriculture Under the Common Agricultural Policy, Manchester University Press, 1985.

Brown, L.N., The Court of Justice of the European Communities, Sweet and Maxwell Ltd., London, 1989.

Buckwell, Allan, et.al., The Costs of the Common Agricultural Policy, Croom Helm Ltd., London, 1982.

Coffey, Peter, Main Economic Policy Areas of the EEC-Toward 1992, Kluwer Acacemic Publishers, Dordrecht, 1988.

Deutsch, Karl, Political Community at the International Level:Problems of Definition and Measurement, Archon Books, NY, 1970.

Duchene, Francois, et.al., New Limits on European Agriculture: Politics and the Common Agricultural Policy, Rowman and Allanheld, New Jersey, 1985.

Fennel, Rosemary, The Common Agricultural Policy of the European Community, Granada Publishing Ltd., 1979.

Green, A.W., Political Integration By Jurisdicprudence: The Work of the Court of Justice of the European Communities in European Political Integration, A.W.Sijthoff, Netherlands, 1969.

Haas, Ernst, The Uniting of Europe, Stanford University Press, Stanford, 1958.

Beyond the Nation State, Stanford University Press, Stanford, 1964.

Hartley, T.C., The Foundations of European Community Law, Clarendon Press, Oxford, 1988.

Hays, Peter, Federalism and Supranational Organizations, University of Illinois Press, Urbana/London, 1966.

Heathcote, Nina, Agricultural Politics in the European Community, Occassional Paper NO. 7, Department of Political Science, Research School of Social Sciences, Australian National University, CAnberra, 1971.

Hodges, Micheal(ed.), European Integration, Penguin Books Ltd., England, 1972.

Louis, Hean-Victor, The Community Legal Order, The European Perspective Series, Brussels, 1980.

Miller, S., "The Role of the Court of Justice in the Development of Agricultural Policy in the European Communities," Vanderbilt Journal of Transnational Law, 745(1975).

Millet, T., The Court of First Instance, Butterworths, London, 1990.

Newhouse, John, Collision in Brussels, W.W. Norton and Company Inc., New York, 1990.

Organization for Economic Cooperation and Development, National Policies and Agricultural Trade: Study on the EEC, OECD, 1987.

Rasmussen, Hjalte, On Law and Policy in the European Court of Justice, Martinus Nijhoff Publishers, Boston, 1986.

Safran, William, The French Polity, Longman Inc., 1985.

Scheingold, Stuart A., The Law in Political Integration, Occassional Papers in International Affairs, No. 27, June 1971, Center for International Affairs, Harvard University.

Schermers, Henry G., Judicial Protection in the European Communities, Kluwer-Deventer, the Netherlands, 1976.

Schwarze, Jurgen, The Role of the European Court of Justice in the Interpretation of Uniform Law Among the Member States of the European Communities, Nomos Verlagsgesellschaft Baden Baden, 1982.

Sinclair, John and Heppe, Berkely, A Feeling for the Land, B B Communications, London, 1986.

Smith, Martin J., The Politics of Agricultural Support in Britain, Dartmouth Publishing Co. Ltd., 1990.

Snyder, Francis G., Law of the Common Agricultural Policy, Sweet and Maxwell, London, 1985.

St. John Bates, et.al., (eds.), In Memoriam, J.D.B. Mitchell, Sweet

and Maxwell, London, 1983.

Synopsis of the Work of the Court of Justice of the European Communities, Luxembourg, yearly reports.

Usher, J.A., Legal Aspects of Agriculture in the European Community, Clarendon Press, Oxford, 1988.