

**Harmonization of Migration Policies in the European Union—
A State-Centric of Institutional Explanation?**

by

Chien-Yi Lu
Assistant Research Fellow
Institute of International Relations
Taipei, Taiwan
cyl@nccu.edu.tw

Paper prepared for ECSA Sixth Biennial International Conference
Pittsburgh, PA, June 2-5, 1999

Harmonization of Migration Policies in the European Union— A State-Centric or Institutional Explanation?

Chien-Yi Lu

Introduction

At a time when almost all West European countries are complaining about having too many immigrants and asylum seekers, and when population movements are increasingly associated with the issue of national security (Poku and Graham, 1998), rather than strengthening their border controls, the Member States of the European Union are abolishing controls at the borders between them. The Treaty of Amsterdam not only increased the competence of the Commission and the European Court of Justice in migration related issues, but also stipulated that the Council has to ensure the absence of any controls on persons, including nationals of third countries, within five years after the Treaty enters into force. With the advancement of the notion of *European citizenship*, cooperation on the issues of border control and migration has even begun to affect the nationality laws of the individual countries.

Such a fundamental change in the behavior of nation states calls for an explanation. Traditionally, border control has been regarded as one of the defining elements of state sovereignty. A sovereign state not only has the right to decide who is a 'national' and what privileges are associated with nationality, but also has the power to determine the rights of foreign visitors. Under this new Treaty, what clearly fell within the sovereign prerogative of national governments is thus now becoming a Community matter. Given these unprecedented developments, what then have been the underlying forces driving the Member States to agree to allow certain aspects of sovereignty-related policies to be determined collectively rather than autonomously?

In an attempt to uncover answers, this paper traces the various initiatives for collective migration policy-making in the history of European integration and explores the rationale for these initiatives, the evolution of cooperation outside the EC institutions, and the relations between the Community and intergovernmental processes up until the Amsterdam Treaty. I argue that the reason border control, migration, and asylum policies have increasingly become in the common interests for Member States is to be found in *functional spillover effects*, *elite advocacy* and *support of technocrats*.

The study of migration policies in the EU has been peripheral in EC studies not only because the issue is relatively new, but also because the cooperation in this area had been intergovernmental in nature, with little supranational interference. I demonstrate in this paper that the study of migration policies in the EU can in fact not only draw from the mainstream literature of EC studies, but can contribute to the current debate on European integration as well. Among other things, the coordination of migration policies reminds us that the *pattern of policy making* (e.g., intergovernmental versus supranational policy making) should not be confused with the *mechanism that brought about further integration* (e.g., intergovernmentalist versus neofunctionalist view of integration). The failure to distinguish these concepts has resulted in the impasse in the debate on integration theories.

Theoretical Framework

The scholarly views on the increasing cooperation among the Member States can be divided into two categories. For state-centric theorists, European integration is not a major factor that had resulted in the decisions of the Member States to coordinate their migration policies. National interests and relative power of the Member States, instead, dictated the shape, content and timing of cooperation. In contrast, scholars who consider European integration as an important variable take pains to detect the relations between the process of European integration and the EU institutions on the one hand, and the shape, content and timing of the cooperation on the other.

1) State-Centric Theories:

The dominant state-centric theory in the field of European integration is *liberal intergovernmentalism* (LI) (Moravcsik, 1991, 1993, 1995 & 1998; Milner, 1997), which builds on the neorealist tradition and takes national interests as the starting point of analysis. Like neorealism, LI puts great emphasis on the preoccupation of the Member States to reserve sovereignty. Unlike neorealism, however, LI provides a theory for the formation of national interests. According to LI, the choices of the Member States to delegate decision-making in EU institutions are explained by national preference formation and interstate bargaining (Moravcsik 1995, 1998), both of which can be analyzed with the two-level games model (Moravcsik 1993). The two-level games model posits that governments engage in games at two different levels simultaneously (Putnam 1998 & 1992). At the national level, interest groups, voters, and political parties pressure the government to adopt favorable policies; at the international level, national representatives seek to maximize the so-called “national interests” aggregated domestically through interstate negotiations. The outcomes of the negotiations are determined by the relative powers of the Member States. From the liberal intergovernmentalist perspective, therefore, cooperation within the context of the EU should not be viewed differently from any other international cooperation. The sole function of the EU, like any other international institutions, is to “increase the efficiency of bargaining by providing a set of passive, transaction-cost reducing rules” (Moravcsik, 1993:517). The convergence of national preferences caused by reasons independent of previous integration, in turn, becomes the precondition for cooperation.

On the specific issue of migration and border control, the “*common problem*” argument echoes the intergovernmentalist view that policy convergence is the precondition for cooperation. Many scholars have taken the increased influx of immigrants and asylum seekers in the European Union as the key factor for the increased cooperation among the Member States. Faced with the common problem of large numbers of immigrants and asylum seekers, especially after the fall of the Berlin Wall and the outbreak of wars in the Balkans, states found it imperative to tackle the problem collectively (Wessels 1994; Overbeek 1995; Lohrmann 1994; Russell & Keely 1994; Kessler 1996). Consequently, intergovernmental fora were set up to facilitate the exchange of information and experiences with a view to reducing the workload of the participating countries.

European governments are inspired by the fear that hordes from the

South and the East, masquerading as asylum seekers, will invade the territory of the Member States of the European Community. Without sacrificing their positions concerning the competence of the EC concerning migration and asylum they have put into place overlapping and partly identical intergovernmental instruments to reduce the influx of these 'aliens'." (Jessurun d'Oliveira, 1993:181)

A similar approach is taken by Ugur, who argues that high numbers of immigrants and asylum seekers engender high centrifugal tendencies among domestic societal groups. Under such circumstances, governments tend to use policy convergence as a functional legitimation technique (Ugur, 1995:969-973).¹ Therefore, 'Fortress Europe' should not be associated with the advent of the Single Market. Instead,

[t]he recent surge of exclusionist policies must be seen in the context of an ongoing interaction between the tendency of the European political elites to resort to blame-avoidance in the face of rising unemployment and a faltering welfare state, as well as the rising constituent assertiveness reclaiming the privileges associated with nationality (Ugur, 1995:974).

In short, cooperation among the Member States resulted not from the momentum of European integration, but from the policy convergence informed by national preferences and induced by common problems faced with all the Member States.

2) Gaps State-Centric Explanations Fail to Fill:

1. To test the claim of state-centric theories that the coordination of migration policies among the Member States is a result of convergence of national policies caused by reasons *independent* of process of European integration, one could ask a counterfactual question: If the EU did not exist, would the Member States have coordinated their migration policies with the same depth and intensity we see today? Given that current policy coordination involves the elimination of border control between nations, the answer to this question is likely to be negative. There is, actually, no convincing reason why, when faced with the increased number of asylum seekers, the states did not take unilateral actions to reinforce rather than abolish national border controls. The so-called "common problem" faced by the states can reasonably be viewed more as an *obstacle* than *stimulus* to cooperation. As a Commission official pointed out, had European integration not been the central rationale, the cooperation resulting solely from the large number of asylum seekers would have been much looser in form and vague in substance.²

2. A comparison of the sequence of events and the timing of major decisions taken on

¹ I consider Ugur's approach a state-centric one even though he made it clear that his work represents a *challenge* to the "state-centric" approach to the study of migration policy. This is because the term "state-centric" bears different meanings in comparative politics and in international relations. From the perspective of comparative politics, Ugur's work is society-centered, and therefore a challenge to the state-centered approach. From the point of view of a student of international relations, however, Ugur's work is state-centric for he downplays the role of international institutions.

² Interview with a Commission official, March 12, 1997.

migration policy coordination demonstrates that, while the content of policy coordination strongly reflects state concern over the mass influx of asylum seekers, the mass influx of asylum seekers only became a prominent issue *after* a number of revolutionary plans for intensive cooperation regarding border control had already been launched. (see figure 1) Thus, the inflow of mass immigrants and asylum seekers should be viewed as the *intervening variable* that helped shape the content of policy coordination, not the *cause* of coordinated migration policies.

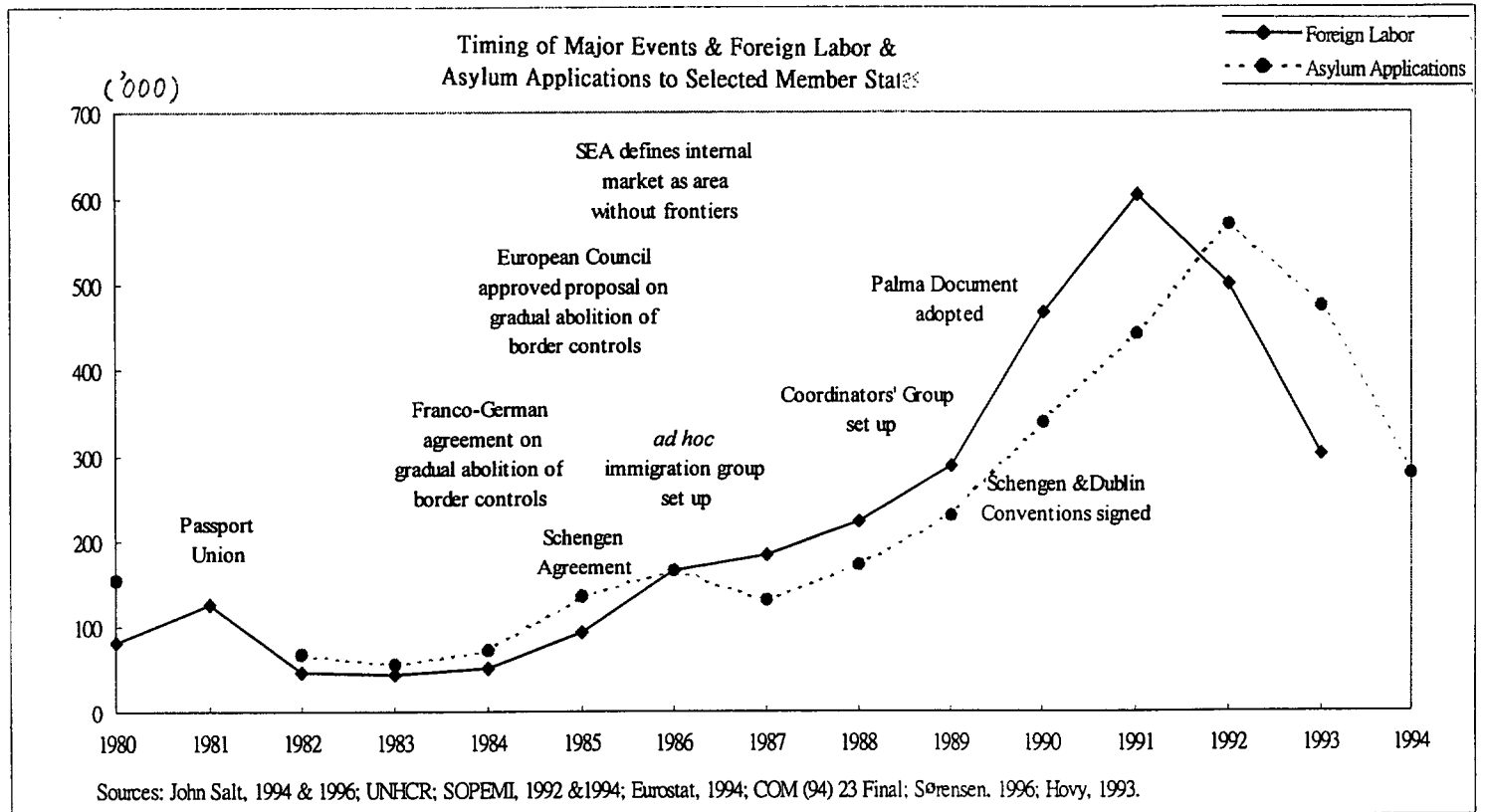


Figure 1

3. The intergovernmentalists' insistence that policy convergence must precede policy coordination has to do with the exclusive focus of LI on history-making grand bargaining (e.g., the Treaty of Rome, the SEA, and the Maastricht Treaty). Such an approach inevitably overlooks the cumulative effects of piecemeal and incremental progress that may contribute to policy convergence. Paul Pierson uses the "snapshot view" to describe LI's concentration on grand bargaining at the expense of the analysis of day-to-day interactions among the Member States and the EU institutions. The application of the two-level games concept forms part of the explanation for LI's rejecting the possibility that EU institutions could facilitate policy convergence.

The two-level games model arbitrarily divides the activities of statesmen into two categories--political leaders are either aggregating interests at the domestic level or negotiating agreements at the international level. A number of problems arise from

this depiction of the activities statesmen undertake. First of all, formal international negotiation does not exhaust the list of routine interactions states have with each other. The snapshot view precludes the possibility that statesmen may be receptive to new ideas derived from informal interactions with foreign counterparts. By focusing exclusively on the interests aggregating function of statesmen, the snapshot view also dismisses statesmen as visionary leaders. Secondly, even in formal negotiations, statesmen may enjoy a varying degree of discretion, since domestically derived national interests cannot possibly be transformed into fixed bottom lines for every single detail brought up in interstate bargaining. These two points combined signify a theoretical problem inherent in LI, i.e., the assertion that states are pluralist internally but unitary externally. Without explaining how the transformation between the two facades take place, Moravcsik leaves us in the dark as to why statesmen (and other domestic actors) with views different from the official one would keep from influencing European decision making via revenues other than formal interstate negotiation.

Thirdly, the two-level games model implies that when the winsets of the two levels do not overlap, no agreements will be reached and the *status quo* remains. This view dismisses the possibility that, even though the negotiating parties fell short of an agreement, the attitudes of governments may have changed subtly as a result of the exchange of views and exploration of new ideas.

Fourthly, the *results* of negotiations may well be determined by the lowest common denominator, but why a particular issue was *put on the agenda* in the first place needs a different explanation. This question is important because there is a big difference between states not coming together at all to discuss a particular issue and coming together but only reaching a limited agreement that reflects the lowest common denominator. Even an agreement based on the lowest common denominator can enhance the chances of a continual dialogue and create the potential for changes in state positions. The snapshot view focuses exclusively on the result of interstate bargaining and ignores the reasons behind such bargaining. With a more extended time horizon, Sweet and Sandholtz observed that "[R]ather than being the generator of integration, intergovernmental bargaining is more often its product." (Sweet & Sandholtz, 1997) Hence, in spite of the intergovernmental formality, the interstate bargaining within the EU are frequently a response to the demand for expanded EU competency, a demand derived from functional spillover effects.

Finally, using the snapshot view one can answer the question whether the Member States still have the final say in international negotiations, but not the question whether the states are becoming more likely to agree with each other even when they have the right to veto; a question with a time dimension that requires a historical perspective. What this point implies is that a distinction needs to be made between the *decision-making pattern* (how the collective decisions are made) and the *forces that have brought about expanded integration* (why collective decision-making is needed). LI focuses its analysis only on the former but makes conclusions regarding both. This distinction also puts in perspective the intergovernmentalist criticism that institutionalist integration theories are *sui generis* for Europe and not generalizable. Focusing exclusively on the decision-making pattern within the EU and looking at 'points' of time, intergovernmentalists came to conclude that EU Member States behave exactly like other nations. Therefore, intergovernmentalists believe existing

international relations theories are sufficient in explaining European integration. In contrast, the institutionalists, who consider time as linear, recognize that a theory is needed to explain what brought about the unprecedented high degree of integration.

4. It is dubious that the two-level games model can provide an accurate description of decision-making in the EU. The fact that decision-making, particularly but not only in the issue area of border crossing, immigration and asylum, has been strongly criticized for the lack of democratic control implies that domestic actors have not been consulted before governments engage in negotiations. The decision-making pattern shows that the general goals were set by political elites according to their political beliefs, and details worked out by high-ranking staffs. (Economist March 8th). The arrow of giving and receiving between national officials and the EU therefore does not flow in a unilateral direction, as is suggested by the two-level games model. The phenomenon of democratic deficit demonstrates that, rather than passively aggregating and realizing the interests of domestic actors, political elites play a dominant role in the formation of policy ideas.

3) The Institutional Approach: Neo-functionalism, Historical Institutionalism, and Fusion Theory:

To fill the afore mentioned gaps, this study draws heavily on historical institutionalism, neo-functionalism, and fusion theory. The most important common feature of these approaches is their appreciation of the significant role played by EU institutions. For institutionalists, the study of regional integration is concerned with “explaining how and why states cease to be wholly sovereign, how and why they voluntarily mingle, merge, and mix with their neighbors so as to lose the factual attributes of sovereignty while acquiring new techniques for resolving conflict between themselves” (Haas, 1970:610-1).

Historical institutionalism stresses that “political development must be understood as a process that unfolds over time.” At the same time, “many of the contemporary implications of these temporal processes are embedded in institutions--whether these be formal rules, policy structures, or norms” (Pierson 1996:126). Applying the historical institutionalist approach, Pierson found that “actors may be in a strong initial position, seek to maximize their interests, and nevertheless carry out institutional and policy reforms that fundamentally transform their own position (or those of their successors) in ways that are unanticipated and/or undesired” (1996:126). Hence, institutional evolution is not always under the tight control of Member State governments. By applying the snapshot view, LI misses many crucial pieces of institutional evolution.

Just as a film often reveals meanings that cannot be discerned from a single photograph, a view of Europe’s development over time gives us a richer sense of the nature of the emerging European polity. At any given time, the diplomatic maneuvering among member states looms large, and an intergovernmentalist perspective makes considerable sense. Seen as a historical process, however, the scope of member-state authority appears far more circumscribed, and both the interventions of other actors and the cumulative constraints of rule-based governance more considerable. (Pierson, 1996:127)

Historical institutionalism bears strong resemblance to Neofunctionalism (Haas, 1958, 1964, 1970). Contrary to the view which regards neofunctionalism as overly idealistic for failing to recognize states' preoccupation with national sovereignty and national interests, neofunctionalism shares LI's assumption that under no circumstances will states consciously make decisions that will have a negative impact on their nations. Like intergovernmentalists, neofunctionalists believe that supranationality exists only when there is the delegation of authority by sovereign governments (Saeter, 1993:14-5). A central theme of neofunctionalism is the logic of spillover, which posits that international programs established to fulfill functional tasks are likely to generate pressures for integration in adjacent issue areas. Since most policy sectors are not completely isolated from other issue areas, integration in one sector tends to run into problems that can only be solved by further integration in another sector. Unless states decide to leave the original task unfulfilled, the scope of integration will need to be expanded.

The logic of spillover is compounded by the fact that a vast majority of policy outcomes are the consequences of incremental decision-making rather than the results of grand designs. "[M]ost political actors are incapable of long-range purposive behavior because they stumble from one set of decisions into the next as a result of not having been able to foresee many of the implications and consequences of earlier decisions" (Haas, 1970:627).

Whereas intergovernmentalists emphasize that the results of intergovernmental negotiations never exceed the lowest common denominator, neofunctionalists argue that the deliberate or inadvertent upgrading of the common interests of the parties can be found in some intergovernmental negotiations. For neofunctionalists, collectively working out a previously non-existent solution is different from mere compromise. Both conflicts and interests may be redefined in this process which relies heavily on the services of the institutionalized mediator (Haas, 1964:111). Experts in functionally specific bureaucracies "operate on the boundaries between national and international policy making. Above all, their experience, interests and career profiles equip them to operate effectively in the immensely complex and expanding interstices between the domestic and regional milieux" (O'Neill, 1996:42). On the national level, civil servants play a more ambiguous role:

on the one hand to push towards positions in conformity with interests known as national and on the other to achieve results in a policy network where consensus is normally seen as a major value itself...[N]ational officials quite often fulfil time-consuming and troublesome roles as active 'brokers', linking the national and international arenas." (Wallace, 1990:235).

Following this line of argument, Wolfgang Wessels uses the concept of a multi-level fusion process to characterize the increasing intermingling of the European governing body and the national governing body (Wessels, 1998). The myriad of committees within the EU provide the main driving force behind the merging of public instruments and can be seen as the evidence of a growing Europeanization of national administrations. This partnership, however, was not based on a clear blueprint.

It is the product of increasing competition for access and influence in the EU policy cycle. The push to and the pull from Brussels are part of the battle for power in the multi-level system which does not lead to an ultimate victory for any one level or group of actors; the dynamics of this competition lead to greater participation by many national actors. (Wessels, 1998:217)

In fact, the formation of the committees

touches one of the groups that is often most resistant to loss of national control--the bureaucrats in the national governments who immediately feel the loss of power as tasks are shifted to the regional center. To the extent that these national bureaucrats are involved in the regional process on committees or by secondment to the regional secretariat..... the distinction between regional and national bureaucrats is blurred. (Nye, 1970:808)

The multi-level fusion process creates a situation for bureaucratic interpenetration. Instead of following the formal channels, national officials communicate with their foreign counterparts by picking up the phone, making it increasingly difficult for governments to function as gatekeepers (Lindberg, 1971). Whereas LI asserts that from the perspective of institutionalists, EU institutions require minimal democratic oversight because of "the lack of conflicting interests in areas of expert consensus," (Moravcsik, 1998:73) institutionalists themselves consider the loss of transparency and democratic control the result of growing interpenetration of supranational and national bureaucracies. (Wessels, 1998:227)

4) Institutionalism and Migration Policy Coordination in the EU:

The development of migration policy coordination in the EU evinces a clear tendency of incrementalism. The new provisions in the Amsterdam Treaty, for instance, are remedies to the lack of efficiency and democratic control in the third pillar, a product of the Maastricht Treaty. Contrary to the assertion of LI that the stipulation of the Single European Act to "establish an area without frontiers" only has a marginal significance,³ Article 8a of the SEA has become the legal basis for the continuing demand for the elimination of the internal borders of the EU. It was the externalities created by a frontier-free EU that forced Member State governments to take actions to coordinate their border control, migration, and asylum policies.

Incrementalism is also evidenced by the fact that the Treaty of Rome made no mention of immigration and asylum, and yet the concept of free movement of labor embedded in the Treaty of Rome evolved from the vague idea of a common labor market to the notion that every European citizen should have the right to cross the internal borders of the EU without hindrance in any form. Whereas some of the Member States were receptive to the extension of Community competency to the issue area of migration, others were reluctant to concede due to the sensitive nature of the issue of migration. Therefore, if we focus exclusively on the *form* of cooperation, migration could hardly become a subject of the study of European integration, since

³ "Many examples of Commission agenda-setting noted by analysts....are marginal: for example, the commission's ability to retain the wording 'an area without frontiers' in the SEA," Moravcsik, 1998:370.

the form of cooperation in this area has been mostly intergovernmental until very recently. Yet if we are interested also in the *mechanism* that brought about the change of positions of the Member States and hence the increased cooperation among them, the study of the coordination of migration policies can shed some light on the operation and impact of regional integration.

Taking both the form of cooperation and the mechanism that brought about increased cooperation into account, I use *functional spillover effects*, *elite advocacy* and *support of technocrats* to explain the coordination of migration policies among the Member States of the EU.

1. Functional spillover effect:

Policy coordination indicates states' efforts to contain the problem of the so-called policy externality that involves the relinquishment of unilateral usage of certain policy instruments (Keohane, 1984:51-2; Milner, 1997:9). European integration can be seen as a more advanced form of policy coordination with a centralized governing body. In the context of deep policy coordination, the effects of forfeiting a policy instrument on a Member State frequently penetrate into not one, but several policy areas. Therefore, as the original issue area becomes more and more integrated, it becomes less and less plausible to leave the affected adjacent areas completely uncoordinated since many of the policy instruments are no longer available. Following this reasoning, I argue that the Member States' decision to coordinate border control and migration policies has been a case of such functional spillover effect. In addition to the desire of containing policy externality, the occurrence of unforeseen problems and unintended consequences in the course of policy coordination also contribute to the shape and content of future cooperation.

In the issue area of migration and border control, the spillover process started with the call for free movement of labor aimed at fostering a stable labor supply within the EEC. This move that emerged out of strict economic calculations soon generated concerns over broader rights of immigrant workers and their families. When European leaders strove to build a citizens' Europe as a tactic to revive the dwindling public support for the project of European integration, the notion that all persons, not just workers, should enjoy freedom of movement became widely accepted. For many, this notion may have been meant to be nothing more than rhetoric, but when citizens, particularly those who needed to cross borders between the Member States frequently (such as lorry drivers) continued to express their frustration with the obstacles at border check points, the demand to interpret the freedom of movement for people in its widest sense--lifting the internal borders of the Community--forced the governments to search for proper solutions collectively.

At every instance of task expansion, each government evaluates the benefits and costs of policy adjustment independently. Policy externalities and unintended consequences do not affect all states uniformly. For instance, due to the variance in the Member States' geographic and historical backgrounds, coordinated migration policy may lead to net benefits flowing to some but deficits to others. Therefore, while eliminating border controls between the continental countries increases traveler convenience tremendously and cuts governmental financial burdens significantly, island countries would have very little to gain from lifting their border controls. Hence, the UK's being the odd man out in migration policy coordination does not

contradict the argument of functional spillover effects. The precondition for spillover, i.e., the demand for expanded tasks resulting from policy externalities and unforeseen problems, is lacking from the perspective of the UK. Functional spillover effects should not be expected to take place where expanded integration serves no functional purposes. It is equally misleading to assume an automaticity in spillover effects in resulting in task expansion when the other necessary conditions--elite advocacy and technocratic support--are absent.

2. *Elite advocacy and technocratic support:*

By 'elite' I refer to both national and supranational leaders who are "believers" in European integration and are in positions that allow them to play the leadership role by using various resources available to them. The fact that national leaders are always gatekeepers for national interests does not preclude the possibility that ideology could come into play and that leaders could take actions to promote further integration. "[T]he institutions of the EU are not free of values. Embedded within them are values and norms which evolve gradually. Such institutional norms may have a significant impact on how functions allocated to the EU are in fact operationalized." (Bulmer, 1998:368)

However, values and beliefs by themselves cannot amount to a reason legitimate enough for the expansions of Community competency. A mediator is needed to make the connection between the values of the elites and the perceived state of affairs, e.g., the occurrence of the spillover effects. The believers of the institutions have incentives to overstate the problems created by unintended consequences and policy externalities (Nye, 1970:804-6). Needing evidence to support their views, these political leaders often turn to technocrats for reports, analysis, and solutions. Even political leaders skeptical of the idea of expanded Community power tend to turn to technocrats as well when they are uncertain about the need to expand cooperation and need objective assessments of the problems. The technocrats in turn become crucial players in determining the shape and content of further integration.

As the experiences of the Ad Hoc Immigration Group, the Group of Coordinators on Free Circulation of People and various other migration related working groups established under the framework of EC or EU demonstrate, the technocrats more often than not work as a positive force for advancing integration. First of all, given their functional driven position, the technocrats can concentrate on "responding to the economic logic of integration and working out the compromises necessary to make the process work." (Nye, 1970:801) Unlike political leaders who often play the double role of gatekeeper for national interests and advocate for further integration, the power of the technocrats is based on their reputation of expertise. Secondly, since the *raison d'être* of the transnational expert groups is to identify problems and to propose solutions, problems that were never addressed previously could be identified and solutions will be proposed. The implication of such results is often one step closer rather than away from further integration. Finally, when experts and civil servants from the Member States work collectively and interact informally, personal ties and corporate feelings that are conducive to consensus-forming develop. This socialization process channels the attention of the technocrats to exploring common interests creatively, downplays the importance of fixed national interests, and converges expectations.

The evidence for spillover effects, elite advocacy and technocratic support can only be analyzed in a relatively long time frame. Each small instance of progress by itself may appear insignificant, and the process of integration is filled with setbacks, but unless one takes into account the cumulative effects of the many small steps, integration cannot be examined thoroughly. The following is a chronicle analysis of migration policy coordination in the EU.

Empirical Findings

The concept of freedom of movement for persons is as old as the EEC Treaty. The meaning of such freedom in the early years of the EC, however, was very different from today. Border crossing and immigration were not even a concern in the past. "Persons" had the strict meaning of workers and "movement" meant the strict meaning of taking up a job. In the mid-1970s political leaders came to realize that the successful operation of the Community depended at least partly on building a Community that was closer to its citizens. The "citizens' Europe" rationale was therefore added to the labor market rationale. Since the mid-1980s, the Single Market program that envisioned a large increase in the number of persons crossing borders made continuing checks on persons stand out as a key obstacle that would undermine the process of integration. Before internal border controls could be lifted, however, compensatory measures concerning coordinated visa, immigration, and asylum policies on third country nationals must be put in place. In the end, the Member States were left with little choice other than cooperating on these sensitive issues.

1) Increasing Pressures for Cooperation: 1957-1990:

1. 1957—late-1980s: The Labor Market Rationale:

Article 3(c) of the 1957 Treaty of Rome already provided for the abolition of obstacles to freedom of movement for persons. Article 7 laid down that any discrimination on grounds of nationality shall be prohibited. Article 48(1) requires the abolition of nationality-based discriminatory measures between workers of the Member States with respect to employment, remuneration, and other conditions of work. It was later made clear in Council Regulation No. 15/61 that a 'Community worker' must be a 'national' of a Member State.⁴ Nationals of a Member State, however, were still preferred over nationals of other Member States as far as employment was concerned. A national of a Member State could apply for a vacancy in another Member State only if the vacancy could not be filled by the latter's nationals within three weeks.

It is therefore clear that the rationale for the free movement of labor lies in the economic benefits a broader labor market could bring to the EC.

In the creation of a common market, the free movement of factors of production as well as of goods and services is essential to achieving the optimum distribution of resources. The free movement of labour is not, therefore, a social-policy objective in itself, and is not treated as such in the Treaty of Rome. It does, however, have implications that spill over from economics to social policy (George, 1996:249).

⁴ JO No57, 26.8.1961:1513

Thus in 1964 the Member States agreed to ensure equal treatment between their own nationals and nationals of other Member States with respect to working conditions, access to the labor market, training, and readaptation.⁵

In 1968 two EC laws were adopted that would serve, for nearly three decades, as the backbone of free movement of people within the EC. The 1968 Council Regulation no. 1612 provided binding rules guaranteeing equal treatment for migrant workers from Member States. Under this Regulation, any national of a Member State had the right to take up an activity as an employed person within the territory of another Member State. Particularly, any national of a Member State would enjoy the right to take up available employment in another Member State with the same priority as nationals of that state (Article 1).⁶ Directive 68/360/EEC took measures concerning the families of the workers in standardizing conditions of entry.⁷

In 1975, the Commission expressed its view that all discrimination against migrant workers should be progressively eliminated for both Community nationals and legal third country migrants. However, given the recession in jobs in the Community and the problem of illegal migration, the improvement of the rights of third country nationals should be contingent on successful restriction of further inflows.⁸ The concept of free movement of persons had until now been associated mainly with the employment opportunities and other social issues faced with Community workers. For the first time, the concept was linked to the issue of border control. A vague sense of the “external borders” of the EC was emerging as early as 1976--a sense that would grow stronger as the internal barriers for goods, services, and capital gradually diminished.

In 1985, in the midst of a climate favorable to a citizen’s Europe (see below), the Commission adopted a set of guidelines for a coordinated Community policy on migration. The Commission noticed the growing need expressed by the Member States for closer cooperation on combating illegal immigration and the misuse of refugee status. Assuming that a migration policy at European level may gradually take shape as an integral part of the move towards European citizenship, the Commission considered essential that the free movement of persons become accepted in the term’s widest sense, going beyond the concept of a Community employment market. The Commission suggested the establishment of a consultation mechanism to keep migration of foreign workforces under control while promoting social and educational integration of immigrants.⁹

2. Mid-1970s—mid-1980s: The Citizens’ Europe Rationale Is Added:

In the mid-1970s, as labor market and social policy continued to be recognized as an important aspect of the EC, another trend that also called for a coordinated migration policy was taking place.

A Passport Union was a reality among several European countries as early as

⁵ Council Regulation 38/64, Articles 8 & 9 (JO C 1964:965).

⁶ JO ESE 1968:485.

⁷ Bulletin of EC, 11/68:5-6.

⁸ EC Bulletin Supplement 3/76:15.

⁹ EC Bulletin Supplement 9/85 & Com(85) 48 fin.

- 1950. In that year, nationals of Belgium, Luxembourg, and the Netherlands were able to travel across the three countries with only a national identity card.¹⁰ In 1954, nationals of Denmark, Sweden, Norway, and Finland also gained the right to travel without passports or other travel documents when traveling across these Nordic countries. Freedom of movement was extended to non-nationals traveling among these countries by a 1957 convention (Torpey, 1996:35).

In 1974 the heads of governments of the EC agreed to consider the possibility of a Passport Union and the introduction of a uniform passport. One of the objectives of the Passport Union was to harmonize legislation affecting aliens and to abolish passport control within the Community.¹¹ The Prime Minister of Belgium, Leo Tindemans, pointed out that in the atmosphere of economic recession all over Europe, public opinion was extremely skeptical on the will to establish a better integrated Europe. People wanted results and wanted their governments to solve the real problems for them. “The European idea is partly a victim of its own successes.” When reconciliation between formerly hostile countries and economic prosperity resulted from the enlarged market had been achieved, “Europe today is part of the general run of things; it seems to have lost its air of adventure.” And yet “[o]ur peoples are concerned with new problems and values scarcely mentioned by the Treaties. If the European statesmen wanted to safeguard the achievements of the Treaties and conquer new ground, the Member States must agree on new aims”.¹² Mr. Tindemans suggested that, as progress toward European integration was made, the new *status quo* created new needs. Hence, the gradual disappearance of frontier controls on persons was just a corollary of a passport union. Accordingly, the idea of introducing a uniform passport was approved by the European Council in December 1975.

For the EC, the idea of a Passport Union was backed by economic logic, which associated the Passport Union with the concept of a Customs Union.

Establishing a Passport Union would provide arrangements in respect of individuals similar to those provided by a Customs Union in respect of goods, i.e. free movement within the Union together with transfer of controls to the external frontiers of the Union and confirmation of it as an entity in relation to non-member countries in the form of joint action *vis-à-vis* such countries (common foreign policy).¹³

The abolition of identity checks at internal frontiers, however, cannot be selective and only allow nationals of the Member States to move freely within the Community. It is impossible to distinguish nationals of another Member State from those of a non-member country. Furthermore, in a Passport Union, continuing checks on documents such as visas and residence permits would destroy the advantages of abolishing checks on identity documents.¹⁴

¹⁰ Torpey (1996) and Kruijtbosch (1993) provide discrepant information with regard to the exact year of the completion of the Benelux Passport Union. Whereas Torpey suggests that the citizens of the Benelux countries obtained the right to travel freely across the three countries in 1950, Kruijtbosch took the date to be 1960.

¹¹ Bulletin of the EC, Supplement 7/75 *Towards European citizenship*--Report presented by the Commission to the Council on 3 July 1975.

¹² Bulletin of the EC, Supplement 1/76.

¹³ Bulletin of the EC, Supplement 7/75:8.

¹⁴ Bulletin of the EC, Supplement 7/75:11.

Against the background of developments on a uniform passport, the tone of the discussion of the free movement of persons started to change. No longer were “workers” considered the only legitimate category of persons to enjoy freedom of movement. “Citizens” and “travelers” were used in discussion on this subject as well.

The discussion of the Passport Union demonstrated that the “seed” of the frontier-free Europe planted in the Treaty of Rome was already developing in the 1970s. The problems that would accompany the lift of internal border checks had also been thought through. Since integration among the Member States had not reached the point where the need to abolish border controls was intensively felt, however, enthusiasm about the Passport Union subsided quickly, and the Council resolution on a uniform passport was not adopted until 1981. Nevertheless, as we will see in the following sections, the rationale that was used in the 1970s to justify the Passport Union and compensatory measures would resurface repeatedly in the future.

The developments in the first half of the 1970s illustrated a paradox that would continue to characterize Member State attitudes well into the Amsterdam Treaty in 1997. On the one hand, one of the very reasons the Passport Union and gradual abolition of border controls were brought about at that particular time was the economic recession, which led to a loss of faith in Europe for many people and convinced the policy makers that “something must be done” to revive the European project. On the other hand, economic recession also meant a more conservative attitude towards immigration. The connection between extending citizens' rights by abolishing passport controls and the image of immigrants moving around freely was not recognized by the leaders of the Member States when they first revealed their determination to form a Passport Union. Therefore, when the Council finally approved the uniform format of the passport in 1981, border checks remained in place, rendering the uniform passport nothing more than a formal European identity.¹⁵

In the midst of dwindling public support for the EC, the heads of Member State governments asked for measures be taken to make the Community a “people’s Europe.” The rhetoric of a “people’s Europe” changed the view that free movement of persons had to be confined to workers and people providing services. In short, no longer was engaging in economic activities the only justification for a person to move freely to another Member State. At the 1984 Fontainebleau European Council, the heads of governments and states stressed the importance of responding to the expectations of the people of Europe and issued a declaration on the abolition of police and customs formalities in respect for the movement of persons and goods across internal frontiers. An Ad Hoc Committee on a People’s Europe was set up to propose arrangements aimed at easing rules and practices which caused irritation to Community citizens.

The Ad Hoc Committee (also known as the Adonnino Committee after its Italian President) not only made a clear connection between a citizens’ Europe and suppressed frontier controls, it also specified the compensatory measures that needed to accompany these suppressions. The Committee pointed out that abolishing all formalities would presuppose the gradual application of a common policy on third

¹⁵ OJ C241/1 1981, OJ C179/1.

country citizens and closer cooperation between the police and judicial services of the Member States. The Committee in turn made recommendations on both short-and long-term measures for relaxing border controls.¹⁶ The European Council approved the proposals and requested the Commission to take necessary steps to put the proposals into practice. Little by little, the value of suppressing frontier controls in helping constructing a Europe closer to its citizens became increasingly recognized by the political leaders of the Member States (Nanz, 1994:123-4).

3. Mid-1980s onward: the Single Market Rationale:

In June 1984 the Commission sent the Council a communication on consolidating the internal market which reviewed progress to date and the problems still to be resolved for the internal market. The Commission called for a political commitment by the governments to make substantial progress in eliminating most of the existing visible checks at intra-Community borders. The aim was to allow those who desire to carry out their activities wherever they felt that they would derive maximum advantage. To achieve this goal, a European passport with a uniform format must be accompanied by a relaxation of checks on citizens of Member States when they cross frontiers inside the Community, in particular by the elimination of systematic checks and the introduction of passport gates reserved for Community nationals. The right of residence in other Member States should also be guaranteed, even if the purpose of the residence was not to engage in an economic activity within the meaning of the EEC Treaty.¹⁷

In June 1985, the Commission submitted the white paper "Completing the Internal Market" to the European Council. The Commission pointed out that the formalities affecting individual travelers, including immigration controls and passports, were the constant and concrete reminders to the ordinary citizen that the construction of a real European Community was far from complete. However, since police checks at internal frontiers were bound up with the fight against terrorism, drugs, and crime, they could only be abolished if they were transferred to the external frontiers of the Community and cooperation between the relevant national authorities was further enhanced. The Commission wished to abolish any border checks on Community citizens who leave one Community country and enter another by 1992. Since this raised questions concerning the regulations of non-Community nationals, the Commission would also seek the coordination of the rules on status of nationals of non-Community countries, and the right of asylum and the position of refugees. Furthermore, the Commission considered it necessary to develop a Community policy on visas. The Commission recognized the difficulties in achieving these goals but was convinced that the target justified the effort that would be required to solve them.¹⁸

The Commission white paper led to the signing of the Single European Act in 1986. Article 8a of the SEA (later becoming Article 7a of the TEU after Maastricht) provides the basis for a frontier-free Europe. The paper defines the internal market as "an area without internal frontiers in which the free movement of goods, persons, services, and capital is ensured." With the term "internal," the notion of "frontier"

¹⁶ Bulletin of the EC, Supplement 7/85, "Report from the *Ad hoc* Committee on a People's Europe to the European Council, Brussels, 29 and 30 March 1985."

¹⁷ Bulletin of the EC, 5/1984, 2.1.7; Com(84) 305 final.

¹⁸ Com(85)310 fin:para. 24-26 &47-56.

became global. Controls at the Community's borders should be operated under the same conditions as the Member States' national territories (Ayrat, 1993:19-20; Buekenhoudt & Goossens, 1993:31). Therefore, although the Act did not include common immigration policies, an objective was set that could not be fully realized without common immigration policies. This is why the Member States agreed on a general declaration which states

[I]n order to promote the free movement of persons, the Member States shall co-operate, without prejudice to the powers of the Community, in particular as regards the entry, movement and residence of nationals of third countries. They shall also co-operate in the combating of terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques (General Declaration of the SEA).

Following the activism envisaged in the White Paper and the Single European Act, in a Council meeting in 1986, the UK presidency launched a program of regular meetings of the ministers responsible for immigration matters. To prepare for the meetings of the ministers responsible for immigration matters, an Ad Hoc Immigration Group composed of the closest advisors of ministers in the field was created. The Secretariat of the Council of Ministers of the EC would assure the secretariat of the group, and a representative of the Commission was included in the group. The subgroups of the Ad Hoc Immigration Group involved civil servants and representatives from the national authorities responsible for immigration policy.¹⁹ In the years that followed, the Ad Hoc Immigration Group played an active and crucial role in facilitating coordination of the migration policies of the Member States.²⁰ And, as will be discussed, their work produced significant results.²¹

Outside the framework of the Community, other groups that dealt with the issue of immigration also flourished (e.g., the TREVI group, the Customs Mutual Assistance Group (MAG) and the European Political Cooperation groups (EPC)), resulting in an overlap of tasks. To overcome the inadequate communication among these groups, the European Council set up the Group of Coordinators on Free Circulation of People in 1988 to coordinate Community activities involving the free movement of persons. The Group of Coordinators was composed of 12 senior officials from the Member States. The representative of the Commission participated as the vice-president. The Council Secretariat serviced the work of the Group, which met four or five times during each Presidency. The Group of Coordinators reported directly to the European Council. This Coordinator's group would in the coming years play an essential role in furthering cooperation among the Member States. The most influential work of the group is the so-called "Palma Document".

The Palma Document is a list of proposals for measures needed to be taken in

¹⁹ Bulletin of the EC 10/1986, 2.4.9.

²⁰ For example, the Group had 100 meetings between 1991 and 1992 (Bunyan, 1993:186-187).

²¹ These would include the Dublin Convention, the Draft Convention on the Crossing of External Borders, the "clearing houses" for asylum and immigration (CIREA and CIREFI), the Resolution on harmonized national policies on family reunification, the Resolution on manifestly unfounded applications for asylum, the Conclusions on countries in which there is generally no serious risk of persecution, and a European Automated Fingerprint Recognitions System (EURODAC).

order to achieve effective freedom of movement for persons within the Community. The arguments in the report were largely based on the approach and methods employed in the Commission white paper.²² It outlined a strategy of first strengthening the Community's external frontier checks and then abolishing internal borders. The following steps were considered "essential" for abolishing controls on persons:

- the harmonization of controls at the external frontiers and the surveillance of these frontiers;
- a common list of countries whose citizens are required to have a visa;
- harmonization of criteria and procedures for granting visas;
- efforts to combat illegal immigration;
- cooperation and exchange of information between law-enforcement agencies and customs on persons who are inadmissible;
- the right of third country nationals residing in a Member State to move without a visa in the territory of the other Member States;
- the abolition of the controls on third country nationals at internal frontiers;
- the determination of the Member State responsible for the examination of requests for asylum;
- agreement on conditions governing the movement on the territory of the Member States of applicants for asylum and refugee status whilst their applications were being considered;
- recourse to a simplified or priority procedure for patently unfounded cases;
- judicial cooperation in penal matters.²³

This highly detailed document represented remarkable compromises among the Member States and the Commission. It was endorsed by the European Council at its June 1989 meeting in Madrid and was thereafter considered the master plan for the border-free internal market. Given the fact that the collapse of Communism in East Europe only took place later in 1989, preposterous is the argument that the mass influx of asylum seekers and immigrants from Central and Eastern European countries was the main factor for the enhanced cooperation among the Member States.

Following the guidelines of the Palma Document, the Ad Hoc Immigration Group produced a draft convention setting criteria for determining the Member State responsible for examining an asylum application. The Member States signed the *Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the EC Member States* in 1990. The Convention is also known as the Dublin Convention, the purpose of which is not to harmonize the rules for examining applications for asylum and refugee status but to prevent asylum seekers from making multiple applications.

While the Dublin Convention is intergovernmental in nature, the preamble of the Convention states explicitly that the bases for the Convention is the joint objective of an area without internal frontiers as provided by the Treaty establishing the EEC and amended by the SEA. Article 16 of the Convention makes a linkage between the objectives set out in Article 8a of the SEA and the establishment of harmonized

²² Bulletin of the EC, 6/1989, 1.1.7.

²³ Select Committee on the European Communities, 1989:55; Coordinator's Group, CIRC 3624/89, 9.6.1989.

asylum policies and a common visa policy. The connection between the Convention and the Community is also evidenced by Article 18, which provides that a Committee be set up and chaired by the Member State holding the Presidency of the Council of the EC, and Article 21, which stipulates that any state becoming a member of the EU may accede to the Convention.

The analysis of the development in this period confirms Bulmer's observation that "changing EU governance is not just a product of 'history-making' decisions. Much of it is evolutionary and takes place *between* such step-changes" (Bulmer, 1998:367, emphasis added). The signing of the SEA and the numerous Council Resolutions show that in interstate bargaining "negotiators explicitly include a time-specific review clause in legislation in recognition of the fact that the agreed legislation is as far as the negotiating parties could go at the time" (Bulmer, 1998:367). Meanwhile, the more detailed and technical works were left in the hands of the various working groups, and the results of this form of decision-making manifest a strong logic of incrementalism (Bulmer, 1998:367; De Lobkowicz, 1994:110).

4. Schengen:

Around the time the twelve EC Member States signed the Dublin Convention in 1990, five of the Member States also signed a convention titled the Convention Applying the Schengen Agreement of 14 June 1985 on the Gradual Abolition of Checks at Common Borders (henceforth the Schengen Convention). The Schengen process was never an objective in itself. The preamble of the 1985 Schengen Agreement made explicit that the objective of the Agreement was to facilitate the achievement of a Community goal--the free movement of persons, goods, and services. Rather than stating the importance of ensuring closer interaction among the citizens of the Benelux countries, the Federal Republic of Germany, and the French Republic, the text of the Agreement spelled out: "the increasingly closer union of the peoples of the *Member States of the European Communities* should be manifested through freedom to cross internal frontiers for all nationals of the Member States and in the free movement of goods and services" (emphasis added). The Agreement, in turn, was not prompted by the desire to provide freer border crossing for nationals of the five signing States, but by "the will to succeed in abolishing controls at the common frontiers in the movement of *nationals of the Member States of the European Communities*" (emphasis added). Hence, from the perspectives of the signatories, the Schengen Agreement was not setting a new goal that was independent of the EC Treaty. On the contrary, the Schengen Agreement was to serve as an instrument for the Treaty of Rome. The reason it had to operate outside the framework of the Community was because not all the Member States were ready to take the necessary steps to abolish internal frontiers. Schengen is in fact an alternative to a deadlocked Community plan to abolish border controls at the internal frontiers for which the Commission had been campaigning unsuccessfully for a long time.

Once again, even though the form of cooperation under Schengen has been intergovernmental, the Agreement owes its genesis, shape and contents to the institutions of the EC. For instance, the provisions of the Schengen Agreement bear strong resemblance to the provisions listed in a series of proposals on the easing of border formalities submitted by the Commission since 1982. The measures identified in the Schengen Agreement also correspond to the program set out in the

Commission's White Paper. Thus, the work by the Commission had, to a certain extent, provided the inspiration and foundation for the Schengen Agreement.²⁴ On the other hand, the creation of the Schengen Agreement has been viewed as a laboratory for the European Communities. For many, Schengen was not even meant to last. Instead, its only task was to do the preparation work for the EC before a secure space of free movement within the Community could be established (Elsen, 1997:5). The Commission was among the strongest supporters of this view. Hence, even though the Commission preferred a Community as opposed to an intergovernmental approach for the coordination of migration policies, its attitude towards Schengen has been positive, for the goal set by the Schengen group is also the aim of Article 8a of the SEA. From the standpoint of the completion of the internal market, the Schengen initiative could help to speed up the removal of controls throughout the Community. Therefore, the Commission believed that not only would the operation of Schengen be a testing-ground for the Community on the technical front, the political will demonstrated by the Schengen States would also serve as a driving force for those Member States outside Schengen.²⁵ The fact that a number of agreements among the Member States (e.g., the Dublin Convention and the European Information System) were clearly modeled after Schengen proved valid the view of the Commission.

Immediately after the conclusion of the Schengen Agreement, negotiators began to work on drawing up the supplementary agreement that would provide detailed cooperation measures that the Member States should take. After four and a half years of protracted negotiations, the Five countries came to an agreement on the contents of the supplementary convention in the end of 1989. The difficulties endured by the negotiators were captured by a report in *Le Monde*:

[T]he five partners found throughout their negotiations that the path drawn at Schengen in 1985....was full of pitfalls. How, on the basis of a number of declarations of intent, to set up a mechanism such that neither governments nor citizens would feel they were having to pay too dearly for the removal of borders? Every day new difficulties were unearthed (*Le Monde*, Dec. 15, 1989).²⁶

During the negotiation, the negotiators realized that the objectives set by the Member State governments, i.e., harmonizing the issuing of visas, setting up a common procedure for the granting of asylum among the five countries, and computerizing the exchange of data between police forces without infringing individual liberties, were "challenges which could not be taken up without some eggs getting broken" (Theys, 1995:10). On 19 June 1990, the five Schengen states finally signed the *Convention Applying the Schengen Agreement of 14 June 1985 on the Gradual Abolition of Checks at Common Borders*.

Succeeding the principle of the Schengen Agreement, the Schengen Convention defines the term "alien" as "any person other than a national of a Member State of the European Communities" (Article 1). Hence, the free movement of persons established by Schengen applies to all EC nationals rather than just the nationals of the Schengen states. In addition, with the expectation that eventually the entire EC territory would

²⁴ Interview with a former Commission official, April 16, 1997.

²⁵ Com (88) 640 fin:13; OJ 1991 C214/12 and OJ 1990 C90/11.

²⁶ Cited in Theys, 1995:10.

have no internal borders, Article 140 provides that any EC Member State may accede to the Convention. Article 134 stipulates that the Convention's provisions are to apply only in so far as they are compatible with Community law. On that ground, Schengen is subordinate to Community decisions, which can have the effect of replacing any of the Schengen provisions (Fischbach, 1993:4). Moreover, Article 142 provides that when conventions are concluded between the Member States of the European Communities with a view to completing the area without internal frontiers, the Contracting Parties shall agree on the conditions under which the provisions of the Schengen Convention are to be replaced or amended by such conventions. Based on this stipulation, the Dublin Convention has substituted the part of the Schengen Convention regarding the determination of the state responsible for examining an asylum application upon its entering into force in 1997 (Van der Klaauw, 1998:77). The incorporation of the Schengen *acquis* into the EU by the Treaty of Amsterdam similarly exemplified the "laboratory" nature of Schengen and bore out the view that the path of intergovernmental cooperation has not been independent of the momentum of regional integration. The meaning and the process of the incorporation of the Schengen *acquis* will be discussed later.

2) The Maastricht Treaty: Migration Issue Put on Agenda

In spite of the conventions, agreements, resolutions, working programs, and working groups discussed above, the issue of migration was never mentioned in any Treaties of the EC. Prior to the convention of the intergovernmental conference (IGC) that resulted in the Maastricht Treaty, the Commission expressed its desire to enshrine in the Treaty once and for all the principle that freedom of movement is a right of Community nationals. The Commission proposed two options to replace the intergovernmental approach in dealing with matters derived from the free movement of persons:

- An explicit reference in the Treaty to a Community competence in relation to non-Community nationals to the extent needed for the free movement of persons and the creation of a frontier-free area; or
- To the extent that the status of non-Community nationals involve the free movement of persons, the Community should recognize the regulation of non-Community nationals as vital common interest.²⁷

What the Member States were willing to accept at the end of the IGC appeared to be a disappointment to the Commission. However, the inclusion of the immigration issue into the Treaty paved the way for more intensified cooperation in the future, as was witnessed in the Treaty of Amsterdam.

1. The First Pillar of the Maastricht Treaty:

The nature of the cooperation under the Maastricht Treaty that involves border control, immigration, and asylum is neither purely intergovernmental nor purely supranational. De Jong describes the arrangement as a form of cooperation that "contains some intergovernmental elements, but subdued in a communitarian sauce" (De Jong, 1995:53).

The first pillar cooperation that gives the Community competence concerns certain aspects of visa policy and the right of the European citizens to move freely.

²⁷ COM(90)600; Migration News Sheet, May 1991:1.

Articles 8a, 8b, and 100c of the Treaty represent the spilling-over of problems from economic integration to visa policy and citizenship, which are further interlinked to the issue of migration.

It becomes a very practical problem with the European lawmakers as to what happens when Single Market is a single legal space and you have freedom of movement of people. Somebody has to decide who gets the visas and who doesn't....[and] what about permanent settlement?²⁸

The provisions in the first pillar have resulted in repercussions on the citizenship laws of individual states. The process of developing a European citizenship has "propelled an institutional and political dynamic that superseded previous expectations" (Lemke, 1997:6). For instance, the rights of Union citizens to move, reside, vote and run for offices have created concerns about the consequences of uncoordinated national laws on citizenship. In some Member States, e.g., France, Spain, the Netherlands, Luxembourg, and Greece, locally born children of immigrants can become their citizens (*jus soli*). In other Member States, such as Germany, Belgium, Denmark, Ireland, and Portugal, nationality can be acquired only by inheritance (*jus sanguinis*). Under the Maastricht Treaty, a Greek-born, second generation third country immigrant can become a European citizen, and thus enjoy the right to reside, work, and vote in municipal elections in, say, Germany even if he only has very limited knowledge of local society and language. In contrast, a German-born second generation Turk, who has relatively little chance of being naturalized, may not obtain the right to vote in his hometown or to move around the Union freely (Convey and Kupiszewski, 1995: 952-5; Weil, 1996:85; Ireland, 1995:241).²⁹

Differences among European countries with respect to citizenship laws, the admission of refugees, tolerance for undocumented aliens, and willingness to admit ethnic kinfolk from neighboring countries matter, if there are to be no boundaries between Western European states. However, common rules concerning whom to admit, what rights migrants should have, whether multiculturalism or assimilation should be the goal, and who should be granted citizenship are difficult issues because they are at the very core of the idea of national sovereignty (Weiner, 1995:47).

From an intergovernmentalist perspective, one can predict how the Member States will work out these problems simply by analyzing the preferences and relative power of the states. From an institutionalist perspective, however, the forces which transformed these problems from non-issues to the subject of interstate negotiation are worth studying and must not be excluded from the studies of European integration.

2. *The Third Pillar of the Maastricht Treaty:*

The cooperation in the field of justice and home affairs is embodied in Title VI of the Treaty. Article K.1 lists asylum policy, the crossing of external borders,

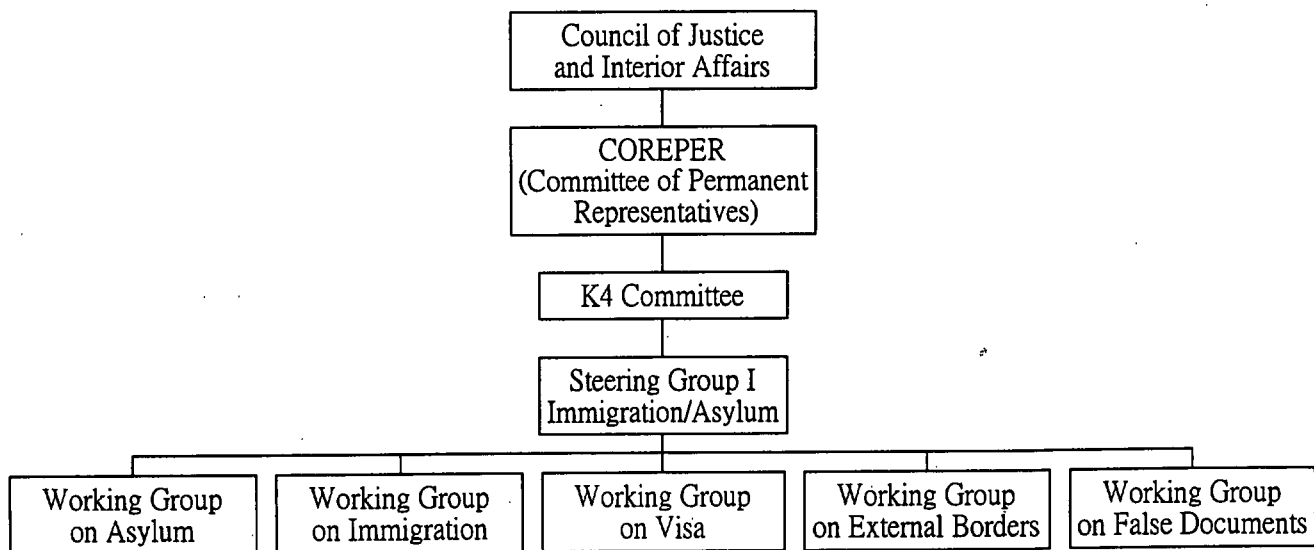
²⁸ Interview with a member of the European Parliament by Lahav, 1994:16.

²⁹ Naturalization rates are at least five times higher in France than in Germany for second- and third-generation immigrants. Although after a revision of an Aliens Law in 1990 naturalization rates have increased in Germany, they remain low in comparison to other European countries (Lemke, 1997a:92).

immigration, and police cooperation as matters of common interest of the Member States. On these issues, the Commission shares the right of initiative with the Member States and the Council acts unanimously. On the initiative of any Member State or the Commission, the Council may adopt joint positions, take joint action, or draw up conventions for the Member States to adopt. The conventions may give the Court of Justice the jurisdiction to rule on any disputes. Although not having a formal right to give opinions, the European Parliament is entitled to be regularly informed of the work in this area.

Article K.4 of the Treaty gave rise to a Coordinating Committee consisting of senior officials from the national Interior Ministries and representatives from the European Commission. The Committee was later known as the K4 Committee. The K4 Committee is responsible for the preparation of the discussions of the Justice and Home Affairs Council. The Committee is expected to resolve as far as possible substantive problems before they are forwarded to COREPER (Committee of Permanent Representatives) which sifts through all proposals before they reach the Council. After the Maastricht Treaty was signed, the Member States decided that the K4 committee would have steering groups on: 1) immigration & asylum policy; 2) security, law enforcement, police and customs; and 3) judicial cooperation. The steering group on immigration and asylum policy will include working groups on: a) asylum; b) immigration policy; c) visas; d) control of external frontiers; and e) false documents. The K4 Committee is also responsible for setting up the European Information System (EIS) which is modeled after the Schengen Information System (SIS) and will provide an EC-wide computerized system covering all areas of policing, law, and immigration.

Figure 2



3) Decision-Making Process, Two-Level Games, and the Democratic Deficit:

The foregoing sections illustrate that while the form of decision-making with regard to the coordination of migration policies had been intergovernmental, the reason this policy coordination ever took place can only be explained by the logic of functional spillover effects. In this section, I will demonstrate that, the institutionalist approach can better explain not only the mechanism that brought about coordinated migration policies (*why* the Member States decided to cooperate), but also the form of decision-making (*how* the Member States cooperate) in the area of migration.

1. Decision-Making in the Two-Level Games Model:

LI insists that the EU, like any other international institution, only serves as a forum for intergovernmental interaction. With or without European institutions, the extent of cooperation among the Member States is determined by two-level games.

At the national level, domestic groups pursue their interests by pressuring the government to adopt favorable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments. Neither of the two games can be ignored by central decision-makers (Putnam, 1988:434).

In this model the politicians are not treated as having a mind of their own, but as spokespersons for the people. They do not take the initiative to cooperate with foreign governments unless they have a clear mandate from the people. To the extent the politicians do have policy preferences, the preferences boil down to their reelection prospects. When international cooperation can improve the overall state of the economy, the politicians increase their probability of remaining in office by promoting such cooperation (Milner, 1997:42). "Vision" and "leadership" are irrelevant as far as policy outcomes are concerned.

A serious limitation of this model, I argue, is that it is applicable only to societies where democratic control is effective and policy making is transparent. Where the voters cannot vote the policy makers out of office or have no access to the decision-related information, the link between the two levels is severed. An examination of the coordination of migration policies among the EU Member States reveals that the constant and informal exchanges of views among elites--exchanges conducted in private and facilitated by EU institutions--best describe the decision-making pattern in this area. The lack of democratic control, in turn, renders the two-level games model irrelevant in the explanation of migration policy coordination in the EU.

I lay out the differences between international cooperation under two-level games on the one hand and the EU on the other:

Decision-Making Under Two-Level Games Model	Decision-Making In the EU
Policy makers 'aggregate' domestic interests	Leaders exercise 'leadership'. Their judgements affects policy outcomes
Requires a strong form of representative democracy. The mechanism of democratic control is well functioning: Directly elected politicians concerned with reelection and take pressure groups and voters seriously	Lack of democratic-control mechanisms at both the European level and national level. The European Parliament as well as national parliaments are ill-informed about the deals the governments make
Policy makers lose office when unpopular policies are made	Key policy makers are not elected, therefore unpopular policies do not lead policy makers to lose office
National legislature can prevent unpopular policies from being implemented by refusing to ratify treaties/agreements	Few debates take place in the national legislature, as legislators are often given too little time and information before they have to ratify conventions or agreements
Negotiating representatives meet occasionally and have a very clear sense of having to go back home from the negotiation table and show the citizens the result of negotiation	Communication between elites and civil servants from all the Member States is easy: A group of like-minded people constantly exchange views, explore novel ideas, and influence each other in a subtle way

2. Democratic Deficits and Coordinated Migration Policy:

The European people's disapproval of the elite style decision-making in the EU became widely recognized after the ratification of the Maastricht Treaty. "The market-driven integration process has produced far-reaching changes in the organization of the national polity, without necessarily providing means for citizens to participate in the decision-making" (Lemke, 1997:9). The lack of transparency in decision-making means that the policy makers cannot be held accountable for the decisions they have made. Moreover, the governments of the Member States are elected by their citizens to manage national and foreign affairs *within* the national polity. The emergence of the European polity, however, has expanded the power of these domestically elected decision-makers to a new polity that is not subject to equivalent democratic control, even though decisions taken in the EU do affect every citizen's daily life. The fact that about 90% of Council decisions are taken before ministers ever get involved further signifies the problem as it becomes even more difficult to hold the lower-level officials accountable.³⁰

Decision-making in coordinated migration policies in the EU is particularly laden with the problem of democratic deficit (Bunyan, 1993; Geddes, 1995; Curtin &

³⁰ *The Economist*, "Doing the Spilt," March 8, 1997:59.

Meijers, 1995; Monar, 1997:334). The reluctance or even blunt refusal of the policy makers to make some documents public has demonstrated that domestic legislators, interest groups and voters do not play any significant role in decision making. Contrary to the ideal democratic model, a handful of European and national leaders and a group of technocrats based in Brussels have dominated policy-making. The structure of this policy-making network corresponds to the image of the epistemic communities.

According to Haas, epistemic communities are "networks of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area" (Haas, 1992:3). Because of their common goals, shared sets of normative and causal beliefs and common policy practices, such communities can facilitate the convergence of views and induce cooperation (Haas 1990:55; 1992:3). Hence, epistemic communities not only frame the issues for collective debate, and provide novel solutions, they also create new perceptions of national interests (Milner, 1997:26). From this perspective, elites and technocrats involved in the work of policy coordination should not be regarded only as representatives vehemently defending national interests. They are also experts who are eager to find new solutions and are not paranoid about making adjustments. In the context of migration policy coordination in the EU, the experts have been trying to strike a balance between the common goal of a zero-barrier Single Market and the demands governments strive to meet domestically.

Whereas LI sees the arena for interstate interactions as being comprised of two clearly separate levels, the concept of epistemic communities suggests that there is no clear beginning and end of international negotiations.

Evidently, international negotiations need not be discrete, explicit, or acknowledged by all players, nor need they take place around a table in accordance with diplomatic protocol and with the shared expectation of reaching a formalized agreement. Instead, the process is often ongoing, tacit, even unacknowledged, and perhaps overtly treated as a 'technical' discussion (Sebenius, 1992:351).

The more institutionalized the cooperation at the international level is, the more opportunities there are for these informal contacts. The EU, being a highly institutionalized entity, provides an excellent environment for representatives and civil servants from the Member States to interact with each other casually. The following is an illustration of this essential role played by the EU institutions in the process of migration policy coordination.

Under the arrangement of the Maastricht Treaty, the process of decision-making in coordinated migration policies begins with the Council Presidency (see figure 2). The incoming Presidency prepares initiatives and draws up a timetable for the meetings of working parties scheduled for the six-month period. The working parties examine the initiatives, exchange views and try to find a middle ground. The proposal is then sent to the K.4 Committee, which decides whether or not a draft is 'ready' for presentation to the council. The agenda is next forwarded to COREPER,

which puts the proposal in the context of other fields of activity of the Union.³¹

All meetings under the K.4 Committee and their subgroups are held in secret.

Their decisions typically are not the result of consultation with the European and national Parliaments, national and supranational interested bodies, but are decisions taken by government authorities meeting intergovernmentally. All of the faults associated with the democratic deficit in the Community are thus present, particularly in view of the absence of effective judicial and parliamentary controls at national or supranational levels (O'Keefe, 1995:414).

The problem of democratic deficit is aggravated by another important characteristic of this decision-making procedure, i.e., the closer to the bottom of the decision-making structure, the greater the workload of decision taking. With interior and justice ministers primarily occupied with domestic problems, not used to international negotiations, and meeting only once every six months, a large share of decision-making is left to senior officials and experts.³²

Although ministers still have formal responsibility, the real center of decision making tends to pass from the political to the administrative level.... It...make[s] democratic control more difficult, first because there is no direct responsibility of senior officials to parliaments, and secondly because the structure and patterns of administrative decision making are usually rather opaque to parliaments (Monar, 1995:245).

From the perspective of the various groups under the Council, minimal involvement of the Commission and the Parliament is an advantage: "We can get things moving quickly and get more things done."³³ With ministers only having time to comment on the most general principles, all the detailed work has to be finalized at the lower level. The documents worked out by the working parties and submitted to the Council usually have an "A list" and a "B list." The A list consists of agreements that have been reached and over which Ministers do not need to negotiate anymore. The B list consists of issues which the working parties cannot make decisions and thus the ministers themselves must work out the differences. It is common that the Council cannot reach any agreements either. The document will then be sent back to the working parties and the process starts all over again. Roughly two-thirds of the decisions are made between the working parties and COREPER, while only one-third of the decisions are really made by the ministers.³⁴

Compared with most interactions in the international arena, interactions within the EU are more conducive to cooperation because of the "layers, the facilities, and the speed."³⁵ From the availability of rooms for emergent meetings, to expeditious translation and printing of documentation, to better trained staff, the EU provides bigger and better resources than any other international cooperation setting can.

³¹ Niemeier, 1995:327; Interview with Council officials, April 24, 1997.

³² Interview with a council official, April 24, 1997.

³³ Ibid.

³⁴ Ibid.

³⁵ Interview with a Council official, April 27, 1997.

Formal negotiations are not even a necessity for some decisions to be taken. Telephone calls between members of the working parties can result in final decisions that would be adopted by the Council. A circle of people who are acquainted with one another makes decisions with little input from private interest groups. The process is very "closed"--in fact, "this is the most anti-democratic place in the world!"³⁶

Hence, although people working in the subgroups of the K.4 Committee are civil servants and experts representing national interests, they are like-minded people sharing the common goal of promoting free movement of persons within the EU.³⁷ The like-mindedness can very well be the functional result of the problem-solving team. First of all, as neofunctionalists have argued, the increased volume of interactions between supranational institutions and national representatives and experts lessens the impact of cleavage based on nationality. "[O]ne of the basic ways in which diffuse support is built up is by means of socialization in the form of learned patterns of political interaction, new loyalties, and habits of communication developed as a result of participating in common political activities" (Lindberg, 1970:690).

Moreover, given the fact that developments in the area of coordinated migration policies are often 'compensatory measures' derived from previous decisions, the technocrats are naturally charged with the task of overcoming technical barriers and to develop novel policy ideas. Under these circumstances, unless common language and basic consensus have been developed, the group of experts cannot work together to solve the problems. "[T]he epistemic community members may come to act as a coordinated set of common interpretive filters." Over time, "as interests and beliefs about causal mechanisms converge, certain potential agreements... appear both more prominent and more valuable." In other words, "learning alters the zone of possible agreement such that the community's preferred policy is widely seen to embody a greater degree of joint gains and the alternatives to agreement are seen as less desirable" (Sebenius, 1992:354). Adding up the piecemeal problem-solving works done by the various groups over the years can amount to significant progress. Even though periods of progress are often followed by periods of stagnation, "progress registered usually creates a ratchet effect which provides a partial shield against spillback during periods of stagnation" (Uçarer, 1997:284).

4) The Treaty of Amsterdam: The Communitarization of the Migration Issue

Article N of the Maastricht Treaty stipulates that a new IGC must be held in 1996 to assess the functioning of the Treaty. Having learned from the experience of the ratification process of the Treaty, which was marked by the protest of the citizens for being excluded from the decision-making process, Member State governments were significantly more open to the suggestions of the NGOs this time (Hix & Niessen, 1996:14). The Commission itself, the European parliament, and the Court of Justice also submitted their suggestions to the IGC. The overarching theme of the opinions was to reinforce democratic principles and to make the adoption and application of European law conform with the standards applied in the Member States.³⁸

The NGOs, the Commission, and the Parliament also proposed to streamline

³⁶ Ibid.

³⁷ Interview with a permanent representative, July 7, 1997.

³⁸ Standing Committee of Experts, 1996:1.

decision-making in this area. One of the most serious drawbacks of relying on intergovernmental conventions for cooperation is the time-consuming ratification process required of national parliaments or courts. The five layers of decision-making should therefore be replaced by the regular Community decision-making procedure, with qualified majority voting in the Council.³⁹

On June 17, 1997 the leaders of the Member States agreed on the Amsterdam Treaty. Chapter two of the new Treaty concerns the *progressive establishment of an area of freedom, security and justice*. Its over-arching objectives are to ensure the free movement of persons in conjunction with appropriate measures with respect to external border control, immigration, asylum and the prevention and combating of crime. A new title, *Free movement of persons, asylum and immigration*, was inserted in the Treaty establishing the European Communities (the first pillar). Under the new title, the EU will dismantle all its internal borders within five years after the entry into force of the new Treaty. Immigration, asylum and visa policy become subject to the regular Brussels EU institutions, including the European Parliament and the European Commission. After the five-year transitional period, the Commission will have the exclusive right of initiating, and the Parliament may share the legislative power with the Council according to the co-decision procedure in certain areas. The Court of Justice will have the jurisdiction to give a ruling on interpretation of this Title upon a request from the Council, the Commission, or a Member State. Decision-making in the Council will remain unanimous for five years. After that, the Council, acting unanimously, can decide to apply qualified majority voting.

The Schengen *acquis* were incorporated into the EU by a protocol annexed to the Treaty. As soon as the Treaty enters into force the Council will adopt measures for the implementation of the Schengen Protocol and the integration of the Schengen Secretariat into the General Secretariat of the Council. Britain and Ireland have negotiated an opt-out, allowing them to retain exclusive control of their own frontiers. Thus, the new title on free movement of persons, asylum, and immigration does not in principle apply to the UK and Ireland. However, the two countries may decide to participate in initiatives on a case by case basis. Denmark also negotiated a protocol, which gives her a partial opt-out of the new title.

The Amsterdam Treaty represents a "correction" of Title VI of the Maastricht Treaty from the semi-intergovernmental approach to the more democratic and efficient approach. At the time the Maastricht Treaty was signed, the third-pillar arrangement reflected the lowest common denominator among the Member States-- nothing more Communitarian would be acceptable to all the Member States. In five years, what was unacceptable became acceptable. From the intergovernmentalist perspective, the new Treaty still reflects nothing more than the lowest common denominator in the sense that no Member State was coerced to accept a deal not acceptable to it. This argument becomes tautological if an explanation with respect to the change of the perceptions of the states is absent.

LI focuses on the *status quo* without looking into the history that contributed to the *status quo*. It admits that a new *status quo* can replace the old *status quo*.

³⁹ Hix & niessen, 1996; Carlier et al., 1996; NGO Network on European Refugee, Asylum and Immigration Policy, 1996; Hix 1995; monar, 1997.

However, at any given point in time, the power and interests of the Member States, formed independent of supranational influences, determine the outcomes of negotiations. This paper has focused not on points in time but on the passage of time and found that the process of European integration itself has been a major force in creating a new *status quo* in which the Member States have to rethink their positions.

By including the issue of migration in the Treaty, the third pillar of the Maastricht Treaty created a new *status quo* for the Member States. Although its semi-intergovernmental structure was cautiously designed to safeguard national sovereignty, "[w]henver these limits frustrate the application of practical solutions, an argument in favor of a modification of Title VI is in order" (De Jong, 1997:329). Most importantly, when the democratic control mechanisms such as the EP and the ECJ were readily available in the EU, the intergovernmental arrangement in the third pillar was naturally compared with the first pillar and criticized for the lack of democratic control and transparency. As a consequence, the Member States were forced to create a new *status quo* in Amsterdam. Once again, the route the Member States have been taking does not follow a well-planned blueprint. To the contrary, it is characterized by incrementalism. The Member States have been forced to make suboptimal choices when faced with unintended consequences derived from previous decisions. France, for example, would rather the EP and the ECJ remain outside the decision-making process on migration related issues. Moreover, France, Greece, Portugal, Finland, Sweden, Denmark, the UK, and Ireland would all rather Schengen remains outside of the EU (Hix and Niessen, 1996). When the new context is such that the lack of compromise would threaten to undercut previous efforts, however, the Member States reconfigured their cost-benefit analysis and opted for further integration.

Conclusion

The harmonization of migration policies in the EU is unprecedented in terms of its scope and intensity. "The staggering result of the harmonizations agreed upon is an almost full-blown 'political union' in this area. The States in question are going to be vigilant for each other's territory, like people sometimes watch their absent neighbor's garden, bearing in mind not only common interests, but veritably the other's particular concerns" (Bolten, 1991:33).

For political scientists the significance of this unprecedented harmonization is that states decided to entrust their neighbors to control their borders even when they are aware that some states are not as determined to or capable of keeping their borders tightly controlled as they are. Faced with this new phenomenon, scholars intuitively identified the common problem of the massive influx of immigrants, and asylum seekers as the key explanatory factor. Yet the timing, rationale and content of the harmonization mean that even if there had been no massive influx of immigrants and asylum seekers, the harmonization would have taken place. The massive influx of immigrants and asylum seekers did not *cause* the harmonization to take place, it only contributed to the restrictive nature of the harmonization. Likewise, contrary to the intergovernmentalist argument that states make decisions according to national interests defined *independently* of the process of European integration, the primary function of coordinated migration policies has been to provide compensatory

measures for the border-free common market, a key objective of European integration. Like the modern state, the construction of the EU "has been created self-consciously with respect to its parts, but not to its whole" (Marks, 1997:28).

Even though as of today the pattern of decision-making in coordinated migration policies still have a number of intergovernmental traits, the choice of the semi-intergovernmental decision-making procedure is not so much a manifestation of two-level games as it is a form of pragmatism. The motives behind such pragmatism attest to the importance of distinguishing the mechanism that brought about coordinated migration policies from the form of decision-making. For "[t]he key for integrationists was not to convince opponents of the virtues of creating a European polity but to shift the debate to practical matters having to do with reaping collective benefits" (Marks, 1997:30).

Important to note is that the institutionalist explanation does not dispute the fact that preferences and power are important in determining the decisions of states. In contrast, based on the assumption that all states endeavor to maximize their national interests, the institutionalist explanation addresses the effects of regional integration on converging preferences and diluting the relevance of power. LI has insisted, correctly, that theories on European integration should be generalizable, not *sui generis*. Accordingly, intergovernmentalists set to find explanations for the behavior of the Member States that can also explain the behavior of any other state. This insistence, unfortunately, has led intergovernmentalist to concentrate on how similar the EU is to the rest of international cooperation, and not how distinctive the EU has become from the rest of international cooperation. In fact, European integration has been such a fascinating subject exactly because the scope and extent of cooperation in the EU have become categorically distinctive from integration in other regions of the world. In this sense, institutionalist explanation is *sui generis* only because no other similar cases are available. The so-called generalizability of LI is maintained only by denying the uniqueness of the EU.

Reference

- Agence Europe, various issues.
- Ayral, Michel (1993) "La Suppression des Contrôles aux Frontières Intra-Communautaires," *Revue du Marché Unique Européen*, Janvier:13-44.
- Bolten, José J (1991) "From Schengen to Dublin: The New Frontiers of Refugee Law" in J. D. M. Steenbergen (ed.) *Schengen--Internationalisation of Central Chapters of the Law on Aliens, Refugees, Privacy, Security and the Police*: Utrecht: Kluwer Law and Taxation Publishers: 8-36.
- Buekenhoudt, J. & Goosens, R.(1993) "Premier Janvier 1993! Abolition des douanes? 'Oui, Mais...!'" *Revue des Affaires Européennes*, no.1:31-45 & no.2:17-34.
- Bulletin of the EC, various issues.
- Bulmer, Simon J. (1998) "New Institutionalism and the Governance of the Single European Market," *Journal of European Public Policy*, Vol. 5, no.3, September, 1998: 365-386.
- Bunyan, Tony (ed.) (1993) *Statewatching the New Europe--A Handbook on the European State*, London: Statewatch Publication.
- Caporaso, James A. (1998) "Regional Integration Theory: Understanding Our Past and Anticipating Our Future" in *Journal of European Public Policy*, 5:1, March: 1-16.
- Carlier, Jean-Yves, Philippe De Bruycker, Christine Denys, Kris pollet, and Jacques Vandamme (1996) "interim Report of the Study Dealing With the Free Movement of Persons and Accompanying measures," Brussels: Groupe d'Etudes Politiques Européennes (GEPE).
- Convey, Andrew & Marek Kupiszewski (1995) "Keeping Up with Schengen: Migration and Policy in the European Union," *International Migration Review*, Vol. 24, No.4: 939-963.
- Curtin, Deirdre & Herman Meijers (1995) "The Principle of Open Government in Schengen and the European Union: Democratic Retrogression?" *Common Market Law Review* 32:391-442.
- Daily Telegraph (1997) "The Summit Outcome" June 18, 1997.
- De Jong, C. D. (1995) "Towards a European Immigration Policy Under the Treaty on European Union" in G. D. Korella & P.M. Twomey (eds.), *Towards a European Immigration Policy*, Brussels: European Interuniversity Press.
- (1997) "European Immigration Policies in the Twenty-First Century?" in Emek M. Uçarer and Donald J. Puchala (eds.) *Immigration into Western*

De Lobkowicz, Wenceslas (1994) "Intergovernmental Cooperation in the Field of Migration--From the Single European Act to Maastricht" in Jörg Monar & R. Morgan (eds.) *The Third Pillar of the European Union--Cooperation in the fields of Justice and Home Affairs*, Brussels: European Interuniversity Press and College of Europe: 99-122.

The Economist (1997) "Doing the Splits" March 8:59-60.
"The Island View" June 7:56-7.

----- (1998) "Frontier wars" January 10, 1998:42.

Elsen, Charles (1997) "Schengen et la coopération dans les domaines de la justice et des affaires intérieures--Besoins actuels et options futures" in Monica den Boer (ed.), *The Implementation of Schengen: First the Widening, Now the Deepening*: 5-11.

Financial Times (1996) March 18, "A Pillar in Need of Support."
April 18, "Senior Tories to Press for Free Movement Inside EU."

----- (1997) June 11, "EU Tries to Get Asylum Acts Together."
June 19, "Enlargement May Test EU's Treaty."

Fischbach, Marc (1993) "La politique de Schengen" in Pauly, Alexis (ed.) *Les accords de Schengen: Abolition des frontières intérieurs ou menace pour les libertés publiques?* Maastricht: Institut européen d'administration publique:1-6.

Geddes, Andrew (1995) "Immigrant and Ethnic Minorities and the EU's 'Democratic Deficit'," *Journal of Common Market Studies*, Vol.33, no.2:197-217.

George, Stephen (1996) *Politics and Policy in the European Union*, Oxford University Press.

Haas, Ernst B. (1958) *The Uniting of Europe: Political, Economic, and Social Forces, 1950-1957*, Stanford University Press.

----- (1964) *Beyond the Nation-State: Functionalism and International Organization*, Stanford University Press.

----- (1970) "The Study of Regional Integration: Reflections on the Joy and Anguish of Pretheorizing," *International Organization*, Vol.24:607-646.

Haas, Peter (1990) *Saving the Mediterranean*, New York: Columbia University Press.

----- (1992) "Knowledge, Power, and International Policy Coordination," *International Organization* 46, 1, Winter (special issue).

Heaton, Ricou (1992) "The European Community After 1992: The Freedom of

- Hix, Simon (1995) *The 1996 Intergovernmental Conference and the Future of the Third Pillar*, Brussels: Churches Commission for Migrants in Europe.
- Hix, Simon & Jan Niessen (1996) "Reconsidering European Migration Policies--The 1996 Intergovernmental Conference and the Reform of the Maastricht Treaty", Briefing Paper published by Migration Policy Group, Churches' Commission for Migrants in Europe and Starting Line Group, Brussels.
- Hovy, Bela (1993) "Asylum migration in Europe: Patterns, Determinants and the Role of east-West Movements" in Russell King (ed.), *The New Geography of European migrations*, London:Belhaven Press: 207-227.
- Ireland, Patrick R. (1995) "Migration, Free Movement, and Immigrant Integration in the EU: A Bifurcated Policy Response" in Stephan Leibfried and Paul Pierson (eds.), *European Social Policy: Between Fragmentation and Integration*, Washington, D.C.: The Brookings Institution: 231-266.
- Krohane, Robert O. (1984) *After Hegemony*, Princeton: Princeton Univ. Press.
- Kruijtbosch, E.D.J. (1993) "Benelux Experiences in the Abolition of Border Controls" in Schermers, Henry G. et al. (eds.), *Free Movement of Persons in Europe*, Dordrecht: Martinus Nijhoff Publishers:31-40.
- Keohane, Robert O. & Stanley Hoffmann (1991) "Institutional Change in Europe in the 1980s" in Keohane & Hoffmann (eds), *The New European Community: Decisionmaking and Institutional Change*, Boulder: Westview Press:1-39.
- Kessler, Alan E. (1996) "International Migration, Cooperation, and Policymaking in Postwar Europe," paper presented at the International Studies Association national conference, San Diego.
- Lahav, Gallya (1994) "Elites and Immigration: Party, National, and Transnational Bases of Attitudes in the European Union," Paper presented at the 1994 Annual Meeting of the American Political Science Association, New York, September 1-4.
- Lemke, Christiane (1997) "Citizenship and European Integration," Paper presented at the 1997 Annual Meeting of the American Political Science Association, Washington DC, August 28-31.
- (1997a) "Crossing Borders and Building Barriers: Migration, Citizenship, and State Building in Germany" in Jytte Klausen and Louise A. Tilly (eds.) *European Integration in Social and Historical Perspective*, Maryland: Rowman & Littlefield:85-102.
- Lindberg, Leon N. (1970) "Political Integration as a Multidimensional Phenomenon Requiring Multivariate Measurement," *International Organization*, Vol.

- (1971) *The Political Dynamics of European Integration*, Stanford University Press.
- Lohrmann, Reinhard (1994) "Immigration in the 21st Century: Which Framework for Policy Response?" Paper presented at the ECSA conference on immigration, May 13-14, Charleston, SC.
- Marks, Gary (1997) "A Third Lens: Comparing European Integration and State Building" in Jytte Klausen and Louise A. Tilly (eds.) *European Integration in Social and Historical Perspective, 1850 to the Present*, New York: Rowman & Littlefield:23-50.
- Migration News (1996) Vol. 3, No.11, November, UCDAVIS
- (1997) Vol. 4, No.4, April;
Vol. 4, No.7, July.
- Migration News Sheet, (March 1991) Brussels.
- Milner, Helen V. (1997) *Interests, Institutions, and Information--Domestic Politics and International Relations*, Princeton University Press.
- Moe, T. (1990) "The Politics of Structural Choice: Toward a Theory of Public Bureaucracy." in O. E. Williamson (ed.), *Organization Theory: From Chester Barnard to the Present and Beyond*, Oxford: Oxford University Press:116-153.
- Monar, Jörg (1995) "Democratic Control of Justice and Home Affairs: The European parliament and the national Parliaments" in Roland Bieber & Jörg Monar (eds.), *Justice and Home Affairs in the European Union--The Development of the Third Pillar*, Brussels: European Interuniversity Press:243-258.
- (1997) "European Union--Justice and Home Affairs: A Balance Sheet and an Agenda for Reform" in Geoffrey Edwards and Alfred Pijpers (eds.) *The politics of European Treaty Reform--The 1996 Intergovernmental Conference and Beyond*, Washington: Pinter: 326-339.
- Moravcsik, Andrew (1991) "Negotiating the Single European Act," *International Organization*, Vol.45, no.1:651-688.
- (1993a) "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach," *Journal of Common Market Studies*, Vol.31, no.4:473-524.
- (1993b) "Introduction: Integrating International and Domestic Theories of International Bargaining" in Peter B. Evans, Harold K. Jacobson, Robert D. Putnam (eds.), *Double-Edged Diplomacy--International Bargaining and Domestic Politics*, Berkeley: University of California Press:3-42.

- (1996) "Liberal Intergovernmentalism and Integration: A Rejoinder," *Journal of Common Market Studies*, Vol.33, no.4:611-628.
- (1998) *The Choice for Europe*, Ithaca: Cornell University Press.
- Nanz, Klaus-Peter (1994) "The Harmonization of Asylum and Immigration Legislation within the Third Pillar of the Union Treaty--A Stocktaking" in Joerg Monar & R. Morgan (eds.) *The Third Pillar of the European Union--Cooperation in the fields of Justice and Home Affairs*, Brussels: European Interuniversity Press and College of Europe:123-133.
- NGO Network on European Refugee, Asylum and Immigration Policy (1996) *A Dossier of Proposals for the InterGovernmental Conference 1996*, contributed by: Amnesty International, Caritas Europa, Churches' Commission for Migrants in Europe (CCME), the European Council on Refugees and Exiles (ECRE), Migrants Forum and Starting Line Group.
- Nye, J. S. (1970) "Comparing Common Markets: A Revised Neo-Functionalist Model," *International Organization*, Vol. 24:796-835.
- O'Keefe, David (1995) "Reforming the Third Pillar: Transparency and Structural Reform in the Long-term perspective" in Roloand Bieber & Jörg Monar (eds.) *Justice and Home Affairs in the European Union--The Development of the Third Pillar*, Brussels: European Interuniversity press:397-422.
- (1996) "The Convention on the Crossing of the External Frontiers of the Member States" in Alexis Pauly (ed.), *De Schengen à Maastricht: voie royale et course d'obstacles*, Maastricht: European Institute of Public Administration.
- Oellers-Frahm, Karin and Andreas Zimmermann (1995), "France's and Germany's Constitutional Changes and their Impact on Migration Law--Policy and Practice," *German Yearbook of International Law*, Vol. 38:249-283.
- O'Neill, Michael (1996) *The Politics of European Integration*, New York: Routledge.
- Overbeek, Henk (1995) "Towards a New International Migration Regime: Globalization, Migration and the Internationalization of the State," in Dietrich Thrähardt and Robert Miles (eds.), *Migration and European Integration: the Dynamics of Inclusion and Exclusion*, London: Pinter:15-36.
- Pierson, Paul (1996) "The Path to European Integration: A Historical Institutional Analysis," *Comparative Political Studies*, Vol. 29 No. 2, April:123-163.
- Poku, Nana and David T. Graham, (eds.) (1998) *Redefining Security—Population Movements and National Security*, Connecticut: Praeger,
- Putnam, Robert (1988) "Diplomacy and Domestic Politics: the Logic of Two-Level Games," *International Organization*, Vol.42, no.3:427-61.

- Russell, Sharon Stanton & Keely, Charles B. (1994) "Multilateral Efforts to Harmonize Asylum Policy Along Regional Lines in Industrial Countries" Paper presented at the ECSCA conference on immigration, May 13-14, Charleston, SC.
- Saeter, Martin (1993) "Democracy, Sovereignty, and Supranationality: Institution-Building and European Union in a Neofunctionalist Perspective," paper presented at the Third Biennial International Conference of the European Community Studies Association, May 27-9, Washington, D.C.
- Salt, John (1994) *Migration and Population changes in Europe*, UNIDIR, New York: UN.
- (1996) "Current trends in international migration in Europe", presented at the Sixth conference of European Ministers Responsible for Migration Affairs, Warsaw, 16-18 June.
- Sebenius, James K. (1992) "Challenging Conventional Explanations of International Cooperation: Negotiation Analysis and the Case of Epistemic Communities," *International Organization* 46, 1, Winter (special issue).
- SOPEMI (1992) *Migration and Development--New Partnerships for Cooperation*. Paris: OECD.
- (1994) *Trends in international Migration*, Paris:OECD.
- Sørensen, Jens Magleby (1996) *The Exclusive European Citizenship: the Case for Refugees and Immigrants in the European Union*, England:Avebury.
- Straubhaar, Thomas & Klaus F. Zimmermann (1993) "Towards a European Migration Policy" in *Population Research and Policy Review*, 12:225-241.
- Suleiman, Ezra (1995) "Is Democratic Supranationalism a Danger?" in Charles A. Kupchan, (ed.), *Nationalism and Nationalities in the New Europe*, Cornell:66-84.
- Sweet, Alec Stone & Wayne Sandholtz (1997) "European Integration and Supranational Governance," *Journal of European Public Policy* Vol.4, no.3, September 1997: 297-317.
- Theys, Michel (1995) *The Schengen Agreements on Freedom of Movement for Persons in the European Union*, Brussels: Ministry of Foreign Affairs, External Trade and Development Cooperation.
- Torpey, John (1996) "'The Surest Thermometer of Freedom': The Evolution of Passport Controls in Europe," paper presented at the Tenth International Conference of Europeanists, Chicago, 14-16 March.
- Uçarer, Emek M. (1997) "Europe's Search for Policy: the Harmonization of Asylum

- Policy and European Integration” in Emek M. Uçarer and Donald J. Puchala (eds.), *Immigration into Western Societies: Problems and Policies*, London: Pinter: 281-309.
- Ugur, Mehmet (1995) “Freedom of Movement vs. Exclusion: A Reinterpretation of the ‘Insider’ - ‘Outsider’ Divide in the European Union,” *International Migration Review*, Vol. xxix, No.4:964-999.
- Van der Klaauw, Johannes (1998) "The Dublin Convention: A Difficult Start" in Monica den Boer (ed.), *Schengen's Final Days? The Incorporation of Schengen into the New TEU, External Borders and Information Systems*, Maastricht: European Institute of Public Administration: 77-92.
- Wallace, Helen (1990) “Making Multilateral Negotiations Work” in W. Wallace (ed.) *The Dynamics of European Integration*, London: Pinter: 213-228.
- Weil, Patrick (1996) “Nationalities and Citizenships: The Lessons of the French Experience for Germany and Europe” in David Cesarani and Mary Fulbrook (eds.), *Citizenship, Nationality and Migration in Europe*, New York: Routledge:74-87.
- Weiner, Myron (1995) *The Global Migration Crisis--Challenge to States and to Human Rights*, New York: Harper Collins College Publishers.
- Wessels, Wolfgang (1994) “The Third Pillar: Plea for a Single Theoretical Research Agenda” in J. Monar and R. Morgan (eds.) *The Third Pillar of the European Union--Cooperation in the fields of justice and home affairs*, European Interuniversity Press and College of Europe:227-236.
- (1998) "Comitology: fusion in action. Politico-administrative trends in the EU system," *Journal of European Public Policy*, Vol. 5, no.2, June 1998:209-234.