# The Position of the British Government towards

# Harmonisation of European Immigration Policy

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**Contents**

## 1 Introduction

This paper examines the position of the British government towards European integration as demonstrated by its immigration policy. The term *immigration policy* embraces all policies relating to the movement of people across national borders. In this paper, emphasis is put on the position of the British government towards concrete European arrangements ('regimes'), and the preferences underlying this position.

European integration, which is promoted mainly by the European Union (EU), has affected national immigration policies in significant ways. In order to harmonise national policies, various international arrangements have been created, the most important being the Schengen Group and the EU itself. The co-existence of these two arrangements is relatively recent and followed the implementation of the Treaty on European Union (TEU) in November 1993. They were, however, preceded by others such as the European Community (EC) and intergovernmental forums that were organised outside EC institutions. All national governments within Europe have to comply with these arrangements regarding national border controls, including Britain.

Many academic papers have considered these European arrangements [1] but the range of their analysis has been limited. In general, attention has been paid to the contents of these arrangements themselves rather than the position of national governments towards them. This paper, which focuses on the British government's position, considers the strategy through which the British government is distancing itself from the dominant currents of European harmonisation on immigration policy. The government's general position is, however, not against co-operation with its European partners and Britain's 'minority' position in choosing this stance is derived from its different perspective on immigration policy.

This paper has five sections: Section 2 describes a framework of analysis for the national government position towards integration and considers an approach by the American political scientist, Andrew Moravcsik with special reference to his concepts of 'regime' and 'national preferences'. European regimes on immigration policy and the position of the British government are analysed in Sections 3 and 4 respectively. In

Section 5 the findings on the previous sections are summarised together with conclusions relating to the British government's position.

## 2 Framework of analysis

### 2.1 Moravcsik's approach to the national government's position

The American political scientist, Andrew Moravcsik, has made an important contribution to the study of the national government's position on European integration (Moravcsik, 1991; 1993). His approach of 'liberal institutionalism', later renamed 'liberal intergovernmentalism', is based on two levels of analysis: a pluralist approach to domestic policy-making and a statist approach to international relations.

Moravcsik sees international institutions such as the EC as regimes, which provide mechanisms for policy co-ordination between national governments, and which help to 'increase the efficiency of interstate bargaining' by providing 'a greater range of co-operative arrangements' (Moravcsik, 1993: 507). Based on a statist approach, the national government is supposed to act rationally according to the calculations of the costs and benefits in national terms.

Considering the EC as an international regime, a functional approach to the EC is developed. 'EC institutions serve as a passive structure, providing a contractual environment conducive to efficient intergovernmental bargaining' and '[the] essence of the EC as a body for reaching major decisions remains its transaction–cost reducing function' (*Ibid.*: 508).

The process of integration is the result of intergovernmental bargains within the regime, moves towards or against integration are the result of negotiations between the national governments which act in terms of respective national preferences. Agreement on integration in this intergovernmental bargain is made easier if there is a convergence of national preferences among national governments.

The emphasis on national preferences, one of Moravcsik's theoretical contributions comes from the attention he gives to domestic politics, where such preferences are formulated. The national preferences are neither a given nor a theoretical product *a posteriori*. National preferences brought to intergovernmental bargaining by national governments, are a result of domestic politics, through bargaining among groups at the domestic level. This is the strength of his approach, national preferences are subject to change through domestic bargains and this may cause change in a government's bargaining position at the intergovernmental level. Convergence of national preferences or, more broadly, changes in national preferences, thus arise from domestic politics.[2]

## 2.2 Characteristics of Moravcsik's approach

The main characteristic of Moravcsik's approach is its evident state-centricity. His approach is state-centric not only in terms of its view *a priori*, as an approach to a national government's position towards the regime, but also in terms of its theoretical construction. The role of the national government, which is assumed to be the mechanism linking domestic and international politics, is crucial in his theory. The national government plays a special role in both the domestic politics of interests aggregation and in intergovernmental bargaining. National preferences are supposed to reflect domestic pressures fully, but not external pressures.

This assumption recalls the traditional arguments on state autonomy from societal actors. The coincidence of observable preferences of the national government with this ideal-typical concept of national preferences depends on the extent to which a national government is reactive to domestic demands on the one hand, and independent of external pressure on the other.

In this paper, discussion of the domestic reactivity of the national government is not developed in detail, as the aim of the paper is not the formulation process of national preferences. Observable preferences of the national government are used, however, as the national preferences in Moravcsik's sense. Moreover, focusing only on the preferences of the national government when analysing its position at the European

level may be justified, if the national government is significantly autonomous of the pressures of non-governmental actors. Most criticism of Moravcsik's approach focuses on this point (cf. Hix, 1994: 8).

Consideration of state autonomy brings another important argument – autonomy from the regime. Moravcsik's approach assumes a regime as a given environment, not an object to react, for the national government. This makes necessary a special consideration of the influence of the regime that is different from the influence of societal actors.

From the point of view of the national government, the regime has the advantage of reducing the uncertainty of negotiation, but at the same time, it might have adverse implications for its autonomy. This point about state autonomy seems to be lacking in Moravcsik's approach, but should be theoretically recognised. The condition on the national government being significantly autonomous from non-governmental actors limits the theoretical scope of Moravcsik's approach. His approach relies heavily on the state-centric assumption so that it cannot be applied universally to all policy areas.

### 2.3 Autonomy of the British government in immigration policy

In order for Moravcsik's approach to be effective in a particular European level policy area, the area must have significant autonomy for the national government.[3] The immigration policy area is one where the state (or the national government) can enjoy relatively strong autonomy both at the domestic and European levels. Societal interests at the domestic level are diffuse, uncertain and less organised. Pressures on the government from non-governmental actors are therefore small and the government enjoys relatively broad autonomy.

In immigration policy at the European level, power relations favourable to the national governments have been guaranteed in the relations between them and non-governmental actors. Non-governmental institutions such as organised interests (though not organised yet in these areas) have relatively little impact on a national government's position. Meanwhile, in the case of the regime, Moravcsik points out that the EC differs from nearly all other international regimes in 'two salient ways':

firstly by '*pooling* national sovereignty through qualified majority voting rules' and secondly, by '*delegating* sovereign powers to semi-autonomous central institutions' such as the European Commission, the European Parliament and the European Court of Justice (Moravcsik, 1993: 509 (italics as in original)). However, the two characteristics of the EC are not appropriate for immigration policy, as it has been generally left outside the EC's institutional settings to which Moravcsik refers.

His approach aims to explain the national government position *within* the regime. This paper, however, uses his concepts of 'national preferences' and 'regime' to explain the national government's position *towards* the regime, which includes the positions both when inside and outside. By adopting this strategy, his concepts not only have greater applicability, but also avoid the special considerations on the influence from the regime. In this strategy the influence from the regime can be treated in the same manner as that from societal actors.

Nevertheless, Moravcsik's approach provides us with a set of important strategies for analysing the national government's position towards integration. The analysis in the following sections adopts this approach.

## 3 European regimes relating to immigration policy

In post-war Western Europe, the European Community, now the European Union, has been the main example of international regimes on immigration policy. Two other regimes are also identified, which have been maintained by intergovernmental frameworks - intergovernmental groups of the EC/EU member states and the Schengen Group. They have been influenced by the EC/EU arrangements, but are formally independent of, and have distinct functions from, the EC/EU regime of immigration policy.

### 3.1 The European Communities before Maastricht

Before the Treaty on European Union (TEU) came into force in November 1993, most immigration matters were outside the scope of the institutions of the European

Community (EC). They were dealt with in intergovernmental negotiations outside this framework. Some matters were thought of as being inside the Community's domain and were dealt with in Community' institutions. These were mainly concerned with facilitating the realisation of the Common Market, or internal market, through policies such as free movement of workers.

EC legislation is binding on national governments and some is directly applicable without national legislation. According to the degree of legal obligation, legislation takes one of three forms:

- Regulations, which are binding on member governments and citizens of member states
- Decisions, which are binding on those to whom they are addressed
- Directives, which are binding as to the result to be achieved, but require approval by the appropriate national authority to take effect.

Such legislation is proposed by the Commission and then adopted by the Council of Ministers. The national government is usually involved in the legislative process by examining the Commission's proposals in its own national institutions in order to determine the national position at the meetings of the Council of Ministers.

The Single European Act (SEA) of 1986, which amended the Treaty on European Economic Community (EEC Treaty), had at least two major impacts on immigration matters. Firstly, as a result of the deadline for completion of the internal market being set as 1992, pressure for free movement of workers and other factors of production, was strengthened. Article 8a of the EEC Treaty defined the internal market as 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty' (Article 8a EEC, quoted from *Single European Act*, 1988). The article also determined the Community's positive initiative that the Community should 'adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992 . . .' (Article 8a EEC, *Ibid.*). The Commission interpreted this article as implying the total abolition of controls at 'internal frontiers' (borders between two

member states) to assure free movement of persons.[4] From this time on, the Commission's proposals relating to free movement of workers (and people in general) have increased and its initiative extended to wider areas of immigration. The free movement provision has now been applied to the nationals of EEA countries (the EC plus Finland, Sweden, Austria, Norway, Iceland and Liechtenstein) as a result of the European Economic Area (EEA) Agreement concluded in 1992.

Secondly, the implementation of the SEA also intensified Commission pressure for member states' co-operation on controls at 'external frontiers', that is borders between a member state and a third country (cf. Collinson, 1994: 124). The Commission maintained that establishing the internal market as 'an area without internal frontiers' required co-ordinated controls at the external frontier by the member states. Assuming that identity controls at a national frontier have been the most effective means of establishing whether an individual is a national of the EC or a third country, the removal of internal frontiers 'implies that any such distinction must be made at the external rather than the internal frontiers' (Commission Communication to the Council (COM (88) 640 final), 7 December 1988, Report, para.13 (quoted from SCEC, 1989: 42)).[5] Accordingly a White Paper (COM (85) 310 final) published along with the Act, was to propose measures about procedures related to control at the external frontier, which included the co-ordination of visa policies, the status of third country nationals and the rules for granting asylum and refugee status.

### 3.2 Intergovernmental negotiations outside the EC

Key measures on immigration such as passport controls and visa requirements were, however, thought to be exclusive provinces of member states (cf. Philip, 1994: 175). Though the Commission's interests in these areas were intensified after the SEA, the main decisions on immigration policy were still run on an intergovernmental basis and were distinctly outside the control of the EC.

Earlier initiatives to co-ordinate policy on national border controls date back to the late 1970s when a meeting of Justice and Home Affairs ministers of EC countries agreed in 1975 to co-operate in combating terrorism. Accordingly, an intergovernmental forum named Trevi was set up in the next year. Though the main focus of the Trevi groups was initially co-operation against terrorism, its scope gradually broadened to include policing matters generally. According to a British Home Office paper of 1993, the Trevi forum had at least three working groups at the time, which respectively covered countering terrorism, drug trafficking and other serious crimes, and public order problems (HO, 1993a: 2e). There were considered to be a few more sub-groups in the Trevi forum (Cruz, 1993: 19–20).

Other intergovernmental arrangements, 'Ad Hoc' groups, were established. An Ad Hoc Group on Immigration was set up in October 1986 to 'work towards free movement in the Community in a manner compatible with the need to combat terrorism, drug trafficking, other crime and illegal immigration' (HO, 1993a: 1–2e). In practice, as some of these matters were dealt with within the Trevi or other groups, the Group has concentrated on the immigration-related aspect of free movement. It had established five standing and one *ad hoc* sub-groups by 1993 namely: external frontiers, expulsion and admission, asylum, forged documents, visas, and refugees of the former Yugoslavia (*ad hoc*) (*Ibid.*: 2e; Bunyan and Webber, 1995:4).

The works of these intergovernmental meetings were run by senior officials of the member states (mainly from Justice and Home Affairs Ministries) and reported to the Ministerial meetings of each forum (HO, 1993a: 2e).

After the implementation of the SEA in 1987, the European Commission's intervention in these intergovernmental works on border controls increased. The Rhodes European Council of December 1988 decided to integrate six intergovernmental forums relating to justice and home affairs under a new intergovernmental body: a Group of Co-ordinators on the Free Movement of Persons. Consequently the intergovernmental forums on immigration policy such as the Trevi Groups and the Ad Hoc Group on Immigration were arranged under the Co-ordinators' Group.

The Co-ordinators' Group consisted of officials from the Justice and Home Affairs Ministries of the member states and the European Commission. The Group reported directly to the European Council (*Ibid.*: 1e). With the increasing involvement of the European Commission the Group issued a document in June 1989. Called the 'Palma Document' (*Free Movement of Persons: A Report to the European Council by the Co-ordinators' Group*), the document stressed the link between the idea of an area without internal frontiers and the tighter controls at external frontiers, and drew up a list of measures that were essential or desirable as a precondition of any relaxation by member states of controls on people at internal frontiers.[6]

Intergovernmental approaches culminated in the agreements in two areas namely asylum procedures and the procedures for controls at external frontiers – the Dublin Convention and a draft External Frontiers Convention. The Dublin Convention, signed in June 1990 by all the EC member states with the exception of Denmark which did it in June 1991 (Joly, 1990: 99), determined which state was responsible for examining an initial request for asylum. Member states were required to assume responsibility for the request and reduced the possibility of asylum-seekers being placed 'in orbit' as they were passed from one potential reluctant recipient state to another.[7] Meanwhile it introduced a 'one-stop' asylum procedure, meaning that an asylum seeker had to make his/her claim in the first safe country at which he/she arrived. However, this was to remove the freedom of an asylum seeker to make an appeal in the country of his/her choice. The convention is not in force after six years since ratification of member states has been delayed.

The draft convention on the crossing of external frontiers (draft External Frontiers Convention) laid down a number of new principles that allow unchecked movement of third-country nationals. These included:

- adoption of a common visa format
- production of a list of the third countries whose nationals require visas when they enter member states ('negative list')
- introduction of common criteria on admission and stay
- production of a joint list of inadmissible people
- introduction of common criteria for expulsion.

Though immigration ministers reached political agreement on this draft Convention in June 1991, a difference between the United Kingdom and Spain over how the convention should apply to Gibraltar placed the final agreement in deadlock.

### 3.3 The Schengen Group

The scope of each intergovernmental forum of all EC members outside EC institutions was specific to particular areas. The Schengen Agreement, signed in June 1985 by five continental EC members (Federal Republic of Germany, France, Belgium, the Netherlands and Luxembourg), had a different approach from other arrangements involved by all EC members. The Schengen Agreement was the first attempt to co-ordinate wider areas of immigration policy.

The Schengen Group has its origins in the Fontainebleau European Council in June 1984, which adopted the principle of abolishing police and customs formalities at the internal frontiers of the EC (Convey and Kupiszewski, 1995: 942). Having a common origin in the internal market provisions of the SEA, an implicit aim of the Schengen Group has been to set out a blueprint for EC policy. The objective of the Group is therefore to abolish the internal frontiers and to allow free movement of goods, services, capital and persons within the area. Originally the economic aspect was the dominant incentive for dismantling internal frontiers, but this has now dwindled and the main concern of the Schengen Group is border controls on persons (O'Keefe,

1992: 186). In concluding a supplementary agreement in 1990 and with the enlargement to 10 of the 15 EU countries, the Schengen Group has now become established as another important European regime on immigration, in addition to the EU.[8]

The Schengen provisions are so wide as to include most of the matters that are now under discussion in co-ordinating immigration policy at the EU level. The main provisions are:

- abolition of checks at internal borders
- adoption of the common rules of external border control
- adoption of common visa policy
- determining responsibility for the processing of applications for asylum
- exchange of computerised information about persons and objects (O'Keefe, 1992).

The Schengen Group operates at four levels: meetings of junior ministers, a Central Negotiating Group (represented by senior officials of member states), Working Groups, and sub-groups (Cruz, 1993: 3-15). The Working Groups cover such fields as security and police, movement of persons, transport, and movement of goods. The Movement of Persons Working Group has subgroups on common manual (for external frontier controllers), asylum, visas and readmission.

The European Commission was given observer status in Schengen ministerial meetings ever since their inception and later acquired this right in the more exclusive administrative Central Negotiating Group meetings (*Ibid.*: 3). Maintaining links with the European Commission and endeavouring to influence, though not formally, the proposals of the European Commission, the Schengen Group has attempted to develop an EC/EU immigration regime outside the institutional framework of the EC/EU. For example, the EC's negative country list on visa requirement is based on the Schengen's list (European Commission, 1994: 26–7e (QQ112-122); see also Collinson, 1994: 139). The Group is now regarded as having a 'pilot function' and is seen as an 'enlightened vanguard' of European integration (Hailbronner, 1995: 192; de Shoutteete, 1990: 122).

The difference in thinking between the Schengen countries and non-Schengen EU members – Britain and Ireland – is fundamental. This is concerned with the Schengen's main aim of abolishing all controls at internal frontiers. The Schengen Group aims to guarantee that there will be no checks at its internal frontiers of any persons, regardless of their nationality. The British government recognises the existence of the influence of the Schengen Group on the EC/EU policy measures (cf. HO, 1990: 10e; 1994c: 90e (QQ561)). Although recognising the indirect effects of the Schengen Group, Britain has not responded to it directly.

In March 1995 the abolition of controls at internal frontiers was partly implemented by seven member states (France, Germany, Belgium, the Netherlands, Luxembourg, Spain and Portugal), though France, after the trial period of three months, suspended its implementation.[9]

### 3.4 The European Union

The Treaty on European Union (TEU) of 1992, or Maastricht Treaty, which came into effect in November 1993, brought many changes to the existing institutional arrangements on immigration policy. The most important among them was the incorporation of the intergovernmental forums under the Co-ordinators' Group within the scope of the EU, which had been kept outside the European Community. The 'matters of common interest' among member states were specified in Article K1, which included asylum, external border control, and the entry, residence and clandestine immigration of third-country nationals.

The TEU arranged these areas in Title VI (Provisions on Co-operation in the Fields of Justice and Home Affairs: Articles K1–9). The policies on common visas were independently stated in Article 100c of the EC Treaty (formerly the EEC Treaty). As a result, immigration matters were to be found mainly in three parts of the Treaties relating to the EU:

Article 7a EC – internal market (formerly Article 8a EEC)

Article 100c EC – common visa (new provision)

Articles K1-9 TEU – Justice and Home Affairs (new provision).

Except for the common visa policy (which is now in Article 100c), changes brought about by the TEU on immigration matters were, by and large, symbolic rather than substantial. The changes to the common visa policy were substantial, however. The EC Treaty, the treaty where Article 100c was inserted, used to be the EEC Treaty, and procedures which the EEC Treaty used to determine are applied to this Article. This means that qualified majority voting has been introduced (from January 1996) and the European Court of Justice, whose rulings have often annoyed national governments by overruling their policies, has jurisdiction. According to this change the common visa policy was removed from the draft External Frontiers Convention, and formed an independent regulation proposal. The draft External Frontiers Convention was therefore revised and proposed as well. The visa regulation, namely the introduction of the EU common visa policy, which had been proposed even before the Maastricht Treaty was adopted by the Council in September 1995 (OJ-L, 1995: 1–3).

The most remarkable, though largely symbolic, change was the incorporation in the EU arrangements of the intergovernmental forums which formerly used to be outside the EC institutions. The TEU established a European Union which consists of three major provisions, often called pillars, by merging three former institutions (EEC, ECSC and EURATOM) into one European Community, the first pillar, and establishing two other arrangements on Common Foreign and Security Policy, the second pillar, and on Justice and Home Affairs Policy, the third pillar.

In the case of the third pillar, which deals with immigration, a Council of the Justice and Home Affairs Ministers was established which is, as with the first pillar, served by the COREPER (Committee of Permanent Representatives of the Member States). Under the COREPER is located the Co-ordinators' Group, which was renamed the K4 Committee. The groups previously under the Co-ordinators' Group (the Ad Hoc Group on Immigration and the Trevi Groups, for example) were merged into three steering groups. The Ad Hoc Group on Immigration became the immigration and asylum steering group, which has, as it used to do, five working parties (formerly sub-

groups) on migration, asylum, visas, external frontiers and forged documents (Bunyan and Webber, 1995: 5).

It is important to note, however, that, unlike the first pillar, which basically maintained the provisions of the former EEC Treaty, negotiations on the second and third pillars remain intergovernmental in nature, and the influence of supranational institutions such as the Commission, the European Court of Justice and the European Parliament are kept to a minimum. This means that, although intergovernmental forums outside the former EC were reorganised and incorporated in the EU, basic structures of intergovernmental negotiations on immigration matters have changed little. The Commission now has the right to issue proposals but this remains of little importance.

Before Maastricht, the forums under which EC countries could negotiate on the harmonisation of immigration policy were provided by either the EC or the intergovernmental meetings. These intergovernmental arrangements (except the Schengen Agreement) have now been incorporated into the EU. This change is, however, only a formality. In substance it has changed little of their intergovernmental nature. With supranational influences on these matters being significantly curtailed, the EU regime on immigration policy is a continuation of the past and still remains on an intergovernmental basis. Except for the common visa policy, which has been brought under the influence of the institutions of the European Community, the only logic by which they can take initiatives is still the one linked to internal market provision.

A real change has come about from a different direction – the Schengen Group. Formally independent of the EU, it provides a new alternative for EU members. Moreover, encompassing the majority of EU members and having close links with the European Commission, the Schengen Agreement has provided a regime which even non-members of the Schengen have to take into account. Britain has been distancing itself from the Schengen's arrangements. However, considering its influence on EU policy on immigration, the Schengen Group’s policy is bound to have significant impacts on the British government’s position in the EU's immigration regime.

## 4 The position of the British government

The position of the national government towards a regime is closely connected with the policy objectives of the regime. A regime has particular policy areas of its own, and the objectives relate to these policy areas. From the view of British government, two major directions can be found in the objectives of the European regimes on immigration policy firstly, relaxation of national border controls, and secondly co-operation on national border controls.[10] Basically the EC regime was associated with the first direction and the intergovernmental regime with the second. The EU regime encompasses both.

### 4.1 The EC regime: relaxation of national border controls

When Britain first applied for membership of the EC in 1961, acceptance of the measures to admit unrestricted entry to Britain for workers from other EC countries, measures which EC member states had already introduced, was unavoidable.

The British government was reluctant to open its labour market to EC workers.[11] However, the main objective that caused the British government to choose to join the EC was to strengthen its commercial links with the existing EC countries. Alongside this principal objective, the concern with admitting rights of free movement to EC workers had relatively small significance. Regarding the free movement provisions, the British government even misunderstood the directly applicable nature of EC legislation, and thought that it could control EC workers' entry into Britain.[12] By the time Britain was accepted as a new EC member in 1971, the government's opposition to free movement had receded and the provisions had been accepted as a *fait accompli*.[13]

British resistance to free movement of workers at the initial stage of negotiations to join the EC was based on two concerns – economic and historical – both of which declined in relative political importance in this decade. Fears that Italian workers

might flood the British labour market were a concern in the 1960s (Werner, 1993: 79). By 1971, however, the general mood of the government on EC immigration had become optimistic. A government White Paper of July 1971 asserted that '[i]nside the Community movement of workers between member countries actually diminished between 1965 and 1969' and '[i]n practice the provision for the free movement of nationals of the Six to seek or take up work has had only a limited effect on the actual movement of workers' (*The United Kingdom and the European Communities*, 1971: 35 (para.143)). The White Paper stated that the British government did not therefore ask for 'any transitional safeguards for [the] national labour market as a whole' (*Ibid.*: 36 (para.143)).[14]

The other factor affecting the British government's position in the 1960s was both historical and symbolic – its links with the territories of the former empire. When the British government at this time considered links with the EC, its relations with the former empire, and with the US, had an important diplomatic meaning. When the government lodged its application in August 1961, a bill that was to be published in Parliament in November of that year, which had the aim of restricting immigration from the Commonwealth. This had been under final consideration by the Cabinet at the same time as the application for the EC. In this respect, granting free movement rights to EC workers might be taken as further evidence of discrimination against the Commonwealth. This aroused a fear among pro-empire sections of the government that the free movement provisions of EC workers might result in the restriction of Commonwealth immigrants if conflicts in interests over employment arose between workers from EC countries and the Commonwealth (Meade, 1970: 69). However, these sentiments were directed mainly at the status of Commonwealth migrants in Britain, rather than as objections to EC provisions.

To ensure the practicability of free movement, the Commission in 1982 proposed measures to ease the controls at internal frontiers. The proposal (COM (82) 400 final) was one of the earliest initiatives to reduce the formalities of frontier checks. The proposal included the abolition of systematic checks on entry, replacing it by occasional spot-checks, and the introduction of special channels for EC nationals at EC airports and ports. The former point met strong resistance from member states, which thought that the power to determine who is entitled to enter the territory should

lie with the national government (Bevan, 1986: 203). The British government (especially the Home Office) was opposed to the proposal on the grounds that on-entry controls would become ineffective if the existing systematic controls were replaced by occasional spot-checks (SCEC, 1983: x (paras.21-2), xi (para.26)).

The Single European Act of 1986 had a significant impact on the British government's position. In the field of immigration policy the Act strengthened the British government's doubts on EC policy. The European Commission thought that the Single European Act, by introducing a new article to the EEC Treaty on internal market (Article 8a EEC), gave the Commission a legal ground for its pressure for abolishing controls at internal frontiers. Some member states, such as Britain, Denmark, Greece and Ireland, had a different view. They thought that the internal market provisions should not affect border controls by the national government on persons, and still less, bring about their abolition (HO, 1989: 143e (QQ626)).

The difference between the Commission and the British government lay in the interpretation of the scope of the EC's free movement provisions. The Commission's interpretation was that all persons, including third-country nationals, could be included here (Cavolli, 1992: 366), while the British government's interpretation was that free movement was allowed only to EC nationals (cf. SCEL, 1995: xii, xv). At this time the British government was successful in obtaining a declaration that was attached to the SEA. The declaration was inserted, according to a junior Home Office Minister, in order 'that frontier controls on persons between the United Kingdom and other member states should be maintained' (Charles Wardle, Parliamentary Under-Secretary, Home Office, on 7 July 1993 at the ESC-B) (ESC-B, 1993: cols.16–7). The declaration ('General Declaration on Articles 13 to 19 of the Single European Act') says that '[n]othing in these [internal market] provisions shall affect the right of Member States to take such measures as they consider necessary for the purpose of controlling immigration from third countries, and to combat terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques' (quoted from *Single European Act*, 1988: 21).

Difference in interpretation on Article 8a (which was amended later to Article 7a of the EC Treaty by the Treaty on European Union of 1992) is so fundamental that little progress has been made since in negotiations on controls at internal frontiers. The British government's position towards the SEA has been consistent since then.[15]

Two sets of thinking relating to social concerns could be pointed out in the British government's philosophy on national border controls. The first is related to 'crime prevention'. According to the government, 'the primary objective of the systematic frontier controls on entry currently operated in the United Kingdom' is 'the exclusion of illegal immigrants, persons with criminal records, terrorists, drug addicts and carriers of diseases' (SCEC, 1983: viii (para.14)). Therefore lifting border controls would require, in their place, stricter internal enforcement on immigration, such as identity card checks (HO, 1983: 3e).

The second is related to 'race relations'. The Home Office believes good domestic race relations have been 'supported by a firm but fair immigration policy' based on entry controls at the border. The border controls have helped to limit internal controls to a minimum, thus reducing internal policing which is effected 'with a fairly light touch' (A. J. Langdon, Deputy Under-Secretary, Home Office, on 18 July 1989 at the SCEC) (HO, 1989: 144e (QQ630)). The Home Office fears that replacing the current system of border controls by internal controls might have adverse consequences for domestic race relations. Abolition of border controls would be 'harmful to race relations', since 'that would mean that it would be impossible to continue the relaxed [internal] control', which has so far been 'supportive of good race relations' (SCEC, 1989: 17 (para.50)).[16]

Application of the free movement provision under the EC regime, and later the EU, has now extended from workers to all EU nationals to some extent. In practice it was extended to the nationals of the European Economic Area (EEA) following the EEA Agreement in 1992. In the case of Britain, EEA nationals are, except for being required to show their passports, not subject to any on-entry controls. However, from the British government's view, the free movement provisions are, in practice, a reluctant and exceptional arrangement. Free movement is allowed only to EU (or EEA) nationals (see for example C. Wardle on 7 July 1993 at the ESC-B (ESC-B,

1993: cols.16–7)). In this sense it might be possible to say that EEA nationals are, in reality, ‘exempted’ from border controls.

## 4.2 Intergovernmental regimes before the TEU: co-operation on national border controls

In parallel with the EC framework, intergovernmental co-operation relating to immigration policy was also promoted outside the EC institutions. This provides another regime based on intergovernmental negotiation, with a view to encourage co-operation in the field of national border controls. Most important among them were the Trevi Groups and the Ad Hoc Group on Immigration.

The British government’s position towards these intergovernmental groups was, unlike its position towards the EC measures, co-operative; it even took the initiative in some cases. Both the Trevi Groups and the Ad Hoc Group on Immigration were initially established on British initiative (HO, 1993a: 1–2e). These intergovernmental groups are often criticised of their secrecy, as well as being outside the EC laws and the jurisdiction of the European Court of Justice (Joly, 1990: 107-15, Brochmann 1995: 92-4). To the contrary, the British government thought that the importance of these groups lay in their informal and spontaneous character, independent of the EC institutions (HO, 1990: 5e).

Adoption of the SEA by the EC, however, intensified pressure from the EC regime for the formalisation of these groups. The Commission’s firm attitude towards establishing an internal market without internal frontiers was turned towards co-ordinating controls at external frontiers, and thus towards the intergovernmental regimes related to this area.

The British government’s interpretation of the SEA was that the internal market provisions did not affect national border controls by the member states. Accordingly, another declaration was sought for the SEA relating to the aspect of intergovernmental co-operation of national border controls. The ‘Political Declaration by the Governments of the Member States on the free movement of persons’ read: ‘In 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' (quoted from *Single European Act*, 1988: 22). The declaration determined, on the one hand, further co-operation of the member states on border controls, and on the other, that the co-operation should be promoted outside the EC framework.

As seen in the previous section, with the increasing influence of the Commission since the SEA, intergovernmental work on border controls was rearranged according to this objective. In December 1988 the Co-ordinators' Group was set up for the purpose of co-ordinating activities of the Ad Hoc Group on Immigration, the Trevi Groups and others. In June 1989 the 'Palma Document' was reported to the European Council by the Co-ordinators' Group. It is in this context that the Dublin Convention and an External Frontiers Convention were proposed.

The British government's position towards the intergovernmental regime for co-operation on border controls was not negative, even after the SEA. The British government thought it important to participate in co-operative arrangements, where they existed. Though specific to visa harmonisation of the draft External Frontiers Convention, the government's reason for supporting co-operation was that, if other Community states were imposing visa requirements on third countries, Britain needed to consider whether it should do the same, 'since the last State in the queue, as it were, is likely to get the traffic which is diverted from the others' (A. J. Langdon, on 18 July 1989 at the SCEC) (HO, 1989: 144e (QQ628)). This is also true in the case of other arrangements relating to controls at external frontiers. In the field of asylum, the Home Office maintained, referring to the Dublin Convention, that it would basically support an international convention designed to regulate the question of responsibility for applications for asylum (A. J. Langdon, on 18 July 1989 at the SCEC) (*Ibid.*: 147e (QQ650)).

### 4.3 The EU as a comprehensive regime

When incorporation of the informal intergovernmental forums of immigration policy into a new EU structure was an issue in the negotiating process of the TEU, a priority for the British government was to keep immigration matters outside Community competence. Even if the incorporation was necessary, it was essential at least to assure intergovernmental character in these matters. The point at which the British government compromised was that immigration matters were merged into the new EU arrangements, but outside Community competence.

Bringing immigration matters under Community competence was advocated by Continental European countries. At the Luxembourg European Council in June 1991, for example, German Chancellor Helmut Kohl suggested 'communitarising' immigration matters and urged immigration ministers to develop a work programme in a number of areas which would no longer solely be concerned with the crossing of internal frontiers (Geddes, 1995: 208). The main reason underlining the pressure for 'communitarising' these matters was the limitations on the use of international law, such as the Dublin Convention, which might not ensure the establishment of laws common to all member states (*Ibid.*: 209).

During the negotiations leading to the TEU, differences appeared between member states on the form of co-operation in the field of immigration policy (Hix, 1995: 9-10). The Netherlands, Belgium, Italy and Spain, on the one hand, preferred to see full incorporation of these matters into Community competence. France and Germany also preferred incorporation, but with different measures being established for each policy. These countries sought to add to the new Treaty a power for the Council to adopt, by unanimous decision, measures necessary for achieving Union objectives in the fields of asylum, visas and immigration. On the other hand, Britain, Ireland, Greece and Denmark were opposed to the incorporation. Their positions were either to continue to co-operate outside the EU framework (Denmark) or only to make reference to co-operation in the Treaty (others). They insisted that immigration policy, like other aspects of justice and home affairs, should be dealt with on an intergovernmental basis only (Geddes, 1995: 209).

The outcome was a compromise which established independent pillars outside Community competence, made reference to ‘matters of common interest’ (Article K1 TEU), transferred some aspects of visa policy to Community competence (Article 100c EC) and inserted a provision on the measure to transfer an issue to Community competence (Article K9 TEU). In addition, a declaration was attached to the TEU regarding asylum policy (‘Declaration on Asylum’), which determines that ‘the Council will ... consider, by the end of 1993, ... the possibility of applying K.9 to such matters as [asylum policy]’. Except for some aspects of visa policy – a common visa format and a common negative country list on visa requirements (the ‘negative list’) – which were transferred to Community competence, most aspects of immigration policy were kept within the competence of national governments and may only be negotiated on an intergovernmental basis.

In December 1993, soon after the implementation of the TEU, measures relating to the common visa policy that were transferred to Community competence, were separated from the draft External Frontiers Convention and proposed as an independent regulation, along with the revised draft of the External Frontiers Convention. New measures were also included in the proposals, the positive lists on visa requirement (visa regulation), the principle of mutual recognition of other member state’s visas (visa regulation), and the extension of the jurisdiction of the European Court of Justice to this area (draft EFC).

The underlying logic behind the British government’s position towards the new regime was consistent with its position on the previous one. Referring to the revised draft External Frontiers Convention, the Home Office expressed its view as follows: ‘[T]he UK Government has consistently maintained the view that Article 7A [EC] does not require the removal of all frontier controls; consequently it does not accept that implementation of the Convention requires the removal of such [internal frontier] controls’ (HO, 1994b: 82e). The British government did not accept the view that the removal of controls at internal frontiers was the underlying objective of these two proposals and pursued instead the idea that each policy measure should be judged on its own merits, independently of any others (SCEL, 1995: xii).

Following the agreement on the introduction of a uniform visa format, the visa regulation was adopted by the Council in September 1995. Its main provision was a negative country list on visa requirement (OJ-L, 1995: 1-3). The adopted list contains 101 third countries and territories. Initially the proposal had listed 126 countries and territories (OJ-C, 1994: 15-7). For Britain, it would have resulted in imposing a visa requirement on a further 45 countries, of which 31 were Commonwealth countries. The Home Office was not openly opposed to the inclusion of the Commonwealth countries in the list; its expressed view was that 'we ought to look closely country by country and see if there was justification for them being put on it' (A.R. Rawsthorne, Assistant Under-Secretary, Immigration and Nationality Department, Home Office, on 11 May 1994 at the SCEC) (HO, 1994c: 90-1e (QQ562)). In the event, however, as many as 23 of these 31 Commonwealth countries remained exempt from visa requirements.

Meanwhile new measures proposed in 1993 after the TEU – a positive country list and mutual recognition principle – were rejected. Under the EU arrangements the British government has become more cautious than before about maintaining the boundary in competence between the Community and the national government. Its main objections to the Commission's proposals are concerned with this point. From the British government's view, there is no room for any policy measures to be accepted unless they are concretely designated in the articles of the relevant Treaties. The measures proposed in 1993, including the jurisdiction on the European Court of Justice on the draft External Frontiers Convention, were subject to criticism mostly in terms of competence (HO, 1994a: 80e; 1994b: 82e).

Moreover, having been successful in preserving the intergovernmental forums, the British government has determined to keep as many immigration matters as possible in these forums by rejecting the transfer of those matters to Community competence.[17] According to a senior Home Office official, the British government 'is quite opposed to any transfer into [Community] competence' (A. R. Rawsthorne, on 15 December 1993 at the HAC) (HO, 1993b: 34-5e (QQ109). In this respect the British government now worries about the transfer of asylum policy to Community competence.[18]

The British government's position shows that it is now concerned with keeping as many immigration matters as possible in the intergovernmental negotiations in order to maintain as much influence as possible. The government is not necessarily opposed to concrete policy measures. It is opposed to the enlargement of Community competence and especially of the jurisdiction of the European Court of Justice.

## 5 Conclusions

Moravcsik has provided a framework for the analysis of a national government's position towards international regimes. For this purpose he puts an analytical emphasis on the national preferences behind the position of the national government. The governments of West European countries are involved with numerous institutional frameworks and arrangements that, to a greater or lesser extent, affect immigration matters and constitute immigration policy regimes. Chief amongst these, and which the British government has supported, were the EC, the Trevi Groups, the Ad Hoc Group on Immigration, and the EU. This paper has shown the kind of considerations for national preferences which lay behind the position of British government towards them.

### Factors governing national preferences

Two factors have influenced the British government historically in terms of policy towards immigration. The first is the special status of the Commonwealth. For a long time one of Britain's main concern in terms of external relations was the Commonwealth. This has been reflected in policies on immigration from the Commonwealth, which have been less restrictive than those on other non-EU immigration.[19]

The other factor is the predominance of political and social concerns over economic ones. The economic logic has been overruled by socio-political issues as far as British immigration policy is concerned (cf. Findlay, 1994). Since 1945, policy measures have been determined by the socio-political imperatives of 'crime prevention', 'race

relations' and electoral considerations. As a result, British post-war immigration policy took a rather different direction from those of many other EU members, especially in the 1950s and 60s. Economic priorities were not a major concern, except for the limited introduction of East European War Refugees in the late 1940s and of West Indians for the London Transport service in 1950s and the concern to maintain free entry of workers from Ireland. Immigration from the Commonwealth was consistently restricted after 1962, when other European countries were still recruiting immigrant workers on a large scale.

**The position of the British government**

These two historical factors kept their significance when harmonisation of immigration policy at the European level became an issue. Though the general importance in British politics of the Commonwealth has decreased considerably, the 'Old Commonwealth' still merits special importance. The common visa policy in particular highlighted differences in interpretation of the status of Commonwealth countries.

Socio-political concerns are still the most important consideration. The British government has rejected economic interpretation of immigration, which might endanger the legitimacy of border controls. The government's official view is that the internal market provision of the SEA is *not* the main ground either for removing controls at internal frontiers or for co-ordinating controls at external frontiers. The government view continues to be that border controls should not be linked to the economic logic of the internal market, but should be considered from a social perspective. Therefore each policy measure relating to border controls should be treated on its own merit from the view of socio-political concerns, not by a long-term objective of the completion of an internal market.

The important point is that those considerations, which have historically governed British preferences are, by and large, specific to Britain; its European partners do not share them. They have little interest in Britain's Commonwealth ties. Rather than keeping border controls for social and political reasons, a borderless internal market is

a dominant idea. This is why the British government has chosen to support the regimes that assure a framework of intergovernmental negotiation. Intergovernmentalism is essential in securing its negotiating position and making its minority voice effective.

The British government has thus supported arrangements such as the Trevi and Ad Hoc groups, which were outside the EC institutions. The government is now concerned with keeping the intergovernmental forum within the EU arrangements of immigration policy outside Community competence. So far it has achieved success, by circumventing the influence of supranational institutions and keeping to unanimity voting rules.

**Theoretical points**

From the theoretical point of view, the findings in this paper about the British government's position towards European immigration policy regime have developed Moravcsik's approach in two ways. The first point concerns the assumptions on relations between the national government and the regime. Should the regime be considered as a given condition for the national government to belong to, so that the national government's position towards a regime is determined to some extent by the regime itself? Or should the regime itself be considered as an object of choice by the national government? Moravcsik's approach has greater flexibility, as this paper has shown, when it is based on the latter assumption, which nevertheless maintains his key concepts of 'national preferences' and 'regime'.

Secondly, the concept of national preferences leaves room for refinement in relation to the time scale. Accepting a regime means accepting policy measures, however reluctantly. In the case of the British government, opening the labour market to EC workers when it joined the EC was a typical example. Such a case could be better explained when future expectations of co-operation override the preferences based on present considerations. It is not at all rare for national governments to opt for a regime on the basis of future expectations despite the present reluctance on particular policy measures which would be imposed by the regime.

## Future prospects

The Intergovernmental Conference (IGC) for revising the TEU began in March 1996. Details of issues being discussed are unknown at the time of writing this paper. Possibilities range widely: dissolution of the third pillar, policy on justice and home affairs, and full incorporation of immigration matters into Community competence; extensions of supranational institutions' competence to some of these matters; or transfer of asylum policy to Community competence (cf. Hix, 1995: 15–20).

Discussions on the third pillar are, however, highly likely to be fruitless. The decision making process is based on unanimity, but the differences are fundamental between Britain and its Partners. Moreover, the British government is unlikely to find any reasons that would override its present reluctance to change its views. Community competence would thus not be extended to any third pillar matters without Britain's exercising an 'opt-out' from the treaties concerned (*Independent*, 13 July 1995: 11).

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*Official publications*

In the bibliographical notes on official publications, the following abbreviations are used:

| | |
|---|---|
| e | The Evidence pages (e.g. '3e' means 'Page 3 of the Evidence') |
| ESC-B | House of Commons European Standing Committee B |
| HAC | House of Commons Home Affairs Committee |
| HO | Home Office |
| OJ-C | Official Journal of the European Communities: Information and Notices (C series) |
| OJ-L | Official Journal of the European Communities: Legislation (L series) |
| QQ | Question and Answer |
| SCEC | House of Lords Select Committee on the European Communities |
| SCEL | House of Commons Select Committee on European Legislation |


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**Notes**

1 See e.g. Cruz (1993), Collinson (1994), Philip (1994), Bunyan and Webber (1995), Brochman (1995).

2 The Changing nature of national preferences through domestic politics has not, however, been emphasised by Moravcsik himself. In a later article (Moravcsik, 1993) his analysis of intergovernmental bargaining focused more on patterns of action which rational national government could take in negotiations than on process of change in national preferences and its effect on the negotiation. His approach has moved on from description to analysis, but provides more static views than dynamic ones. The importance of convergence of national preference is pointed out more clearly by Keohane and Hoffman (1991: 23-5).

3 At the domestic level, Moravcsik has himself considered, though in a different context, such policy areas when he referred to domestic power relations. He distinguishes three kinds of policy areas in terms of variations in patterns of domestic political mobilisation, opportunities for governments to circumvent domestic opposition, and motivations for international co-operation. These are 1) commercial policy, market access and producer interests, 2) socio-economic public goods provision, and 3) political, institutional or redistributional policies (Moravcsik, 1993: 488–96). In the last group of policy areas, private interests are diffuse and uncertain compared with the first two. Pressures on the government from non-governmental actors are therefore small and the government elite enjoys relatively broad autonomy.

4 A Commission Communication to the Council of December 1988 (COM (88) 640 final) states: 'The Single European Act sets an objective which goes beyond the mere easing of frontier controls. The concept of an 'area without frontiers'

necessarily implies that internal frontier controls must also be abolished . . . ' (Report, para.13, quoted from SCEC, 1989: 42).

5 For the abbreviation on bibliographical notes, see the note on the 'Official Publications' in the Bibliography at the end of this paper.

6 'The achievement of an area without internal frontiers could involve, as necessary, the approximation of national laws and their rules of application and scope, collaboration between national administration and a prior strengthening of checks at external frontiers'; '[T]he creation of an area without internal frontiers would necessitate tighter controls at external frontiers. Controls carried out at those frontiers are in fact valid for all the Member States. Those controls must be highly effective and all the Member States must be able to rely on them.' (*Free Movement of Persons: A Report to the European Council by the Co-ordinators' Group*, para.III) (quoted from SCEC, 1989).

7 Referring to the Schengen and Dublin arrangements on asylum, Joly asserts that 'the general tone of these proposals seems to indicate that states are reluctant to settle refugees'. She points out that, while seemingly they have an effect to reduce the refugees' risk of remaining 'in orbit', in practice it will have the opposite effect. Each state may argue that it is not responsible for examining the asylum request so that the number of refugees 'in orbit' increases (Joly, 1990: 101).

8 Two non-EU members, Norway and Iceland, as well as Denmark, Sweden and Finland, have admitted the observer status since May 1996 so that they can maintain Nordic passport union, another free movement area.

9 France is currently suspending its implementation, owing to difficulties in controlling drug trafficking from the Benelux borders (*Independent*, 29 June 1995: 11; *Guardian*, 30 June 1995: 15).

10 The term 'border' is more likely to be used in British government terminology than the term 'frontier'. Therefore 'border' is used here when matters on border/frontier are seen from the national government's perspective.

11 "[I]t is quite unreal to suppose that we could be compelled suddenly to accept a flood of cheap labour, or to alter the basis of our social security overnight." (Harold Macmillan, Prime Minister, on 2 August 1961 in the House of Commons) (House of Commons, 1961a: col.1490).

12 "[The] apprehensions about the social implications of joining the Treaty are really aspects of a wider constitutional anxiety about what has often been called 'sovereignty'." Therefore, if necessary, "movements of workers would be related by administrative control to actual offers of employment" (H. Macmillan, Prime Minister, on 2 August 1961, in the House of Commons) (House of Commons, 1961a: col.1490).

"If one reads Articles 48 and 49 of the Treaty of Rome it would appear that control is possible." (R. A. Butler, Home Secretary, on 16 November 1961 in the House of Commons) (House of Commons, 1961a: col.699).

13 See Parliamentary Debates on the Immigration Bill of 1971, where measures restricting immigration from the Commonwealth were compared to those of free movement of EC workers, which was regarded as already accepted (House of Lords, 1971a; 1971b).

14 For Northern Ireland, a five-year transitional period was sought before the application of the Community's requirements on free movement of labour (*The United Kingdom and the European Communities*, 1971: 36 (para.144)).

15 In a recent House of Commons Committee debate, Home Secretary Michael Howard confirmed the government's determination to keep border checks: "We would not give our approval to any directive of regulations which had the effect of dismantling our frontier controls; . . . [W]e will take whatever steps are necessary to ensure that those frontier controls are not dismantled." (M. Howard on 22 March 1995 at the ESC-B) (ESC-B, 1995: col.14).

16 The worry that internal control may worsen race relations is also expressed by academics and NGOs. For example, Anne Owers of the Joint Council of Welfare for Immigrants refers to the case of the on-entry control, where ethinic minorities are more likely to be questioned, and warns that members of ethnic minority communities may be the target of internal checks (Owers, 1994: 272-3).

17 The TEU (Article K9) has given the Council a power by unanimous decision to transfer the areas of immigration defined in Article K1 TEU to Article 100c EC.

18 The issue was raised in the Home and Justice Ministers' Council in 29 and 30 November 1993. However, at this time, "even the Commission . . . came to the conclusion that it would be premature to do that" (A. R. Rawsthorne, on 15 December 1993 at the HAC) (HO, 1993b: 34-5e (QQ110)). Mr Rawsthorne warned that "[the Commission] obviously thought that would be a better way of handling asylum matters" and indicated fears that the issue might possibly be discussed in the 1996 intergovernmental conference (*Ibid.*: 34-5e (QQ109)).

19 Such a belief was still held by some politicians in the early 1970s; for example, Lord O'Hagan feared on the deliberation of the 1971 Immigration Bill that: "[T]his Bill, by and large, levels the persons from the Commonwealth down; the Commonwealth citizen can vote and . . . he has the privilege of not registering with the police; but, on the whole, he is now to be treated like an alien – and if we go into the Common Market, worse than a good many aliens." (Lord O'Hagan on 18 October 1971 in the House of Lords) (House of Lords, 1971b: col.457)