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Sara Casella Colombeau

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**SARA CASELLA COLOMBEAU**

**Border guards as an “alien police”:  
usages of the Schengen Agreement in France**

*Sara Casella Colombeau est doctorante au Centre d'études européennes de Sciences Po et ATER à l'IEP de Toulouse. Sa thèse porte sur « Les gardes-frontières au travail. La construction de la frontière européenne, une comparaison France-Espagne ».*

*Sara Casella Colombeau is PhD candidate at the Centre d'études européennes at Sciences Po and assistant lecturer and researcher at Sciences Po Toulouse. Her doctoral dissertation is entitled: « Border guards at work. The building of a European border, a comparison between France and Spain ».*

Contact: [Sara.casella@sciences-po.org](mailto:Sara.casella@sciences-po.org)

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## **Border guards as an “alien police”: usages of the Schengen Agreement in France**

Keywords: administrative adaptation, europeanization, France, free movement, immigration policy, national parliaments, policy analysis, public administration, Schengen

### **Abstract:**

The creation of a common European space following the integration of the Schengen Agreement into the “*acquis communautaires*” through the Amsterdam Treaty in 1997, and the subsequent treaties and summits, lead Member States to consider border control as a common issue. One could have thought that the lifting of the internal borders within the Schengen space would have threatened the border guard corps at the national level. This is not the case. I will show that, thanks to a change in the “model” of French border guards, their power and influence have in fact risen in the second part of the 1990’s. In response to the fear of a drastic cut in the workforce, French border guards mobilize to define a new model of border guard: the “alien police” model, which aimed at fighting against “illegal” immigration.

### **Résumé:**

La création d’un Espace commun suivant l’intégration de l’Accord Schengen dans les « Acquis communautaires » lors du Traité d’Amsterdam en 1997, et les Traités et sommets suivants ont conduit les Etats membres de l’Union européenne à considérer le contrôle des frontières comme une question commune. On aurait pu penser que l’abaissement des frontières internes au sein de l’espace Schengen aurait menacé les corps des gardes-frontières au niveau national. Ce n’est pas le cas. Je montrerai dans cet article que, grâce à un changement dans le « modèle » des gardes-frontières français, leur pouvoir et leur influence a de fait augmenté dans la seconde partie des années 1990. En réponse à la peur de diminution drastique dans le personnel, les gardes-frontières français se sont mobilisés et ont défini un nouveau modèle de garde-frontière : la « police des étrangers » dont le but principal est de lutter contre l’immigration « illégale ».

## **Border guards as an “alien police”: usages of the Schengen Agreement in France**

Since the 1980's, the issue of border management in Member States has no longer been a purely domestic one. The creation of a common European space following the integration of the Schengen Agreement into the “*acquis communautaires*” through the Amsterdam Treaty in 1997, and the subsequent treaties and summits<sup>1</sup>, lead Member States to consider border control as a common issue [Monar, 2001, 2004; Pastore, 2004; Uçarer, 2002, 2005]. The growing role of the European institutions regarding this issue and the creation in 2004 of a community agency, Frontex – European Agency for the management of operational cooperation at the external borders of the member States of the European Union – made of the European level, a mandatory one.

One could have thought that the lifting of the internal borders within the Schengen space would have threatened the border guard corps at the national level. This is not the case. I will show that, thanks to a change in the “model” of French border guards, their power and influence have in fact risen in the second part of the 1990's. Border guards – whose work is considered a profession in its own right – are, then, in this context, key to understanding European and domestic border policies. This paper will hence bring these actors back in, by arguing that they are both impacted by European pressure and play a key role in the Europeanization of the border policies.

This paper is at the crossroads of European integration studies (especially of policies related to the Justice and Home Affairs domain) and Europeanization studies on the one hand, and of the sociology of the profession on the other. Against a definition of Europeanization as a simple exogenous variable [Knill and Lemhkuhl, 1999] or as a process where national actors react to European public policies previously put in the agenda at the European level [Börzel, 2002], I will support my argumentation with studies that stress the interaction between national and European levels, leaving aside only top-down approaches. Bruno Palier and Yves Surel [2007] do not differentiate the analysis phase and the phase of the impact of the European process from the phase of building of institutions and public policies at a European level. This is also the case for Sophie Jacquot and Cornelia Woll, who aim at designing the “usages approach”, “to move beyond the misfit model to study not just institutional constraints, but also informal politics and the cognitive dimension of multi-level policymaking.” [Jacquot and Woll, 2010: 112]. They argue for introducing the strategic behaviour of actors without considering that they “oversee and control the effects of their actions entirely” [ibid.: 121]. This usages approach takes into account the different usages (strategic, legitimizing, cognitive) domestic actors make of the opportunities set by the European Union. Usages of Europe is defined “as social practices that seize the European Union as a set of opportunities, be they institutional, ideological, political or organizational” [ibid.: 116]. This approach realizes a synthesis between the discussion on public policies implementation and European studies in the sense that it considers that the implementation of European norms cannot be neutral, and claims to take into account the reinterpretation and usages of these norms by domestic actors.

I will refer as background analytical framework to the literature on the integration of the Justice and Home Affairs domain, and especially to the work of Virginie Guiraudon. She proposes a theoretical framework to explain the integration of the Justice and Home Affairs

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<sup>1</sup> Notably the European council of Tampere in October 1999, dedicated to the creation of a European Liberty, Security and Justice Space

domain through the development of a *venue shopping* [Guiraudon, 2000] by national governmental actors. She emphasises the role of law and order officials, at the beginning of the 1980's, in the building of a transnational cooperation aiming at circumvent national constraints on the development of immigration policies: «actors seek new venues when they need to adapt to institutional constraints in a changing environment. » [ibid.: 258]. Various authors have analyzed the reasons why a policy areas tightly linked with national sovereignty has been strongly integrated at the European level. The main contribution of Virginie Guiraudon is to introduce a multi-level game and to put the emphasis on the role of actors in the explanation of this integration. Indeed, the previous theories focus mainly on the European level and the authors opposed neo-functionalist argument against intergovernmentalists ones [Monar, 2001]. In this paper, the same point of departure is adopted, taking strongly into account the role of actors and the multi-level game in which they are acting.

The theoretical framework relies also on the sociology of profession. Classical interactionist definition of profession by Everett C. Hughes will be used. Two notions are at the basis of Everett C. Hughes' definition of the profession: the *licence* and the *mandate*. “Licence, as an attribute of an occupation, is ordinarily thought of as legal permission to carry on a kind of work.” [Hughes, 1958: 79]. In the case of border guards, as for all civil servants, this *licence* is delivered by the State. The *mandate* is claimed by the professional group that previously received the *licence* “to define what is proper conduct of others toward the matters concerned with their work.” [ibid.: 78]. This is an auto-regulation process which defines both the way the tasks should be executed, and the sense to be attributed to these tasks. This theoretical framework helps me to characterize the “models” of professions and to identify the changes that occur in the 1990's.

The mechanisms that have led to these changes will be analyzed through the reference to another classical author in sociology of profession: Andrew D. Abbott [1988]. He gives a dynamic vision of professions, based on the claim that professions are continually contesting their jurisdictions within a “system of professions”. The main contribution of A.D. Abbott is to consider that professions define themselves by interaction with each other. He built his model against the traditional parallel study of different professions that lead to a linear definition of the professionalization and shows that a profession can rise or decrease and even disappear. Abbott proposes a highly conceptualized model to explain how professions are constituted and evolve, especially by fighting for “jurisdictions”<sup>2</sup>. This is the central concept in his model, the “link between a profession and its work” [ibid.: 20]. For him, “to analyze professional development is to analyze how this link is created in work, how it is anchored by formal and informal social structure and how the interplay of jurisdictional links between professions determines the history of the individual professions themselves.” [ibid.: 20]. The theoretical framework of this paper relies on the articulation of these two approaches of the sociology of professions. Both models are used to characterize and explain the change that happens in the 1990's.

In this study the term “border guard” will be defined as State agent whose mandate is to control the territory in which he has the authority and the legitimacy to intervene. In France, the police services of the *Police Aux Frontières* (PAF) – which is as sub directorate of the National Police force – are entrusted to this mission.

Two professionalization models for border guards, the “traditional” model and the “alien police” model are identified by means of four criteria: the workplace (borders or the entire national territory), the legislation to which the actors refer (administrative rules or penal laws), their main activity (identity checks or investigation) and their *mandate*. I will show how the French implementation of the Schengen Agreement has been correlated with the emergence of a new model of the French border guard profession. Formerly seen as state agents who

<sup>2</sup> That resembles the notion of *licence* developed by E.C. Hughes [1958]

protect national borders, they witnessed the emergence of a new mandate that appeared in the 1990's. I will demonstrate that border guards at that time started to prioritize to fight illegal immigration. This new *mandate* is associated with a full change of the model of border guard, characterized by the location of their work, carried out mostly within territorial boundaries and not at the borders; and secondly by the increasingly “judiciary” nature of their work, with leading investigations objectives, seeking out rings for forged documents and illegal labour. The traditional model aimed at preventing irregular migrants to enter the French territory. The “alien police” model, as an implicit recognition of the helplessness of the French border guards to control the physical national borders, set the objective to detect irregular migrants in France and to deport them to their country of origin. The mandate changed, from preventing irregular migrants from entering the territory to organising the search for irregular migrants within the territory in order to deport them.

How to explain the rise of a new model of French border guard in a context of lifting the border control at the internal borders of the Schengen space? Do multilateral agreement and the emergence of an immigration control policy at the European level explain the appearance of a new model of border guards? The change to be explained here doesn't consist on the replacement of an old model by a new one but more precisely consist on a diversification of the models of border guards<sup>3</sup>. Kees Groenendijk [2002] proposed a domestic focused explanation, stressing the role of national political actors in the use of the European norms to reach objectives at the national level. In a comparative study between Germany and the Netherlands he has shown that the implementation of the Schengen Agreement in the 1990's in both countries have been used by domestic political actors as an “argument for the introduction of new, or the extension of existing internal police controls” [ibid.: 143]. This kind of claim can easily be articulated to the usages approach of Sophie Jacquot and Cornelia Woll. The question is then: do we acknowledge the same kind of usage by French domestic political actors? Or can we identify other dynamics from the border police itself that would have been developed?

The first part of this paper will focus on the changes that have occurred in the professionalization model of the French border guards in the mid 1990's, when France began to implement the Convention Implementing the Schengen Agreement. Then, two independent variables that can explain this change will be examined: the legitimizing usage of Europe by domestic political actors; and the cognitive usage made by professional border guards actors. Firstly, the Groenendijk hypothesis will be tested for the French case. I will then show that the rise of the “alien police” model in the 1990's can be explained by the “legitimizing” usage made by domestic government actors and MPs of the lifting of internal borders. However, this independent variable explains only a time correlation between this legitimizing usage and the rise of the “alien police”. Furthermore, the role of political actors cannot explain the configuration taken by the border guard model in France. The third part of the paper will then examine the hypothesis developed mostly by Andrew D. Abbott that the emergence of the “alien police” model may be the result of a cognitive usage by professional actors. The Schengen Agreement must be seen as an exogenous shock with terrible consequences for the border guards, especially drastic reduction of staff number. The aim is then to show that border police was a central actor in the definition of a new model, and to examine how it takes this shock as an opportunity to set a new jurisdiction. In response to this shock, the representatives of the border guarding profession claimed new jurisdictions that were previously held by other police departments, such as the Judiciary Police. The interaction between two levels of decision-making and between two usages of Europe explains the emergence of a new model of border guards in France in the mid 1990's.

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<sup>3</sup> This point will be further developed later

## The emergence of a new border guard’s model

Models	Workplace	Activity	Norm reference	Mandate
Traditional	National borders	Identity checks	Administrative legislation	Protection of the national space
Alien police	National territory	Investigation	Criminal law	Fight against illegal immigration

### *The traditional model*

In France, since the 1960’s, the police department in charge of border control has become progressively more autonomous. The first structure, the *Police de l’Air* (Air Police), was created in 1963 and was part of the internal security department of the French police. In 1973, this department became autonomous and became the *Police de l’Air et des Frontières* (Air and Border police), depending directly on the French national police. From the 1960’s, a model of border guards is developed, which remained dominant until the implementation of the Schengen Agreement and the lifting of internal borders. In this “traditional” model, the main activity of the border guard is identity control at the national borders. This type of border guards mainly refers to the administrative legislation. The border guards intercede at the sea, air and land borders of the territory.

If the individuals controlled are not in possession of a visa or other document required to enter the national territory, they will then be “non-admitted”. Depending on the type of border at which they arrive, they will be deported directly or held in a detention centre for the period of time required to organize their deportation. The border police is in charge of organizing all the stages of this procedure, which is mainly administrative. In this model of border guard, the balance between border control and the fight against illegal immigration leans towards border control. The mission of the agents of this traditional model is the protection of the territory by preventing irregular migrants to enter the territory. It is closely linked to the notion of national sovereignty.

Whereas this model has decreased since the 1990’s, a part of the workforce of the PAF can still be classified under this model. In fact one of the main consequences of the Schengen Agreement has been to replace fixed and systematic control with random and mobile control at the internal borders. But the kind of tasks and the missions are similar. Moreover, the traditional model still remains, of course, at the external borders of the Schengen space.

### *The “alien police” model*

In the 1990’s a new border guard model emerged under the notion what is called here the “alien police” model. While the government was negotiating the conditionality of the implementation of the Schengen Agreement, the former “*Police de l’Air et des Frontières*” (Air and border police) became in 1994 the DICCILEC (*Direction Centrale du Contrôle de l’Immigration et de la Lutte contre l’Emploi Clandestin* – Directorate for immigration control and the fight against illegal employment). This organizational change is the sign of a broader change in the conception of the role of the border guards in France. The word “border” itself no longer appears in the name of that department. The new vision of the border guards that emerged with the DICCILEC put the emphasis on the fight against illegal immigration more than on trans-border control. It assumes that the main problem is not the holding of the national borders but the detection of irregular migrants and their deportation.

At the same time, several services were created within the DICCILEC. The OCRIEST (*Office Central de Répression de l’Immigration et de l’Emploi des Etrangers Sans Titre* – Central Office for the Suppression of Immigration and the Employment of Undocumented Aliens), was created in 1996. This office is in charge of the coordination of all public administration



bodies participating to the “fight against the rings encouraging irregular immigration”<sup>4</sup>: the Ministry of Defence, the Ministry for Labour and Social Affairs, the Foreign office and the Home Office. To this change at the central level corresponds at the local level the creation of a local office, the BMR (*Brigade Mobile de Recherche* – Mobile Investigation Unit), present throughout French territory (including non border areas), in charge of the local activity of the OCRIEST. These changes appeared in the middle of the 1990’s but the process was confirmed at the beginning of the 2000’s, with the arrival of Nicolas Sarkozy as Minister of the Interior in 2003. This reorganization corresponded to the elaboration of the “alien police” model.

This change can be characterised looking at four criteria: the workplace, the main activity of the border guards, the main norm reference, and the mandate. From 1994, the PAF’s workforce has been reoriented towards the French territory. In 2005, a series of local PAF departments opened in *départements* such as the Yvelines, the Val d’Oise, the Seine-et-Marne and the Oise – all located within the Paris region – which are not border areas, and with a very high migrant rates among the population (among the highest in the French territory, between 9.2% and 16.8%).

Regarding their main activity, the border guards as defined in the “alien police” model are specialized in the detection of forged documents, investigation into illegal immigration rings, and illegal employment of irregular migrants. Their daily activity became more judicial: they develop close links with judicial system actors, and they refer mostly to criminal law, rather than administrative law. They investigate in similar ways and with similar objectives to the detective division of the French Police Force. They have daily links with examining magistrates on specific cases. I had the opportunity to observe in Nice a meeting of two police officers from the Nice BMR with the examining magistrates for their case. They were providing evidence to obtain authorization for pursuing their preliminary investigation against a criminal network providing forged documents to undocumented migrants.

Furthermore, the “alien police” collaborate with numerous other public services that do not usually intervene in the field of security, such as government inspectors concerned with health and safety and conformity with labour laws. Indeed, police officers from the PAF cannot enter a workplace without the authorization of a judge, but thanks to these government inspectors (who can enter any workplace to control conformity with labour laws); they can gain access to workplaces where they suspect irregular migrants are being illegally employed. These police officers also carry out administrative investigation at the request of the Town Hall concerning paper marriages. They investigate couples in which one of the partners is undocumented.

Therefore, the objective assigned to the alien police is not to prevent undocumented migrants from entering the national territory, but to investigate a range of measures for sending them back to their country of origin.

### **Lifting the borders, reinforcing the control**

The Schengen Agreement offered new possibilities for national political actors to use Europe to orient national immigration policies by redefining the role of the border guards. Indeed, there is a clear time correlation between the negotiations of the Convention Implementing the Schengen Agreement, the way in which “Europe” has been mobilized in the parliamentary debate preceding the adoption of immigration legislation in France, and the creation in 1994 of the DICCILEC, the new border police.

#### *The Schengen Agreement negotiation context*

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<sup>4</sup> [http://www.interieur.gouv.fr/sections/a\\_l\\_interieur/la\\_police\\_nationale/organisation/dcpaf/ocriest](http://www.interieur.gouv.fr/sections/a_l_interieur/la_police_nationale/organisation/dcpaf/ocriest)

The Schengen Agreement between France, Germany, Belgium, the Netherlands and Luxemburg was the first step towards the creation of a common European border. Following the adoption of the Convention implementing this agreement, signed in 1990<sup>5</sup>, the lifting of internal Schengen borders was accompanied by the implementation of compensatory measures<sup>6</sup>. This convention provided for the creation of various mechanisms to adapt territorial control to the changes related to the implementation of the Schengen Agreement, and especially for France, which counts numerous internal borders. Provisions on common visa policy and asylum related measures are also created. This agreement was described by Jörg Monar [2001] as a “laboratory” for the future development of common asylum and visa policies, judiciary cooperation and police cooperation issues. But a precise analysis of the content of the convention, of the document produced by the parliamentary commission in charge of evaluating the implementation measures of the agreement<sup>7</sup> and the Circular<sup>8</sup> implementing the convention shows that nothing was said on how to adapt the national border guard corps to the building of the Schengen space. Between 1990 and 1995, the effective date for the Implementation Convention was postponed on several occasions, often at the special request of France. Indeed the government was worried about the consequences of the lifting of internal borders in terms of security and migration control. For several months<sup>9</sup>, France maintained the safeguard clause, and then upheld the borders with Belgium and the Netherlands. In spite of the reluctant implementation of this agreement and the absence of measures regarding the border guards, the CISA has been used by national political actors to strengthen the immigration policy in France.

#### *Europe and immigration in the parliamentary debate*

Despite the fact that it was far from being implemented, and that it finally came into force in March 1995, the Schengen Agreement has been a recurrent reference in parliamentary debates, used by both the majority and the opposition in the early 1990's. There is a clear turning point in the way political actors have been using this reference in 1993-1994. The parliamentary debates preceding the adoption of immigration laws and the implementation of the Schengen Agreement have been analysed in order to shed light on the distinctive ways in which left-wing and right-wing actors mobilized the reference to Europe. Between 1985 (signature of the Schengen Agreement) and 1997, there have been seven laws regulating immigration in France: in 1986, 1989, 1990, 1991, 1992, 1993 and 1997. The rise in the legislative activity and the politicization of immigration issues is very clear during this period. MPs and governmental actors made reference to the building of a European space, the harmonization of immigration legislation, and the Schengen Agreement, but never used these references to Europe to influence the orientation of immigration policies. In fact the debates focused mainly on the opposition of pro vs. anti European<sup>10</sup>.

During the debates preceding the ratification of the Schengen Agreement in 1991, pro and anti-European MPs opposed on the question of immigration policies and the issue of the

<sup>5</sup> Convention Implementing the Schengen Agreements (CISA), signed on June 19th, 1990

<sup>6</sup> “This involved improving cooperation and coordination between the police and the judicial authorities in order to safeguard internal security and, in particular, to fight organized crime. With this in mind, the Schengen Information System (SIS) was set up. SIS is a sophisticated database used by authorities of the Schengen member countries to exchange data on certain categories of people and goods.”

[http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/133020\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133020_en.htm)

<sup>7</sup> Délégation de l'Assemblée Nationale pour l'Union européenne – National Assembly Delegation for the European Union

<sup>8</sup> Circular of March 17th 1995 on the coming into force of the Schengen Convention: dispositions related to the crossing of borders and to the foreigners right

<sup>9</sup> France benefited from a trial period of three months provided for in the SIA (Circular of 23rd of March 1995 on the implementation of the SIA) then invoked in article 2(2) of the SIA to temporarily close its borders.

<sup>10</sup> See in particular the discussion preceding the adoption of the law n°92-190, on 21<sup>st</sup> of January 1992, first session

lifting of the border was just one more opportunity to discuss the European project. At that time, there was a general agreement on the convention, both left-wing and right-wing governments having negotiated the CISA (from 1985 to 1990). The debates were held mainly by the anti-European MPs from left-wing and right-wing parties. These debates revealed more of a europhile/eurosceptic divide. In fact, until 1993, Europe was evoked by governmental actors whether from right-wing or left-wing governments, only to boast of the efforts to cooperate with other Member States<sup>11</sup>. The only actors mentioning the increase in criminality that could result from the lifting of internal borders were the eurosceptic from right-wing parties. These MPs feared every new step towards European integration: the Schengen Agreement and its implementation were perceived as a way to weaken the State sovereignty. Europe was not *used* to pass new measures on immigration, but on the contrary, immigration was *used* to participate in the debate on European integration.

#### *The turning point: 1993-1994*

The years 1993-1994 represent a turning point: for the first time a “usage” of Europe as defined by Jacquot and Woll is observed. Indeed “the European Union [had] become a vector of change by providing new resources, references and policy frames, which national policy actors use strategically.”[Jacquot and Woll, 2010: 113]. In this case, the European agreements are used by national actors to legitimize their immigration policy; “actors rely on the image of ‘Europe’ to communicate implicit content or employ related discursive figures such as ‘The European Interest’, European constraints’, ‘the application of the Maastricht criteria’ to legitimate political choice.” [ibid.: 116]

The first “Pasqua law” passed in 1986. It was the first very restrictive law in matters of immigration. But the “Joxe law” passed in 1989, when the left-wing had come back into power, and cancelled most of the previous law’s measures. The right-wing had to wait until 1993 to see the second “Pasqua law” passed, when Charles Pasqua came back as Minister of Interior<sup>12</sup>. This law made legal immigration more difficult.<sup>13</sup> It introduced new measures, banning any person who had previously been deported from returning legally to France, making it impossible for foreign students to obtain family entry and settlement, imposing administrative detention for irregular foreigners unable to provide the documents necessary for their deportation and giving mayors the right to cancel any wedding suspected of being a paper marriage.

Several references to the Convention Implementing the Schengen Agreement were made during the discussion of the law by Charles Pasqua, in charge of elaborating and presenting this law. The members of the majority party had two main types of reference to Europe in these debates. First, the lifting of the internal borders of the Schengen space would have terrible consequences in terms of security for France. The analysis of the parliamentary debates shows that this kind of argument is used by either euro-sceptic MPs from the right-wing majority, and member of the Front National (FN – National Front, extreme right-wing). Marie-France Stirbois, deputy of Dreux, was the only FN deputy from 1989 to 1993. She intervened during the debate preceding the ratification of the Schengen Agreement in 1991 using the fear about a massive immigration coming from Eastern Europe. But she didn’t intervene in the debate preceding the Pasqua law in 1993.

Second, new measures introduced under the law were justified by the obligation to implement the previously ratified international agreement. This is the argument made by C.

<sup>11</sup> See the discussion preceding the adoption of the “Pasqua” Law n° 93-1027, on the 15<sup>th</sup> of June 1993, first session, intervention of the Interior Minister, Charles Pasqua and

The discussion preceding the adoption of the law n° 90-34, on the December 18<sup>th</sup>, 1989, 2<sup>nd</sup> session, intervention of Interior Minister, Pierre Joxe

<sup>12</sup> Charles Pasqua has been Interior Minister of the Chirac government from March 1986 to May 1988, and Interior Minister of the Balladur government, from March 1993 to May 1995.

<sup>13</sup> The “Pasqua” Law was an implementation of its/his motto: “Immigration zéro”.

Pasqua. During the parliamentary debate, despite his precedent restrictive stand on immigration and on the European project, he appeared as “pro-European”, praising this law as the next step toward harmonizing European legislation on immigration. Charles Pasqua being a well-known euro-sceptic, we can guess that he adopted this point of view to defend the government. During this period, he referred to the same argument to pass new measures on immigration control. Two measures will be specifically analysed.

The first one concerns the law on identity checks<sup>14</sup>. On August 11<sup>th</sup>, 1993 a law was adopted creating a “Schengen zone”, which encompasses a territory delimited by a line of 20km from every internal country border. In this zone, identity checks were facilitated, police officers could perform identity checks with fewer restrictions than in the rest of the national territory. This law provided for the zone being extended up to a line of 40km from the internal country borders. This law was declared unconstitutional by the Constitutional Council and the extension was deleted. When presenting this law at the National Assembly, Charles Pasqua argued that this measure was a simple application of the CISA. Nevertheless, no mention of this zone is made in the CISA, nor in the parliamentary debates preceding its ratification. This particular measure was condemned by the European Court of Justice in June 2010<sup>15</sup>. The second measure that was introduced using this argument was a sanction against “any person who assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties [of the Schengen Agreement]”<sup>16</sup>. Sanctions were provided for in the CISA, but the mention “for financial gain” was deleted in the French application of this measure under the French law. In effect, the French definition of a “smuggler” was broader than the CISA definition. There was no requirement to have received financial compensation for helping an alien to enter the Schengen territory irregularly to be pursued as “smuggler” under French law. Anyone who helped aliens to enter irregularly could be fined up to 20,000 francs or sentenced to 5 years in prison. Before the application of the CISA, the French law on immigration already provided for sanctions (monetary and prison sentences) but the range of sanctions was broader: “from two months to five years” in prison and “from 2,000 to 20,000 francs”. The new French law set the sanction at the highest level possible.

These two cases show how right-wing government actors use Europe as a legitimizing tool in order to adopt more restrictive laws on immigration. Usage has been made of the Schengen Agreement because the argument is used to go beyond the strict application of the “accompanying measures” provided for by the CISA. As Sophie Jacquot and Cornelia Woll point out, “legitimizing usages are linked with the general public and can take place up and downstream of the policy process (during the framing of the diagnosis and the solutions or during the justification of the reform.)”[ibid.: 116]. In this case it is used as an ex-post justification of the reform. These laws can be seen as instruments to strengthen the authority of the border police: the creation of a “Schengen zone” is perceived as a compensatory measure for the lifting of the internal borders. This zone made it possible to implement the post-Schengen control principle: from *fixed and systematic* to *random and mobile* controls. These changes in the parliamentary and governmental arguments correspond to organizational changes to the French border police. Indeed the DICCILEC whose orientation towards the fight against illegal immigration has been already mentioned was created in 1994. This usage remains in the limit of the strict implementation of international agreement; governmental actors did not play with the security argument, as far as the parliamentary

<sup>14</sup> Law 93-992 declared unconstitutional by the Constitutional Council in its declaration n°93-323 DC of August 5<sup>th</sup>, 1993

<sup>15</sup> In the Judgment CJUE, 22 June 2010, C-188/10 and C-189/10, Aziz Melki and Sélim Abdeli.

<sup>16</sup> The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, *Official Journal L 239*, 22/09/2000 P. 0019 – 0062, Article 27, (1)

debate is concerned. The strengthening of the border police is then paradoxically highly linked to the European level.

Looking at the various actors’ strategies with regard to Europe leads to take into account the perspective of the abolishment of internal border control in the design of a new “model” of border guards. A clear time correlation is observed between the creation of the DICCILEC, the negotiation of the CISA and the usage by governmental actors of Europe to widen the range of interventions of the border police. But it is only a correlation and the extension of the mandate of the French border police cannot be explained only by the actions led by political actors. Furthermore, this independent variable does not provide any clue about the orientation taken by the change. In the next section I will show that professional logics can, interestingly, complete our understanding of the rise of the “alien police”.

### **Attack is best defence, in search for a new jurisdiction**

In this part I claim that another independent variable can explain the change of the French border guard model: the cognitive usage of the Schengen agreement by professional actors. The seminal book by Andrew D. Abbott, *The system of professions* [1988], offers us an interesting framework for analysis, providing model of professionalization that can easily be used to explain the emergence of the alien police in the 1990’s in France.

First and foremost, one has to wonder whether it is possible to apply Abbott’s framework to the particular case of the French border guard corps. In Abbott’s view, one of the criteria for considering a group as a profession is that this group claims to be a “profession”. This case does not apply to the French border police. French border police agents do not claim to constitute a separate profession from the French National Police. They feel like they are members of the police, but not especially of the border police. Indeed, most of the border police agents, above all the officers, have worked in several police departments: detective division, riot squads, police station. However, the professional logics can be influential and can be studied even if the group that is under study is not identified as a profession. The point is to highlight professional logics as one more set of logics that can explain individual behavior. In that sense, this case study fits into Abbott’s system of profession.

The claim for jurisdiction is realized through three mechanisms: diagnosis, inference and treatment. A profession claiming a new jurisdiction proposes a new *diagnosis* on the best way to solve a problem and the corresponding *treatment*. The *inference* corresponds to the situation where the link between *diagnosis* and *treatment* is not “routinized”, i.e. there is a debate on the link to establish between the two. These elements can be associated to the *mandate* defined by E. C. Hughes. Applying Abbott’s model to this case gives another explanation for the emergence of the “alien police” model. The new *diagnosis* set up is that the control cannot remain at the limit of the territory and should be done within the territory, the new “enemies” being the illegal immigration rings. The advised *treatment* is then to judicialize the work of the border guard and to put the emphasis on the investigation against these ring of illegal immigration. The *inference* is the criminalization of the migration phenomena. Professionals have thus redefined a new jurisdiction for border guards after the signature of the Schengen Agreement.

Abbott mentions formalized elements to describe the mechanisms leading to this reallocation of jurisdictions: people who are doing the same kind of tasks in different organizations gather, to claim a proper jurisdiction: this mechanism is called amalgamation. He describes other situation where people gather by differentiation of their clientele or by specialization. Amalgamation and differentiation are the two key mechanisms that explain the claim of jurisdiction by groups of professionals. The mechanisms that lead to the creation or

the transformation of jurisdiction could be identified as a specialization of a part of the border police. In Abbott’s model there are two kind of specialization: a specialization by increasing complexity of professional knowledge that leads to a loss in the interchangeability of individual professionals; and a specialization due to change in “an exogenous social structure shaping the profession” [ibid.: 106], may it be workplaces or client groups. The “alien police” emerged through a specialization resulting from an exogenous shock: the lifting (or the perspective of the lifting) of the internal borders following the signature of the Schengen Agreement and a change both in the client groups (the illegal immigration rings) and in the workplace (the national territory). The external shock – the perspective of the lifting of the internal borders – led to the emergence of a new specificity among the border guards profession fighting against new clients, the illegal immigration rings; within a new workplace, the national territory.

In one of the interviews conducted with a former police officer working at the PAF directorate in the 1990’s, he explained that “*within the PAF there was great anxiety about the future, we had to accept that each Member States would manage their own borders and play the game, and not just act following their own interests. We had particular doubts about Italy; [...] we thought that they would never hold their borders.*” The lifting of the internal borders is perceived as a shock, and gave rise to the emergence of a new diagnosis. He added: “*In 1989, we started to think about the evolution of the PAF. The idea was to work on rings and forged documents*”<sup>17</sup>. According to him, his hierarchy gave him the opportunity to manage a small team of police officers in Paris at the *Gare du Nord* train station that would be the embryonic idea of an *office to fight illegal immigration*. When the DRIF (*Direction Régionale de l’Immigration et des Frontières* – Regional Directorate of Immigration and Borders) was created 1991, he was appointed to be in charge of the new directorate. They worked there on immigration regulations application, risk analysis concerning immigration flows and detection of forged documents. “*The idea was to add on some judiciary activities, to create an Immigration Office.*”<sup>18</sup> This former police officer claimed that the DRI became in 1996 the OCRIEST (*Office Central de Répression de l’Immigration et de l’Emploi des Etrangers sans titre* – the immigration and Employment of illegal migrants suppression office). As mentioned previously, the creation of the OCRIEST is one of the elements which contributed to the change in the border guard model from traditional to “alien police” model, in the mid 1990’s.

The emergence of a new model of border guards can be traced out way before the implementation of the Schengen Agreement (in 1995) and the debate at parliamentary level and governmental level on the evolution of the fight against illegal immigration. My hypothesis is that there has been an input made by professional actors to redefine the role of the border police, a cognitive usage of the perspective of the ending of control at the internal borders of the Schengen space. Identifying the professional dynamics helps highlighting another usage of Europe, made by professional actors in order to redefine their jurisdiction. In fact, as shown by Kees Groenendijk [2002], there has been a claim by the professional organization of Dutch border guards to avoid cuts in the workforce. But it only led to the reallocation of these border guards to the external borders and to the creation of “mobile patrols” [ibid.: 136], enforced with the power to perform identity checks in the trains crossing the borders. In the French case, border guards use the Schengen shock as an opportunity to redefine their jurisdiction.

Abbott does not only consider individual professions, but the entire “system of professions”, the interdependence between tasks and jurisdictions of the professions. The change and dynamics of the attribution of jurisdictions are explained by this latter. The contest for a jurisdiction produces a “chain of disturbance through the system until absorbed either by the professionalization or deprofessionalization of some groups or by absorption

<sup>17</sup> Interview with a former police officer who worked in the central administration in the 1990’s

<sup>18</sup> Interview with a former police officer who worked in the central administration in the 1990’s

within the internal structure of one or more existing professions.” [Abbott, 1998: 90]. This chain of disturbance can have external sources or internal sources, for example a group looking for a new jurisdiction. One of the results of my field work is that the border police entered into competition with the detective division of the National Police in the mid 1990’s. Indeed, the former police officer evoked this reason to explain the failure of the DRIF. The detective division was opposed to any development within the PAF of an activity based on criminal law, especially fighting against criminal rings linked with prostitution, illegal immigration and forged documents. The comparison with the situation in Spain can shed some light on the division specialized in human being trafficking depends on the detective division in France, and on the border police in Spain. The fact that a same jurisdiction has been allocated in different ways in two different countries shows that this jurisdiction is questionable. Here again the professional dynamics appear to be fundamental to understand the national configurations of the border police. Moreover, on several occasions, discrepancies can be observed in the task assigned to one or another of the several national Police division. That is notably the case, in France, for the management of detention centers for irregular migrants which has been placed within the border police’s jurisdiction in recent years.

In fact the PAF issued in 1991 an activity report describing a general rise of all activity indicators: number of illegal immigration rings smashed, number of forged documents identified and number of persons arrested. For now this document could not be found; the reference was found in a parliamentary debate, when Nicole Catala, (right-wing MP, member of the RPR<sup>19</sup>) used it as proof of the danger linked to the lifting of the internal borders<sup>20</sup>. More work remains to be done on this issue but it can be assumed that the activity report was used by the border police to draw the public attention to the necessity to increase their activity within the territory. This example shows the interaction between several actors and the interactional use that is made of Europe.

## Conclusion

Most of the studies on immigration policies stress the importance of the political environment and the rise of the FN in the late 1980’s to explain the shift towards criminalization of migrants<sup>21</sup>. This paper shows that, despite a clear effect of national political stakes, Europe and the building of the Schengen space is one more instrument, either for political actors as a legitimizing usage and for professional actors as a cognitive usage. Furthermore, this is the interaction between the two logics, internal and external, that explains the new configuration of the border guard corps and the emergence of the “alien police” model.

Abbott’s framework allows to characterize this change of professional model, identifying the kind of change that affected the jurisdictions of the border guards in that time period. It also provides elements to understanding the link to be made between European policies and domestic policies. In the first part, I emphasized the legitimizing usage made by governmental actors and MPs of Europe to pass new laws on immigration. Abbott’s framework makes it possible to highlight other domestic dynamics that are internal to the

<sup>19</sup> The *Rassemblement pour la République* (RPR) was a right-wing party, claiming to follow Gaullist principles and has been created by Jacques Chirac in 1976. It has been dissolved in 2002 into the UMP (*Union pour un Mouvement Populaire*)

<sup>20</sup> Minutes of the debate preceding the ratification of Convention implementing the Schengen Agreement 2<sup>nd</sup> session on Monday 3<sup>rd</sup> of June 1991, Journal Officiel

<sup>21</sup> « le parti de Jean-Marie Le Pen a nettement contribué à donner à la question de l’immigration sa place centrale dans le champ du politique et à semer le trouble dans les rangs des grandes formations politiques qui tenteront de résorber leurs divisions intestines en s’accusant mutuellement de faire le jeu de l’extrême droite. » [Viet, 1998, p447]

profession. But the change could only happen because of the interactions between these two sets of actors and the usage they have made of the Schengen Agreement. The theoretical framework inspired by the sociology of profession, allows assessing the nature and the mechanisms of change within an institution: the profession of the border guards. This change can be easily described as a professionalization story, but this professionalization only happened in interaction with the European level and governmental actors. It resulted from the interaction between internal logics (led by professional actors) and external logics (led by political actors) and the European level.

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