Panel B - Brexit

Presentation:

“The Swiss involvement in the Schengen space: a model to operationalize the Brexit?”

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Note: the opinion expressed doesn’t bind the members or the management of the CEVA Security Body project (Org Sec Ceva).

Abstract:

Since the advent of the free movement, the task of securing mobility within the EU has shifted the attention of analysts and practitioners from borders between the Member States to the external borders of the Schengen area. While the EU external borders are subjected to intensive scholar scrutiny, internal borders remain understudied.

The Schengen area, which is defined by both its internal and external borders, is therefore intrinsically based on a hiatus. For more than 30 years, this space has been built on a series of compensatory measures – permanent or temporary – in the field of security; and two major developments, the enlargement to 26 members – four associated countries including Switzerland – and the communitarisation of the Amsterdam Treaty.

The internal borders' control constitutes a full domain of the public action, and the border a meeting place of national territories where multiple tensions are applied between the sovereignty and the authority of States. It's the object of an intense reflection both from the point of view of the academic debate¹, think tanks and national central administrations. Above all centred on the outside borders of the European Union, the studies led by the central political

¹ Research agenda on studies of border security practices (Côté-Boucher, Infantino and Salter, 2006)
authorities focus on the control of the borders and on the consolidation of the usual elements of the compensatory measures - strengthening of the protection of the outside borders.

The internal borders of the Schengen area, as for them, remained for a long time the poor sibling of the debate concerning the security. This is all the more paradoxical as the Schengen area created de facto the space of internal borders and constitute the place of daily criminality realization.

In the perspective of the Brexit, the security of the internal border area gives rise to multiple options and the opportunity to rebalance this hiatus between free movement and security within this space. Within this phenomenon of security, Switzerland applies a complex framework of security cooperation; and didn't wish to implement an agreement of cooperation for all borders but choose to define a peculiar agreement to every country.

Based on the methodological framework of action research, and registered in the theoretical framework of the critical security studies, this paper defends the hypothesis that Switzerland can offer a model of cooperation with the European Union in the field of the security which could be used in the case of the Brexit by the UK authorities: the security cross-border cooperation proposes a particular field of security marked profoundly by the bilateralism and allows us to have a laboratory where the governance of security and crisis reconstruct itself in a constant way.

PhD candidate, in charge of the project ‘’Organe de sécurité CEVA - LEMAN-EXPRESS’’ - a cross-border cooperation project about homeland security and civil safety of a new railway line between Switzerland and France-, my positioning puts me in the core of a constellation of policy practitioners, police forces and leading politicians.
Introduction

According to King Solomon, "borders are the beginning and the end of everything". The Schengen area, which is defined as much by its internal as external borders, is therefore intrinsically based on a hiatus. However, this area is a precious asset in terms of trade - a value of around €1.5 billion per year\(^2\) - and an expression of the initial economic vocation of European integration. For more than thirty years, this area has been built on a set of compensatory measures in the field of security; and has undergone two major changes: the enlargement of the number of members - 4 associated countries including Switzerland - and the communitarisation of the acquis by the Treaty of Amsterdam. Free movement is a particularly valued prerogative within the EU. This principle of free movement rhymes from the outset with ease of border crossing by deconstructing internal border control points in a territory, as well as the development of surveillance and control systems - the European smart borders programme\(^3\). When major challenges - migration crisis and terrorist attacks - reveal their flaws and put pressure on both the doctrine and the structure of this area, it no longer seems easy to move safely in Europe; and the questioning or even disappearance of the Schengen area becomes a recurring theme in literature\(^4\).

Border control is a field of public action in its\(^5\) own right; and the border is a meeting place for the territories of States where there are multiple tensions between the sovereignty and authority of States. It is the subject of reflection from the point of view of academics\(^6\), think tanks and national central administrations. Above all, the studies carried out by the central political authorities focus on border control and on consolidating the usual elements of compensatory measures - strengthening the protection of external borders -. The internal borders of the Schengen area, on the other hand, have long remained the poor relation in the security debate. This is all the more paradoxical as the Schengen area effectively creates the internal border area. However, this space is important because it is a place where everyday crimes are carried out.

As a result of the terrorist attacks on the Bataclan (Paris, 2015) and Thalys (Brussels-Paris Line, 2015), the internal borders were given real attention. Nevertheless, the security of internal borders remains, moreover, very often only addressed in the context of border restoration. It is only very recently that the central administrations propose to study how to clarify the conditions under which the Member States may carry out checks in their cross-border area outside periods of re-establishment of internal border control\(^7\).

This context of tension questions the ability of political authorities to rebalance this gap between free movement and security within this space\(^8\). Cross-border cooperation offers a particular field of security marked by bilateralism.

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\(^2\) France Stratégie 2015 study report
\(^3\) "Finally, freedom of movement", GISTI, Plein Droit 2018/1 (n°116), p.35.
\(^4\) 7th National Assises of Strategic Research, 2016, High Council for Strategic Training and Research
\(^6\) Research agenda on studies of border security practices (Côté-Boucher, Infantino and Salter, 2006)
\(^8\) Report of the Senate Inquiry Committee n°484 (2016-2017) - France.
In this perspective, the securing of the internal border area gives rise to multiple developments. Within this security phenomenon, Switzerland did not wish to implement a cooperation agreement for all its borders but chose to define an agreement specific to each country. The Confederation is aware of four cases of bilateral cooperation: Germany (Basel Liaison Office), Austria (Schaanwald Liaison Office), France (Geneva CCPD) and Italy (Chiasso CCPD). The implementation of a "common centre" or "police and customs cooperation centre" (CCPD) has only been adopted in the context of Switzerland's cooperation with France and Italy. These agreements embody the main innovation of Franco-Swiss cooperation through the particular purpose of the CCPD. The latter reflects this form of bilateralism, which shows differentiated practices according to the border: there is no uniform solution, unlike external borders.

This article examines how the implementation of security measures in the Franco-Valdo-Geneva cross-border area has led to the development of a security middle management system at the heart of this area through the study of the Geneva Police and Customs Cooperation Centre. This security could not be based on a unified solution. On the contrary, it has given rise to various changes that are conducive to the gradual emergence of new know-how and skills in border management. This emergence phenomenon favours intermediate actors who have developed specific knowledge of border zone management through practices such as mixed patrols or information exchange based on the information systems developed by Schengen.

I - An observation based on a research action experience.

The observation was conducted in a privileged setting: I am in charge of securing a cross-border rail project between Geneva and Annemasse in France: Ceva - Léman Express.

From 15 December 2019, the Léman Express, a genuine Franco-Swiss link, will connect 45 stations over 230 km of lines and will welcome more than 50,000 passengers per day on the 240 trains. The mission of Le Léman Express is to combine simplicity, comfort and connections to travel in Rhône-Alpes and the canton of Vaud, work and live in Greater Geneva.

Diagram 1 - CEVA project layout. Source: CEVA Switzerland project.

The RER Léman Express RER prefigures the implementation of the 4th railway package. Thus, in Article 7 of the ECVA Convention, SBB Infrastructure is designated as infrastructure manager - IM - for the border section for traffic management tasks. The agreement signed between SNCF Réseau and SBB Infrastructure also provides for the delegation of missions and responsibilities to SBB Infrastructure for the maintenance of certain installations.

SBB Infrastructure is therefore in possession of a safety licence on the French national rail network - RFN - between the State border and the entrance signals to Annemasse station and is responsible - in particular for control and monitoring - for traffic management, incident
management and facility maintenance. SBB Infrastructure is also responsible for describing the organisation enabling the IM to manage, in collaboration with the competent Franco-Swiss authorities, accident or serious incident situations.

Public transport, in particular, rail and guided public transport, has been mobilised on many occasions, both as targets and unfortunate scenes of numerous terrorist attacks - Saint-Michel in 1995, Madrid in 2004, London in 2005 or Thalys in 2015 - and as a vehicle for the mobility of crime. The mobility-security link, therefore, presents a paradox: the same vector can be both a target of crime and a mobility issue for this crime - cheap long-distance buses, circulation of prostitution groups, mobility of merchants, etc.

However, this link is generally addressed through migration issues, whether at the European or Anglo-Saxon level. Thus, the formulation of public mobility policies remains insensitive to a dialogue with security cultures that favours a partitioning between prevention in the context of public transport and security by state forces. Finally, there is a lack of interest in mobility safety due to a separation of analyses between "land traffic" specialists on the one hand and police activity and organisation analysts on the other.

Nevertheless, cross-border mobility exerts informal pressure on States to exercise their monopoly in border management and the resulting particular forms of resistance: it imposes cooperation on specific border sections in order to reaffirm national security objectives that are now harmonised on transnational issues. On the contrary, cooperation, rather than undermining sovereignty, is a factor in protecting this element of the national interest. Cross-border cooperation based on joint border management, therefore, requires strengthening mutual trust in security. As a local territory, cross-border territories, therefore, present specific challenges both at a local level and at the level of the countries concerned.

On 19 March 2014, the agreement between the Government of the French Republic and the Swiss Federal Council concerning the modernisation and operation of the Annemasse railway line in Geneva was signed in Paris. This document is primarily concerned with the provisions relating to the construction project and the future operation of the railway line by entrusting it to the Swiss infrastructure manager. Nevertheless, the agreement includes specific provisions on security.

Based on Article 13 of the Franco-Swiss CEVA Convention⁹ and Article 4.4.2 of the TSI-TRS¹⁰, the Federal Office of Transport (FOT) mandated the "Org Sec Ceva" project in July 2014 to ensure that this infrastructure has an appropriate security framework. The initial phase of the project's creation will make it possible to understand the complexity of cross-border cooperation due to the multiplicity of actors and overlapping cooperation structures. On 30 September 2015, after more than two years of inter-state negotiations on the sole organisation of the cooperation project of the Swiss and French delegations, the "Org Sec Ceva" project was officially established.

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⁹ Convention between the Swiss Federal Council and the Government of the French Republic concerning the modernisation and operation of the Annemasse railway line in Geneva concluded on 19 March 2014, known as the Ceva Convention.

When the work of the "Org Sec Ceva" project begins, the urban area is already securing its territory through a series of public policies of cross-border cooperation in the field of security, whose institutional actors have themselves highlighted the limits and weaknesses\(^{11}\). If the "Org Sec Ceva" project is only an opportunity to look back on an already existing cooperation, it makes it possible to work on the question of security and its relationship to mobility: the latter intervenes with its own challenges within an economically integrated but politically fragmented territory: the security community is led to new reflections and to question the evolution of the construction of cross-border cooperation following the development of this new mobility vector. In the case of the Leman Express RER, there is no natural barrier such as a sea or a mountain: the border is integrated into the territory. There is even overlap of borders.

In view of the cross-border field cooperation already underway, it seemed relatively simple to set up a kind of adaptation of these pre-existing elements to create a binational security tool. Indeed, the "Org Sec Ceva" project makes it possible to observe and update an obvious complexity of creating a cooperation tool and gives the opportunity for innovation in project management of a public policy issue in the field of security.

The agreement provides the project with the starting point for its work. It proposes a vision of security to be addressed in the absence of a forward-looking definition of security. Indeed, when the first exchanges between countries in the field of security began, the risk analysis focused on the civil security dimension. As the history of the territory is marked by the Mont Blanc Tunnel disaster, concerns are focused on the objective of not experiencing such an event again. Thus, civil security appears to be the only security objective under the CEVA Convention: the steering committee is a civil security committee\(^{12}\).

However, the balance of the project has evolved significantly towards a predominance of public safety. In the short term, the Leman-Express RER may lead to a massification of low-intensity insecurities against which security actors wish to organise themselves to fight effectively. In view of the current events disrupted by the multiple terrorist attacks, local decision-making authorities, particularly in France, have therefore taken up this public security issue and rightly imposed it as a priority objective. The development of the project structure reflects a change in the appreciation of the project as a platform and its ability to change blocked situations.

\(^{11}\) Article, 16 March 2016, *Le Temps*, 'Summit meeting to fight cross-border crime'.

\(^{12}\) Ceva Convention - paragraph 3 of Article 13 -.
In a comparative approach, we could observe that other borders are crossed daily by mobility vectors, such as Tylo with Italy, Basel with Tram, etc. However, in each of these examples, the motivation for security is different - migration, crime, etc. - and the same is true of the proposed mechanism.

2 - Switzerland and the European Union

2.1 - “Altruistic individualism” and the strategy of the “good European pupil”.

By referendum, Switzerland entered the area of constituted free movement. However, this integration is accompanied by a size limit. The Swiss Confederation remains intractable on its independence from Brussels by refusing its integration into the European Union. While the discourse of a borderless world remains limited to a few economic groups such as the European Union, Switzerland's inclusion in the Schengen area tends to blur and go beyond the usual distinction between external and internal borders to take into account the globality of its management in a cross-border dimension within the Schengen area.

Switzerland's entry into the European Security Area must be interpreted as the time and beginning of a Europeanisation of security in Switzerland\textsuperscript{13}. This desire to find a new and adequate response is part of a discourse aimed at resolving the contradiction between independence and free movement in the heart of the European continent on the one hand, and the obligation to organise security on the other.

Beyond its position behind the European Union, Switzerland is aware that it must build its internal security around a variety of partners and is instead trying to align itself with standards common to Europe in terms of the production of crime, organised crime, political or terrorist violence. In the latter area, experts and public actors now agree that Switzerland, although

\textsuperscript{13} DAVIDSHOFER Stephan, TAWFIK Amal and HAGMANN Jonas,"Analysis of the field of security in Switzerland: towards a hypertrophy of internal security and other methodological considerations", \textit{Cultures & Conflicts}, 102 | summer 2016
neutral, to be well connected to the clan of Western democracies is no longer absolutely immune to mass attacks in its public spaces. It has therefore chosen to strengthen its position within the Schengen area by strengthening the various aspects of its cross-border cooperation through various bilateral agreements.

At the moment, Switzerland is going through a difficult period of negotiations with the European Union. The latter is determined to put an end to the doctrine of bilateral agreements and to propose new positioning for Switzerland within the European Union. Nevertheless, this implies the adoption of European law and the submission of Swiss law to the European Court.

Switzerland has never concealed its philosophy and doctrine underlying its relationship with the European Union: an asymmetrical relationship to its benefit. Since the vote against mass immigration in 2014, Switzerland has assumed and sought a balance between the concepts of free movement and national preference by opposing the right of establishment in its territory involved in free movement and by trying to put a limit to this free movement.

This difficult relationship has become particularly tense and complex with the perspective of Brexit. Indeed, Switzerland is currently negotiating a framework agreement aimed at challenging all bilateral agreements.

Faced with a European Union that would like to raise fears of isolation, the Federal Council confirmed that "the EU and Switzerland are close allies and privileged economic partners, whose close partnership reflects a high level of economic interdependence and shared values".

Nevertheless, in its power struggle, the Federal Council confirmed the importance of direct democracy in defining public decision-making, which "is in line with the Swiss traditions of conciliation and the search for compromise". It wishes to preserve its economic objectives, the stability of its economy and the preservation of its capacity for growth.

The current version of the framework agreement has three main points:

- certain aspects of state aid,
- Directive 2004/38/EC on the free movement of citizens of the Union,
- wage protection in relation to the secondment of workers.

With regard to the Directive on the free movement of citizens of the Union, Switzerland confirms its position that "no provision of the Institutional Agreement may be interpreted as an obligation for Switzerland to take over the said Directive, as well as its developments, and that any takeover of the said Directive by Switzerland may only be done by means of negotiations between the Parties".

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14 Swiss security: between neutrality and the need for cooperation (Stephan Davidshofer, Amal Tawfik and Jonas Hagmann), "Switzerland, another vision of Europe", International Issues N°87 - September-October 2017
15 Acceptance of the votes of 9 February 2014 on the initiative against mass immigration.
16 Final draft of 23 November 2018 of an agreement facilitating bilateral relations between the European Union and the Swiss Confederation in those parts of the internal market in which Switzerland participates.
17 Letter from Mr Ueli Maurer, President of the Confederation, to Mr Jean-Claude Junker, President of the European Commission dated 07 June 2019 on the institutional agreement between Switzerland and the European Union.
18 Ditto.
The harshness of these negotiations shows that the question arises of the definition of the status of third states and ultimately of the physiognomy of the European Union. Like General De Gaulle, Switzerland has always considered the European Union to be neither a federation nor a confederation with which it should have strong economic links but preserve its autonomy. She seems to be strengthening her position.19

2.2 - The place of bilateralism within this area: a response to the persistent contradictions of the Schengen area.

Police cooperation is usually described and analysed as a nebulous mosaic20 that has been built on proliferation and entanglement of the most diverse initiatives and instruments, in a pragmatic and empirical way, without a real evolution strategy. All the relevant studies show a clear difference in the assessment of cooperation mechanisms and police practices depending on whether one is addressing negotiators, administrators, politicians or operational staff. The context of international police cooperation thus appears as a background, which remains that of competition. International police cooperation is therefore marked by a real gap between its objectives and the concrete applications where the strongest partners make their national priorities a common objective.

Cross-border security does not seem to escape a global phenomenon of increasing levels of decision-making. Within this complex multi-level architecture - European, bilateral and local - bilateral agreements constitute the third pillar of Switzerland's international security cooperation and aim to strengthen the security of the Schengen area. To this end, it most often incorporates the provisions of European Union law into its bilateral agreements while consolidating its participation in European multilateral cooperation arrangements. In contrast to the single legal basis expected by the Court of Justice, it is a complex legal architecture that is implemented and underlies the risk of limiting or forcing the actions to be taken.

Switzerland must build its internal security on the basis of a variety of partners. Thus, France opposes the Swiss partner with different mentalities and working procedures: Switzerland and its confederal model differ radically from the model of the French centralised state. It has therefore chosen to strengthen its position within the Schengen Area by strengthening the various aspects of its cross-border cooperation through various bilateral agreements.

Cross-border cooperation is formalized with the 1998 Berne Agreement. This agreement comes in response to Switzerland's refusal to join the European Economic Area (EEA) in 1992. This refusal is the subject of an epidermal reaction on the part of certain countries - Greece, Spain, Luxembourg and the Netherlands - which refuse that the latter be authorised to participate in the cooperation mechanism constituted by the Schengen Convention.25

21 Ditto.
The Berne Agreement\textsuperscript{26} proposes innovative legal advances inspired by the CAAS\textsuperscript{27}. The objective is to facilitate the exchange of information by trying to find solutions to the limits of mutual legal assistance. The Berne Agreement then faces obstacles to domestic law, in particular with regard to the principle of unconstrained access. The issue is then the traceability of the information. In addition, it allows the creation of new transnational skills through cross-border observations. Nevertheless, there remains the definition of direct cooperation, which remains the basis for such cooperation.

Aware of the limits of the Berne Agreement, the Swiss side began an exchange process in 2004 on the need for revision: this will lead to a negotiation period from 2005 to 2007\textsuperscript{28}; and the conclusion of a new revised agreement on 09 October 2007 in Paris. The Paris Agreement has a generalist security focus which is reflected in the expression of the desire to effectively combat cross-border dangers as well as an international crime through a cooperative security system". Thus, the wording of its preamble identifies the general areas of cooperation:" concerned to facilitate as much as possible judicial, police and customs cooperation"

The main advantage of this agreement is that it provides many clarifications of procedures and competences\textsuperscript{29}: definition of geographical scope beyond the border area defined in 1998, expansion of transmissible information, confirmation of the provisions of cross-border observations.

This agreement is a particular step in Franco-Swiss bilateral cooperation: this first experiment will institutionalize existing direct cooperation, but informal and based on human contacts on both sides of the border by security actors. Thus, it is interesting to measure the impact of the G8 organisation in Evian\textsuperscript{30} on the modus operandi proposed in the new 2007 agreement: the comparison between the 1998 and 2007 cooperation agreements is illuminated in a different way to the prism of the drafting of the Evian agreement. Indeed, this allows us to measure the importance of the feedback received as a result of this organisation as well as the limits of cross-border cooperation observed. Already fully aware of the limitations of the existing agreement, the 2007 Paris Agreement incorporates feedback from operational experiences to provide a new legal framework for greater legal certainty.

The Paris Agreement confirms the existence of an existing cooperation\textsuperscript{31} that wishes to continue regardless of the institutionalisation of cross-border cooperation through the CCPD. This direct cooperation is reflected in mixed patrols despite the limitations induced by different definitions of "apprehension and apprehension"\textsuperscript{32}.

Articles 5, 6 and 7 of the Paris Agreement are particularly interesting. Indeed, they give a particular perspective to the desire to build common security. The adjective "common" is used systematically both in terms of interests and analysis. Article 7 is relevant to the use of the terms "threats" and "fight", which consolidate a change in vocabulary. Article 8 is significant in that

\begin{itemize}
\item Agreement of 11 May 1998 between the Swiss Federal Council and the Government of the French Republic on cross-border cooperation in judicial, police and customs matters
\item Articles 39 and 46 of the CAAS.
\item Frédéric Gisler, "Switzerland's police cooperation", page 296
\item Agreement between Switzerland and France on cooperation between the two countries at the Evian Summit
\item art. 4 of the 2007 Paris Agreement
\item Letter of analysis from DLPJ.
\end{itemize}
it takes into account the feedback that has shown the limits of existing collaboration. Reporting is a constant flow in the operational framework: on many occasions, actions have been taken without the judicial authorities, in particular, being informed of the actions taken by the police forces. This adaptation of the regulatory framework is also reflected in Article 10, which lays down the procedures for transmitting requests in urgent cases. In the same vein, different articles ensure that the legal provisions allowing law enforcement agencies to carry out their actions with greater legal certainty are framed.

However, the main issue remains judicial. In the Berne Agreement, in Article 5, there were already many restrictions in relation to the notion of coercion. This notion will disappear but will remain the question of a difference in interpretation between the notions of interpellation and apprehension\(^{33}\). Thus, offences are not always defined in the same way on either side of the border.

In the end, the Paris Agreement does not revolutionise the operational framework for cross-border cooperation. This agreement was considered as "not entailing any change in French domestic law" by incorporating the provisions of the Schengen Convention and the Prüm Treaty - to which Switzerland is not yet a signatory \(^{34}\). In this case, what is the scope of this agreement in terms other than cross-border security cooperation in its operational and legal aspects? The contribution is perhaps ultimately more political: the ratification of this agreement takes place at a time when the Union démocratique du Centre (UDC) is calling for a popular vote to reject the agreement on the free movement of persons concluded between Switzerland and the European Union. On the other hand, if France wants to remedy the lack of fixed controls at internal borders in the Schengen area, it intends to guarantee better the quality of the area of freedom and security than Schengen is trying to be. This agreement also takes into account Switzerland’s association with the Schengen acquis\(^{35}\).

The prospect of a new revision - Bern III or Paris II - should lead to a choice being made to reposition the CCPD in the operational security articulation with a view to consolidating the structure of the Schengen area.

The PCCC is an important tool for cross-border cooperation. It has made it possible to operationalize principles of cooperation that have remained theoretical for a long time and are based on informal schemes of cross-border police guilds. It is a tool that facilitates cross-border cooperation on a defined territory that goes well beyond the Franco-Valdo-Geneva territorial space. We are therefore not dealing with the Geneva CCPD but with the Geneva CCPD. Admittedly, the influence of the City-Canton and its international sphere, its geographical position and its Swiss coordination have made it a tool tinged with "Genevaoisserie"; but it nonetheless remains at the service of Franco-Swiss cooperation as a whole.

This Franco-Swiss CCPD is a specific organisation: at the same time a tool turned towards the outside, Switzerland remaining an external border of the European Union; at the same time a tool turned towards the inside, Switzerland being integrated into the Schengen area. Thus, the CCPD seized this opportunity to be the tool for securing the internal borders of the Schengen area.

\(^{33}\) Minutes of the meeting of the Joint Monitoring Committee for the Paris Agreement, 2017

\(^{34}\) Ditto.

\(^{35}\) Article 37 of the Paris Agreement.
The CCPD may not be the big loser in the Europeanization of Swiss security. Caught in a "thousand administrative-operational sheets", the CCPD did not have the opportunity to fully realize its potential for cooperation and to impose its bilateral legitimacy in a Europeanized security package. Nevertheless, it provides an answer to the question of the place of bilateral agreements in police cooperation within the\textsuperscript{36} The Schengen area at the risk of increasing complexity and duplication.

The CCPD could have a new opportunity thanks to the Franco-Valdo-Geneva metropolis. The latter must develop an organisation adapted to a cross-border security response in the same way as other large cities close to border points: in other words, to respond to daily crime. Indeed, the development of cross-border coordination of mixed patrols, and the ever more precise need for intelligence-led policing, mean that the monitoring and coordination activities of the various operating entities will be decisive in the treatment of crime developing in the Franco-Swiss border area\textsuperscript{37}. On the other hand, it makes Franco-Swiss cooperation more reliable in parallel with European cooperation.

The current or future "exits" show us the relevance of maintaining this bilateral collaboration. Finally, the CCPD operationalizes a balance between the need for repression at the origin of cooperation and the principle of sovereignty defended by States\textsuperscript{38}. Bilateral agreements and the tools that result from them thus enable States to remain in control of their level of commitment - to deepen, control or restrict cooperation\textsuperscript{39}.

3 - Review bilateral and cross-border cooperation through the security of the Leman Express.

This is one of the questions that the "Security Body" project should have addressed. The latter had to question the need for security in Greater Geneva. However, the Franco-Vaud-Geneva region is traditionally, and above all, considered as an economic area, whose security dimension has recently undergone major developments. The question of security comes up with its own challenges within an economically integrated but politically fragmented territory: it is nevertheless a territory without unified demos or doxa.

3.1 - Public security: a local issue based on enhanced direct cooperation.

If we take a quick historical look back, we can identify three main periods.

\textbf{From 1980 to 2004}, security problems were considered to be the responsibility of each State; and in the interest of "good neighbourliness", it was only necessary to be obliged to provide each other with "mutual information". This period sees an area where the border fully divides the territory. The actors implement informal networks, and offer simple neighbourhood police based on unique individual "goodwill". The triptych actors-space-mobility triptych is not distributed: it knows strict compartmentalization of each of the elements. However, some attenuations can be observed: they are the result of informal contacts between the actors in this area.

\begin{itemize}
  \item \textsuperscript{37} Wishes of the first Swiss coordinator to make the CCPD a tool for coordinating direct cooperation - 2004 CCPD Progress Report.
  \item \textsuperscript{38} Same as above.
  \item \textsuperscript{39} Same as above.
\end{itemize}
Anchored in the same Schengen agenda, two periods then follow one another, offering the possibility of a distinction between the phases and their differences. From 2004 to 2014, cooperation is changing under the influence of integration into the Schengen area. This Europeanization allows the creation of middle management of border security. Fedpol and the CGFR\textsuperscript{40} are carrying out a series of actions in order to be able to take a full place at the heart of the phenomenon of internationalization of cooperation. Nevertheless, cross-border security actors express needs for legal certainty beyond the framework of mutual legal assistance. The law of mutual legal assistance is emerging as an outdated legal corpus that does not allow for full cooperation or efficient treatment of cross-border crime. The actors have organised on multi-level governance: a local level, cross-border middle management and a European level of security management. The area is structured within the Schengen Area. Mobility is built on the concept of the free movement of goods and people and creates a new tension. It is indeed the application of the European agenda for police and judicial cooperation that makes it possible to show how former good neighbourly relations are gradually being secured because they are anchored in this Schengen agenda.

This remains fully true, from 2014, with the arrival of CEVA-LEMAN EXPRESS. Mobility gives a new dynamic as well as the opportunity for a new balance of power within the actors - impacts on the distribution of competences between FEDPOL and the Canton.

New profiles of actors such as networking professionals then emerge through cooperation projects relating to private technical objects. The area is undergoing a resizing of its territory both at the local level and in the European area. The analytical framework generally proposed in the context of critical security studies is overtaken by this new understanding of cross-border cooperation in the field of security because it goes beyond the simple observation of police practices to take into account the dynamics of modernisation no longer with a view to managing criminal phenomena but by an a priori securing of mobility objects.

3.2 - Public security within the work of the Security Body: the identification of public action developed in a bottom-up approach.

While tensions and resistance exist within the working group, public security actors support a dynamic that favours taking into account a logic of questioning sectoral and territorial logic. Indeed, having already experienced a change in the scale of public action, the redefinition of a sectoral logic seems to be part of the methodology of thought and favours a more integrated and coordinated approach to security problems and challenges as well as their regulation through public policies.

Thus, the development of the working group specific to its field led its reflection by integrating that the development of LEMAN EXPRESS security implied an in-depth reorganization of the sectoral, administrative and territorial logics of public policies.

\textsuperscript{40} FEDPOL: Federal Office of Police; CGFR: Border Guard Corps.
The working group is composed as follows:

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<th>SWITZERLAND</th>
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<td>• Public Prosecutor's Office GE</td>
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<td>• Cantonal Police GE</td>
<td>• SNCF Security</td>
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<td>• SBB Transport Police Force</td>
<td>• DDPAF</td>
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<td>• PCCC</td>
<td>• Regional Customs Directorate</td>
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<td>• Border Guard Corps, Region VI</td>
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The working group began its analysis by taking stock of current cooperation. Its analysis was carried out in a specific legal and political context. From a political point of view, on the Swiss side, the approval by the cantonal parliaments of the cross-border cooperation policies developed by their governments poses a problem of institutional and territorial adequacy, given the lack of correspondence (partial territorial overlaps between cantonal entities and cooperation areas); while on the French side, the Jacobin management of central administrations has constituted additional obstacles to taking into account the significant constitutional impacts of an authorisation of a right of arrest of Swiss police officers on French territory as well as the search for a territorialised and pragmatic response.

The analysis began by taking stock of the existing constraints. From a legal point of view, many blocking points appear. In the context of the Schengen implementing agreements and convention, in addition to the list of reservations to the Schengen agreements specific to each country, the notion of constraint limits the possible actions under Article 39 of the convention. On the other hand, within the framework of cross-border cooperation agreements, France does not promote reciprocity of competences; while Switzerland organises cross-border cooperation segmented by country. Finally, while there is a positive outlook with the Prum Treaty, France has specified limitations given in the Joint Declaration and Annexes to the Treaty; while on the Swiss side, the negotiation of the Prum Treaty will have an impact on Switzerland's four cross-border cooperation agreements.

While the border is commonly seen as a barrier - legal and political-institutional differentials are highlighted as obstacles to collaboration - there is a consensus on the need for cross-border security cooperation to evolve. The security forces, aware of the evolution of their needs, have found in the "Org Sec Ceva" project an opportunity for experimentation and updating; and Le Léman Express an opportunity to revisit the cross-border security response to mass mobility.

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41 In accordance with the last sentence of Article 39 of the Convention, if the requested police authority is not competent to execute the request, it may transmit it to the competent authority which, logically, will be the judicial authority. This mechanism cannot be used when the police have to apply coercive measures to execute the request for assistance.

42 Prüm Treaty on the deepening of cross-border cooperation, in particular, to combat terrorism, cross-border crime and illegal migration.
The working group was therefore faced with multiple hypotheses relating to the security of CEVA and beyond the Leman-Express rail offer:

- Hypothesis 1: Let cooperation remain in "status quo".
- Hypothesis 2: Propose a short-term coordination organisation with constant law,
- Hypothesis 3: Short-term proposal before CEVA is put into operation in 2019: development of a convention for the application of the Paris Agreement,
- Hypothesis 4: Long-term proposal after the implementation of CEVA: amendment of the Paris Agreement.

Hypothesis 1 is a possible theoretical possibility in the absence of a consensus on the development of increased security cooperation. This assumption was considered inconceivable by the members of the working group.

Assumptions 3 and 4 will have to respond to the paradox of wanting to guarantee the freedom of cross-border movement provided for by the Schengen Agreement of 14 June 1985 without affecting security". They reflect the usual philosophy transcribed as follows:"

The contracting parties agree that in order to combat cross-border crime more effectively, it is essential to encourage each other to use modern means of investigation and mutual assistance43. Judicial cooperation remains the poor relation in terms of results because the hypotheses considered going beyond the competence of local consultation bodies.

The result of this working group is positive in the sense that it has been able to adapt to successive orders from the political authorities by finding appropriate operational and legal solutions (hypothesis 2). From Cosec in April 2016 to November 2017, the working group will have proposed a model for the evolution of cross-border security by analysing existing constraints and proposing multiple avenues for development.

It will thus have made it possible to obtain an accepted common analysis and to set up a period of experimentation via an existing cross-border coordination unit. It has thus reaffirmed the territory of the CCPD and defined the operationalisation of a local cross-border cooperation tool.

On the other hand, it is in the development of an increased public-private partnership between the sovereign safety actors and specialised actors reporting to the rail operators - the Swiss TPO and the French SUGE - that we will be able to measure a significant evolution. While the context of rising risks in general, and terrorism in particular, gives rise to a feeling of insecurity, in a context of constrained state budgets, certain sectors and missions must be the subject of a demonopolisation of the sovereign sphere. Currently very limited and marked by a distrust of public power, co-production can be seen as a true partnership based on trust, control and balance between the actors: the public power sets the overall architecture and continues to supervise44. The public authority decides what must be fully achieved by it, and what can be delegated while ensuring control of the service provided by its partners. It is not a question of "making" for a fee but rather of "doing together", each partner keeping its prerogatives and missions45.

43 Joint declaration by the contracting parties to the Mondorf-Les-Bains Agreement.
44 Annals of the conference of July 09, 2014 - Council of State
The "Org Sec Ceva" project was thus able to legitimize its action aimed at presenting the implications of this new vector on the cross-border security issue and to propose the framework to ensure an adequate response to Lake Geneva Express via the border control area. More surprisingly, its legitimacy has not been extinguished outside the framework of railway infrastructure and the operation of rolling stock.

**Conclusion.**

In the face of a Schengen area that is being called into question, concrete cross-border security measures should be increased. However, these measures could have the paradoxical effect not of weakening but of strengthening the Schengen area itself. Indeed, these measures are not incompatible with the security organisation specific to the Schengen area; quite the contrary.

The cross-border metropolis then enhances its position as a laboratory for studying the integration of the European Union and positions itself as a new level of a security complex. Indeed, despite the persistence of local territorial tensions, the metropolitan territory appears to be a territorial basis for the development of a common security policy, and the sustainability of security as a management necessity46.

To this end, provided that the constraints imposed by the Schengen area, the different institutional structures of the two countries and the weakness of the cross-border conurbation are combined47, the development of cross-border mass mobility paves the way for progress in cross-border security cooperation within a metropolitan framework, enabling public action to be coordinated by combining a public transport infrastructure development project with a security policy and its implementation in terms of crisis governance.

The "Org Sec Ceva" project, as a functional space, has projected itself in the long term by proposing utopia48: to carry out its work by considering that the security of the French-Valdo-Geneva territory was thus being built; and that CEVA is only a pretext for the development of this construction. The "Org Sec Ceva" project had to create its legitimacy by being able to propose evolutions combining the intersectionality of the problems, the trans territoriality of the regulatory perimeters and the structuring role of property and use rights49. It has reopened the way for the necessary restructuring of institutional arrangements, reorganisation of the legislative corpus and redrawing of institutional organisations.

Pragmatic short-term concessions have been made and have led to some significant progress: single command, operational consultation platform, interoperable transmission concept, cross-border video protection concept. Nevertheless, the security of this territory is carried out in a very delicate political context.

The Org Sec Ceva project, therefore, appears as a window of opportunity to develop the security governance toolbox. Because it generally questions the cross-border metropolis about its ability to perceive a common threat in an increasingly complex security environment. It must have a

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47 David Hiler's chronicle, "Don't let her down! She is so fragile", 21 September 2016, Le Temps.
48 ditto
49 ditto
global vision of its territory. Thus, for example, the discussions currently being conducted for CEVA should not make us forget that the Carpathian line - Bellegarde-sur-Valserine / Geneva - already exists and is currently in operation. In the absence of a global vision, it could become the poor relation of securing rail services in the Franco-Vaud-Geneva conurbation.

The launch of CEVA and the Leman-Express RER will enable us to measure what its real influence may have been on the construction of cross-border security cooperation. In any case, it will have proposed to question the strength of the European Union's external border with one of its third countries. This train has made it possible to design a model that will usefully become widespread elsewhere.

References

Legal resources

- Convention implementing the Schengen Agreement signed on 19 June 1990 and its implementing texts.
- Official Journal L 53 of 27.2.2008 - Switzerland's entry into the Schengen area.
- Agreement of 1 August 1946 between France and Switzerland on border traffic.
- Agreement of 15 April 1958 between Switzerland and France on frontier workers.
- Convention of 28 September 1960 between France and Switzerland on offices with juxtaposed national controls and en-route controls.
- Additional Protocol of 28 January 2002 on the establishment of police and customs cooperation centres and the exchange or secondment of regional liaison officers in the border area.
- Agreement of 08 April 2003 between the Swiss Confederation and the French Republic on cooperation between the two States on the occasion of the Evian Summit.

Reports

• Report on Swiss foreign policy and cross-border regional cooperation in December 1999.

Books

• Didier Bigo, Polices en réseaux: l'expérience européenne, Presses de Sciences Po, 1996
• James W. Sheptyck, In Search of Transnational Policing. Towards a sociology of surveillance in the era of globalisation, "Criminological perspectives", Larcier/De Boeck, Brussels, 2005
• François Dieu, Questions de sécurité : sociétalisation des réponses, globalisation des menaces, l'Harmattan, 2006.

Articles

• Azilis Maguer, La coopération policière transfrontalière, Moteur de transformations dans l'appareil de sécurité français, Cultures & Conflits, 48 -winter 2002
• Stephan Davidshofer, Amal Tawfik and Jonas Hagmann, Analysis of the field of security in Switzerland: towards hypertrophy of internal security and other methodological reflections, Cultures & Conflicts, 102 | summers 2016.