TO WHAT EXTENT THE CURRENT DIFFICULTIES OF EUROPE IN MANAGING THE MIGRATORY CRISIS REVEAL THE LIMITS OF THE 'SPIRIT OF SCHENGEN' IN THE ADVANCEMENT OF THE EUROPEAN CONSTRUCTION?

IED Research Project: "Migration, borders control and solidarity: Schengen at stake?"

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Abstract: The 'spirit of Schengen' is the mixture of two axes of European integration: governmental cooperation and the association of a small number of states with the purpose of progressively rallying, by the example of their successes, other hesitating states, remained on the fringes. Each of these principles is paradoxically at the basis of the European construction. The failure of this process was not obvious thirty years ago but was revealed by the migratory pressure. The integration of the Agreement of Schengen within the European Union law is the subsequent source of the present difficulties: an incomplete integration froze the process before it came to quite a workable legal instrument. To ensure a positive evolution of the situation, a deep change in the political and legal treatment of the freedom of movement is needed. In many of its aspects, the Schengen case is a lesson, regarding other complex integration processes the European institutions would wish to launch during the next few years.

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INTRODUCTION

Just after the signature of the Locarno Treaties, in October 1925, the expression 'spirit of Locarno' rapidly spread across Europe. Behind this expression laid the hope that the European negotiators had finally found, seven years after the end of World War I, a method to solve peacefully the problems that were not settled at – or, for some of them, that were created by – the 1918-1919 Paris peace conference.

A new diplomatic era was expected from a fragile, incomplete and obviously precarious compromise, that scarcely reflected the deep will of the main European leaders of the time and was largely imposed by the political context.

In newspapers and parliamentary debates, the content of the treaties themselves, that were the only concrete results of the conference, yet appeared secondary compared to the prospects considered as opened by the agreement: the conference was seen as the inauguration of a major change in the German attitude towards the new European order. The 1929 economic crisis and its political impacts quickly revealed the limits of the spirit of Locarno: it was not the turning point in the post Great War European international relations but just a happy event during the gloomy interwar period.

Mutatis mutandis, Schengen underwent the same destiny.

Designed to be the legal instrument of the enforcement of the freedom of movement mentioned in the Treaty of Rome, and consequently in charge of a decisive part of the European dream of a unified continent, Schengen was probably the weakest of the treaties signed since the beginning of the European construction in the 1950s.

The 1985 Agreement and its 1990 Convention of Application were presented to the public opinions as a new way of continuing the European integration. They were in fact based on renouncement and resignation in an awkward political context, and negotiated in contradiction with the most important principles of the European ideal.

Just as for the Locarno Treaties, reality is catching up to Schengen. Thirty years after the signature of the Schengen Agreement, the method followed and the instrument chosen to implement freedom of movement within the EU reveal their limits through the management of the migratory crisis. It underlines the errors of the beginning and the contradictions that paralyse the functioning of the Area of Freedom, Security and Justice (AFSJ).

This paper tries to demonstrate that the main reasons of the difficulties in the management of the migratory crisis and the control of the Union borders are to be found in the failure of the Schengen method. It defines this method – baptised 'spirit of Schengen' – as a way of conducting European cooperation based on pure intergovernmental negotiations and limited to a small number of parties, largely resting upon a hypothetic administrative convergence to settle the problems that have not been resolved in a political assembly. Refusing to tackle the core political issue of the time – the direction they wanted to give to the European integration – the political leaders in favour of supplementary political integration invented an *ad hoc* substitute to the general European construction and tried to hide their political shyness behind a so-called new way of reaching the European ambitions.

It proposes answers to some basic questions: why did the mechanism imagined at Schengen led the AFSJ to an impasse? What in its foundation was not strong enough to support the following stages of the framework? What in its developments was too unsettled to keep the construction up? How come a framework intended to bring a supplement of liberty and prosperity to European citizens now embodies for many grass-roots Europeans the uselessness, and even the noxiousness, of the European integration?

Then, based on the lessons learned in the Schengen case, solutions are proposed for a positive conclusion of the present crisis of borders control. To resolve the Schengen crisis is in fact to tackle a dual problem. It has its practical aspects – establishing a sustainable mechanism strong enough to deal with successive massive migratory waves that come and will continue to come in the next few years – and its institutional challenges, *i.e.* reaching a positive compromise that is not the lowest common denominator.

There are in fact general ideas that may be used both for the reform of the AFSJ and for the initiative the Commission will have to launch within the next few years in order to put an end to the current unrest towards the European integration.

From a comprehensive point of view, the conclusion eventually considers the conditions of a general revival of European feelings among European nations – especially in the founding Member States. This revival is indispensable to promote a new integrationist movement, which is essential if Europe wants to address successfully the current affairs.

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PART. I. From great expectations to an unaccomplished mechanism: the germs of wrath.

The period that stretches from the 1985 Schengen Agreement to the current AFSJ as it was imagined at the end of the 1990s saw different moments during which European leaders had to decide about the enforcement of the freedom of movement within the European Community and then the European Union.

Two wasted opportunities have to be focused on. The first one dates back to the years just before and after the signature of the 1985 Agreement. The second one consists in the integration of the Schengen mechanism within the UE law as from the Treaty of Amsterdam, in 1997.

A. *Back to the origins of Schengen: how to implement a founding European principle using a non-European method.*

In *L'Europe difficile*[1], Bino Olivi and Alessandro Giacone provide an overview of the European situation at the beginning of the 1980s: they insist on the atmosphere of crisis in which the meetings, namely the European Council took place. The crisis was both economic and political.

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[1] Bino Olivi, Alessandro Giacone (2007, reed. 2012) *L'Europe difficile. Histoire politique de la construction européenne.* Paris: Gallimard.

The European economy was at that time facing two challenges, since the middle of the last decade. European moneys had undergone a state of uncertainty since the 1971 American decision to suspend the convertibility of dollar in gold. The Europeans laboriously came to the European Monetary System, launched in 1979. But the dramatic increase of the hydrocarbon prices the same year gave birth to a new threat to the Common Market.

Politically, the European Community experienced during these years a change of leaders. The French president Valéry Giscard d'Estaing was defeated at the 1981 election by François Mitterrand. Contrary to the constant involvement of the former in European affairs in favour of integration, the later showed an attitude the authors describe as a sort of 'ideological opportunism' in French politics. Subsequently, in European affairs, '*la communauté était pour lui une réalité*'[2]. In Great Britain, the Tory government, under the leadership of Margaret Thatcher, refused any supranational initiative and based its attitude in negotiation one a strict financial balance of interests.

This context explains the focus on the economy during these years, especially considering the priority given to the revival of the Common Market with the Single Act. It also explains that the question of freedom of movement and removal of internal borders, which political signification was perhaps more symbolic than its economic consequences, was not discussed in the general negotiations about the future Single Act, given the attitude of the British and Irish governments towards any supranational attempt.

Nevertheless, it does not answer the question of the exclusion of the Southern members of the Community.

Actually, at that time, the concept of enhanced cooperation was not included in the treaties, even if it had already been evoked in the Summits. It could have been possible to rally the members of the Community, but Ireland and the United Kingdom. On the contrary, France and Germany were reluctant to include the Southern Member States like Italy and Greece. Considered as traditionally weak, these states could not afford, in the eyes of the signatories of the Schengen Agreement, a trustable administration that would seriously apply the Agreement. They were also eager to come to an agreement before Spain and Portugal joined the Community in 1986.

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[2] Bino Olivi, Alessandro Giacone, *op. cit.,* pp. 166-167.

This was both a rupture in the history of the European construction and an infringement to its spirit. The European integration was innovative in international relations and attractive for many countries precisely because it broke with the secret and private diplomacy Europe experienced until 1945. In fact, before the Schengen precedent, countries that wanted to join a group thinking about a potential economic, military or political union have never been prevented to do so by the members of the group themselves, even if after its constitution, the integration of the organisation would have only been possible through a formal candidacy. In 1948, the discussions about the Organisation of European Economic Cooperation were opened to every country that aimed at benefiting from the Marshall Plan. It was the same in 1950: the Schuman Declaration was intended first to Germany but countries which wanted to participate in the constituting negotiations were free to do so and Italy, in spite of its economic backwardness and its situation of former fascist country, participated in the original discussions.

Simone Paoli, from the University of Padua, studying the case of Italy, proposes an analysis of this peculiar behaviour, appeared in the European construction at the time of Schengen, in contradiction with the core principle of the European integration[3].

The French archives, namely the ones of the *Quai d'Orsay,* indicate that France was at that time the main opponent to the participation of Italy in the future Schengen organisation. Two complementary justifications were presented within the working papers of the Ministry. The first was the French officials' very negative opinion of the Italian law and policy in the field of immigration. The second was the fear that massive immigration, from Italy itself or using Italy as the threshold of the new integrated zone. For instance, in October 1984, the French Ministry for Foreign Affairs considered that around 800 000 migrants were about to come to France in case of removal of internal borders[4].

Simone Paoli points out that the fears were quite the same with regard to Portugal and Spain. Their borders were not seen as sufficient to face the migratory pressure and the French officials were afraid of a massive entry of foreign workers in France that would undermine its economy, drive the unemployment rate up and pave the way for populist xenophobic parties.

The participation of Italy was then accepted under the pressure of the Italian

[3] Simone Paoli, "The Schengen Agreements and the Emergence of a New Migration Regime in Europe: an Interpretation", paper delivered at the international conference «EUSA Biennial Conference. The EU After the Crisis: Phoenix or Albatross?» at the Hyatt Regency Boston in Boston (United States), 5-7/3/2015.
[4] Simone Paoli, *op. cit.* p 10.

government on the signatories of the 1985 Agreement, during the preparation of the Convention of Application, provided a change in Italian law about the refugee status, but the damage was done to European ideal. Besides, France gained a supplementary lever by signing with Italy a bilateral readmission Agreement at the time Italy signed the Schengen Agreement.

To sum up, the Schengen construction suffers from the origins of two main diseases: the opposition of Britain and Ireland, which obliged the others to use a parallel mechanism and the political defiance amongst the Northern states towards the Southern ones.

A third aspect of the Schengen Agreement can be discussed: the weakness of its liberal goals, in regards to its achievement in security field. Indeed, in his paper, Simone Paoli also emphasizes the limited final ambition of the Schengen treaties: in his opinion, 'the strengthening of external border controls, rather than relaxation and eventually abolition of internal border controls, was the primary motive behind these accords'[5]. In that way, the implementation of freedom of movement was secondary compared to requirements of security, particularly given the resurgence, at this time, of xenophobic feelings and populist parties inside the Northern European countries.

In this way, it appears that the Schengen option to choose an independent and limited organisation to reach such an ambitious goal as the establishment of freedom of movement was more a default option due to the circumstances and the will of some of the main European actors than a new concept able to continue the European construction in spite of strong oppositions.

Consequently, the spirit of Schengen, considered as the mixture of strict intergovernmental instrument and limited cooperation was less an innovative concept in European affairs than just a way of getting out of the impasse, without addressing directly the problems of the British reluctance to the very idea of freedom of movement and the defiance of Northern states towards the Southern ones.

The issues revealed by the regular progression of the Schengen process – Convention of Application in 1990, enforcement in 1995 and entry of others countries during these years and after – pushed the governments to encourage the integration of the Schengen *acquis* into the UE law as a way to secure and improve it.

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[5] Simone Paoli, *op. cit.* p.17.

B. An unsatisfactory political bargain: integrating Schengen into the European law.

More than ten years after the signature of the Schengen Agreement, France and Germany, supported by the Benelux countries, tried again to implement the freedom of movement in the European Union through the integration of the Schengen mechanism into the European Community law.

This decision could have been an opportunity for Member States to correct and improve the way the Schengen mechanism functioned. In reality, it could not achieve its instigators' initial ambition and introduced in the European decision-making process complications that reinforced the populist feelings about Europe and frozen any action in that field.

First, the Treaty of Amsterdam split up the Schengen *acquis* and complicated the decision making process.

As from 1985, through international agreements or decisions of the Executive Committee, governments participating in Schengen set up common rules, schedules and principles for the elimination of internal borders. This constitutes what is now commonly referred to as the '*acquis* of Schengen'.

In order to complete that construction and ensure the high level of security national administrations wanted to provide their population with, so-called 'compensatory measures' were imagined by negotiators, as compensations to the loss of administrative tools of border control. The main of these compensatory measures were the common visa policy and the Schengen Information System (SIS) for the exchange of information between national police forces.

Consequently, the Schengen construction was founded on two pillars that were also two strong guarantees upon which governments were able to communicate toward their population in a simple and positive way. The first was the freedom given to nationals and regularly foreign residents to cross internal borders, travel and stay wherever they want within the Schengen area, as long as they respect the law of the country they were living in. The second was the enjoyment of the world's most secured and safest regional area[6].

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[6] This general description of the initial Schengen scheme is based on Bruno Alomar, Sébastien Daziano, Thomas Lambert and Julien Sorin, *Grandes questions européennes*, Chap. 22: 'L'Espace de Liberté, de Sécurité et de Justice', Paris: Sedes 2013.

The decision-making process was complicated, largely out of national parliaments and European institutions control. Yet it had brought, beyond its original limits described above, a basis on which an extension to all the members of the European Union could be contemplated. It would have been a major symbolic achievement and a relevant way of clearing up discrepancies about its nature and the European Union one's.

The political context was in favour of such an integration: the fall of the Eastern bloc, the perspective of a future enlargement to the new democracies in Central Europe and the Tony Blair's New Labour accession to power in Great Britain in May 1997, together with the general optimistic international forecasts of this post Cold War time, created a positive atmosphere for this negotiation.

Nevertheless, within the general European bargain of the moment, Schengen was largely sacrificed.

The Amsterdam Summit, in June 1997, was the final step of a round of negotiations opened in Messina in 1995. The will of coming to a positive issue largely commanded the way the Dutch presided the negotiations. Protocols and reserves of interpretation ensured a diplomatic positive solution, but the price to pay was a splitting of the *acquis* into third parts and a more complex decision-making process.

In an article written at the time of the negotiations[7], Professor Monica den Boer clearly emphasises one of the main negative outcomes of the negotiations: the *acquis* of Schengen was split between the already existing *acquis communautaire*, the new title creating the AFSJ, and what remained in the third pillar.

The author also criticizes the 'protocollarization' of the treaty, the United Kingdom, Ireland and Denmark having negotiated separate protocols. Describing protocols as the 'price to pay for progress', she underlines that they created a paradoxical situation for the United Kingdom: the country is authorised to maintain its own national borders and therefore practically dispensed from applying the main achievement of the Schengen Agreement, the European citizens' freedom of movement. Even so, the United Kingdom may join the Schengen Information System, the main security compensatory measure Schengen has created.

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[7] Monica den Boer, 'Justice and Home Affairs Cooperation in the Treaty on the European Union: More Complexity Despite Communautarization'. 4 Maastricht J. Eur. & Comp. L. 310 1997. Provided by: Sciences Po.

Looking back now, this can be considered as a very bad signal sent to public opinions. It contributed to present Schengen only through its security aspects and pushed into the background its liberal advancements. Politically speaking, even if it had not at that time the signification it has today, in a terrorist attacks context, it increased the influence of the security preoccupations on the national public opinions.

Moreover, to a certain extent, the integration of the Schengen *acquis* did not settle its original ambiguities, but reinforced them. The shared competence of initiative between the Commission and the Council, in particular, specifically introduced for the dispositions of the Treaty regarding Schengen, is in contradiction with the objective of a real integration in the Community law. It is indeed an exception to the fundamental principle of the Commission's monopoly of initiative that operates the first pillar imagined by the Treaty of Maastricht. The wish to find a consensus led to a distortion, even limited to the field of the visa and asylum policies, of the Community method. From an integrationist perspective, there were thus two negative legal outcomes: the weakening of the Community method and the distinction that did not exist before between different matters of the Schengen *acquis*, whether they were now part of the EU law under a special procedure or they remained under a pure intergovernmental procedure (art. 77 TFUE vs. art. 79 TFUE).

Secondly, the decade that followed the Treaty of Amsterdam could not ensure any advancement in the Europeanisation of Schengen.

As summarised by Professors Ian Bache, Simon Bulmer, Stephen George, and Owen Parker[8], the key change brought to Schengen by the Amsterdam is the Europeanisation of visa asylum and immigration policies. It was obviously not enough to give birth to a real free-movement area. Some changes in European politics prevented any further integration.

The association, in 2001, of Norway and Iceland, two states that did not belong to the European Union, brought a supplementary complication as regards to the national public opinions: from a diplomatic point of view, considering that they were members of the Nordic Passport Union, just as Denmark, Sweden and Finland, it was more simple to include them for this specific competence. Nevertheless, these enlargements did not contribute to clarify Schengen and to give to its construction a clear position regarding the rest of the European institutions.

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[8] Ian Bache, Simon Bulmer, Stephen George, and Owen Parker, *Politics in the European Union*, Oxford University Press, 2015.

Meanwhile, Schengen became more and more important in the eyes of the supporters of the European integration while the lack of confidence towards the European institutions grew among the European public opinions, as revealed by the failure of the Constitutional Treaty in 2005. As Virginie Giraudon wrote[9], '*l'Europe des projets s'opposa[it] alors à celle des réformes institutionnelles'* : European leaders preferred not to discuss general questions about decision-making process and were eager to show the Union's usefulness by launching sector-specific programmes. Schengen, partly a project and partly an institution, suffered from that situation.

This context explains that, in spite of the successive impulsions given by the European Councils since the Tampere Council in October 1999, to continue the harmonization, specially in the field of national rules regarding asylum, progresses were not made during the next decade.

More precisely, the Schengen decision-making process appeared frozen by the opt-out negotiated at Amsterdam. In a conclusive work, Christian B. Jensen and Jonathan B. Slapin noticed: 'a decision to opt out by one Member State affects the identity and location of the pivotal Member State in Council decision making.'[10] That assertion seems particularly relevant in the case of the Schengen derogations.

Indeed, during the negotiations, the Irish and British opt-ins and the Danish opt-out were accepted by the other Member States as a necessary period of adaptation to the rules of Schengen and a way for the governments to prepare their public opinions to the new area of free movement. In reality, they rapidly installed the three states in a place of lasting defiance to the others, in the Council, concerning the Schengen affairs just like there public opinions came to consider that their optional participation was the real *acquis*, much more than any free-movement area.

Eventually, it appears that the freedom of movement within the EU paid the price of the successive shaky compromises on the Schengen project. At many occasions, formal institutional considerations and worries about the general coherence of the construction were put at in the appearance of the unity and expansion of the Schengen area. The truth is that the

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[9] Virginie Guiraudon, « Schengen : une crise en trompe l'œil », *Politique étrangère* 2011/4 (Hiver), p. 773-784.

[10] Christian B. Jensen and Jonathan B. Slapin 'The Politics of Multispeed integration in the EU' in Jeremy Richardson and Sonia Mazey (editors), *European Union. Power and Policy making*. London: Routledge, 2015.

more it extended, the less it was understandable by average citizens. Its coherence is now in danger, and its legitimacy is violently questioned, even among the founding members.

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PART. II. By managing the migratory challenge, finding a new path for a renewed Europe.

What kind of crisis does Schengen undergo? Two Jacques Delors Institute researchers offered recently an illuminating summary of the situation. In their paper, Yves Bertoncini and Antonio Vitorino wrote: 'Schengen is also caught in the cross-fire between national political representations that overrate the protective potential of borders, and pro-European representations that play down the original Agreement's security related aspects'[11]. It is thus necessary both to build up, considering the international challenges, a strong common border-control policy and to reassert, facing the national xenophobic tendencies, the free-movement *acquis*. These are the conditions of a positive evolution of the situation.

A. Saving the Schengen acquis *by dropping its spirit.*

In practice, improving the situation is not a problem. The European Commission has proposed during the past few years several solutions that offer to deal with that issue at an affordable cost.

In his policy paper published by the Robert Schuman Foundation[12], Philippe Delivet presents one of the main European Commission's propositions in favour of the improvement of the situation. The 'agenda for migrations' presented on 13 May 2015 contemplates a 'greater solidarity at European level [that] means an increase in resources for FRONTEX. The European Commission proposes allocating 25 million € to it'[13]. Considering that the Union's annual budget for the current multiannual financial framework is around 140 billion €, that amount would not weight a lot upon the Union finances.

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[11] Yves Bertoncini and Antonio Vitorino, 'Schengen's stress test: Political issues and perspectives', *Policy Paper n°158*, Jacques Delors Institute, 15 February 2016.
[12] Philippe Delivet, 'Schengen, thirty years on: results, realities, challenges. *European issues n°361*, Robert Schuman Foundation, 16 June 2015.
[13] Philippe Delivet, *op. cit.,* p.7.

From a humanitarian point of view, the Commission also made propositions that, if accepted, would have led to immediate improvements, where the refugees are concerned. As Philippe Delivet wrote, 'in view of the emergency situation in the Mediterranean, the agenda for migrations proposed by the European Commission suggests activating the emergency relocation, leaving from Italy and Greece, of 40 000 people (24 000 from Italy and 16 000 from Greece) are clearly in need of international protection. Based on article 78§3 TFUE, this procedure will last for 24 months.'

In a technical and convincing recent paper published by the Jacques Delors Institute, research fellow Anna auf dem Brinke presents the updated Commission's proposal of December 2015 'A European Border and Coast Guard to protect Europe's External Borders'.[14] The Commission imagined a 'new agency [that] would replace Frontex and have a stronger mandate, for which it would need additional staff (up to 1,000 permanent positions) and technical equipment. All in all, the European Commission estimates that the new initiative would cost €322 million per year from 2020, when it is operating at full capacity.'[15]

If there are not practical difficulties in the improvement of the free-movement Union's situation, the solution must imply a removal of political and institutional obstacles. It is in fact the intergovernmental method itself that is to be abandoned in the case of Schengen. In their work, Ian Blache and his co-editors list the 'pitfalls of the intergovernmental system'[16]: decisions tend towards the lowest common denominator, there is a low stability and parliamentary control is virtually non-existent. These three elements can be observed as long as Schengen is concerned.

These developments mean that no major achievement can be imagined and last in such sensitive a field as the one of immigration just by getting around the oppositions: any reform proposal would confront these pitfalls. Such conclusions imply a strong political determination in favour of the freedom of movement. That is why if European actors want to save Schengen, they have to drop its original spirit of administrative compromise for happy few partners and to fully introduce Schengen into European politics.

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[14] Anna auf dem Brinke, 'The economic costs of non-Schengen. What the numbers tell us.' *Policy Paper n°162*, Jacques Delors Institute, 20 April 2016.
[15] Anna auf dem Brinke, *op. cit.*, p. 9.
[16] Ian Bache, Simon Bulmer, Stephen George, and Owen Parker, *op. cit.,* p. 455.

In her writing, Anna auf dem Brinke outlines a possible transversal political coalition able to lobby in order to save Schengen. It would assemble actors that individually have a strong interest in maintaining Schengen: the cross-border companies, the small open economies, some individual commuters and tourism industry and countries[17].

Then again, it is possible to imagine a solution that would go beyond a gathering of individual interests. There is an opportunity for a true community of values and ideals that would not only defend the Schengen *acquis* but promote a renewal of European integration ideal in the eyes of European nations that doubt about the benefit of Schengen.

As Yves Pascouau and Sylvie Guillaume say in their paper about the consequences of the refugee crises on the EU Member States, it is more a symbol challenge than a legal one. The reintroduction of national borders has been presented as necessary to respect EU law. It is nevertheless on a symbolic level that European leaders must show their determination, independently of legal requirements: '[EU Member States] should act together and rely on the common values, which include respect for human dignity and human rights. States should above all implement decisions already adopted in their symbolic dimension as well as their practical effects'[18].

This demonstration of political determination implies a politicization of the decision-making process.

B. *Winning against populism by politicizing the decision-making process.*

It is important to say that technically, the process launched in Schengen is a success: many rules for circulation, cross-border business and visas have been harmonized[19]. This harmonization contributes to the success of the internal market, and the general economic growth of the European Union as a free-trade area.

The troubles that have to be fixed currently are not caused by the reconsideration of the economic benefit of Schengen, which, if a confirmatory was needed, have been exposed by Anna auf dem Brinke: 'taking the most plausible upper-bound estimates, the economic costs of Non-Schengen could amount to up to €63 billion each year. The largest chunk would

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[17] Anna auf dem Brinke, *op. cit.*, p.9.
[18] Yves Pacouau, Sylvie Guillaume, 'The rise of national borders and the fall of a symbol', *Viewpoints* n°1, March 2016.
[19] Vendelin Hreblay, *Les accords de Schengen. Origine, fonctionnement, avenir*. Bruylant: Bruxelles, 1998.

occur in trade. The costs for commuting, tourism, and the actual border controls would be lower and similar in magnitude'[20].

In reality, the troubles come from a recurring lack of political support, at every stage of the national political powers. Designed as an agreement restricted to few states, integrated in the EU law as a compromise, the fragile position of Schengen was revealed by the migratory crisis.

About the current crisis, the debates can be partly cleared up by reminding a basic political reality: questions about immigration, especially, illegal immigration are from the very beginning of the Schengen process amongst the most important for national public opinions.

For instance, as the French coordinator for free movement in Europe between 1989 and 1991, Prefect Hubert Blanc draws up at the end of its mission a brief report of the main points of his work[21]. He notices that, during the parliamentary discussions for the ratification of the Convention of Application, in 1991, the French deputies and senators, worried mainly about the fight against illegal immigration, illustrating the general feelings in France.

Furthermore, the definition of a political crisis largely depends on the main actors' perception of it. In her demonstration, Virginie Guiraudon[22] looks at a political crisis through a classical definition from Stanley Hoffman: political actors giving to an event such an importance that it can not be treated by the authorities normally in charge of its settlement, but has to be transferred to the highest level, the one of political authorities. The label 'political crisis' allows the transition from low to high politics and authorizes politicians to intervene in administrative matters.

Elaborating on that perception of the crisis, the migratory pressure can also be regarded as used by political leaders, generally hostile to the Schengen package, as an attempt to fight their way through to it, even if the migratory pressure is a real hot issue[23]. As

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[20] Anna auf dem Brink, *op. cit.*, p. 8.
[21] Hubert Blanc, 'Schengen : le chemin de la libre circulation en Europe', *Revue du marché commun et de l'Union européenne*, oct. 91 p. 722-726.
[22] *Op. cit.* p. 779.
[23] 'Illegal crossings are increasing massively. In all, the number of illegal crossings detected in 2013 amounted to 107 365 compared to 72 437 in 2012. This migratory pressure increased massively in 2014. According to FRONTEX […], the number of detections of illegal border crossings reached a new record at over 280 000 detections (+ 164% compared to 2013).' in Philippe Delivet, *op. cit.*, p.6. In its proposal in December 2015 'A European Border and Coast Guard to protect Europe's External Borders', the European Commission considers that, between January and November 2015, 1.5 million persons have crossed the EU external border illegally.

long as Schengen is a subject for a political crisis, a political answer to the objections against its very existence is needed. Indeed, weakened by its pure intergovernmental aspects, the Schengen *acquis* is definitely in danger: administrative cooperation is not representative enough of its free-movement ambition.

It is nonetheless an opportunity for political forces in favour of its definitive integration into the EU common law to make progress, since the barrier between them and the Schengen rules, is thinner than ever, as national administrations are more and more under political pressure.

Obtaining a true political decision-making would allow the political assembly in charge of it to rewrite the Schengen legal instruments in order to save the *acquis*. But such a politicization implies beforehand the creation of a strong, vast movement across Europe, insisting in front of hesitating national public opinions on both the benefit given by free movement and the inefficiency of the intergovernmental method to deal with it

Finally, considering the institutional balance of power within the European Union, such a solution would probably lead to a reinforcement of the influence both of the Parliament and the Commission, at the expenses of the European Council. When may this beginning of resolution of the crisis appear? As Yves Bertoncini an Yves Pascouau recently observed, 'a favourable political dynamic can be implemented thanks both to the existence of a more proactive Commission today than there was back in the days of the euro area crisis, and to a more vociferous European Parliament, backed up by the four main political groups, which would allow Donald Tusk to overcome the antagonisms within the European Council'[24].

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[24] Yves Bertoncini and Yves Pastoureau, *op. cit.* p. 5.

CONCLUSION

'We are not forming coalitions of states, we are uniting men'[25].

To conclude this reflexion, let us say that Schengen is at stake as long as we are dealing with the idea of reinforcing the unification of Europe through independent, limited and intergovernmental constructions. On the other side, if Schengen is considered as the first - even if not satisfying – attempt of the realisation of the promise of freedom of movement within the associated European states, it is not really at stake, but definitely in need of clarification.

As for its political aspects, the migratory crisis definitely reveals the end of a period in the European Union's history. From 1950 to 1980, peace and economic development were the main advantages expected from the European construction. As from the 1980s, resistance to the instable world economic context and an expected additional economic growth in time of low GDP growth rate became the strongest arguments in favour of the internal market and the European Union: its political aspects were often presented as the price to pay for the economic success of integration.

This perception of the European construction, scarcely loyal to the vision of the first generation and largely inspired by the necessity of mastering the British reluctance to the European Union, has now come to an end. Contrary to the 2009-2011-debt crisis, the migratory crisis is not, first of all, an economic event with political side effects. It is a political phenomenon, caused by the conflicts in Middle East and Africa, with some economic side effects.

It consequently directly tackles what European leaders try not to discuss during the past few decades: the political meaning of the European Union. In fact, to control the borders is a political activity and to manage people's movements is a political prerogative.

Dealing with politics and borders finally leads to the question of sovereignty. If a common, or shared, sovereignty has to be proposed, it must have strong foundations, as evident for the vast majority of the European citizens as national identities are.

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[25] Jean Monnet, in a speech delivered in Washington on 30 April 1952.

Elaborating on that point from the Schengen case, the reflexion inevitably enters the field of political abstraction: what kind of fundamental political principles, designed to inspire their societies, the Europeans want to develop and to promote in a changing world?

During the past thirty years, the political debate on the foundations of the Union was refused by pro-Union parties, which preferred to underline the economic or social advantages of the integration. Schengen was thus overwhelmingly presented in economic terms and its political aspects were considered as practical details, on which diplomatic compromises could be made.

The consequence was that political parties hostile to the European construction have a head start on the ones that defend it, and have succeeded in imposing their vision of the debate. How come? In a stimulating article[26], Olivier Roy, Professor at the Florence European Universitary Institute, presents an explanation of the situation: European public opinions, and namely among them intellectuals and politicians, let the xenophobic parties transform the European culture into a European identity whose basic habits have been proclaimed defining specificities. Even Christianity, considered as the corner stone of this threaten European identity, is reduced to secular traditions that cannot be adopted by those coming from non-Christian regions.

There lays one of the fault lines the Schengen debate contributes to bring to light, beyond its technical aspects: to the extent that there has been one in modern European history, there is no more general agreement on the definition of Europe as a culture.

Therefore, just as a clarification of the AFSJ architecture is essential, a clarification is needed concerning the definition and the place of a true positive European culture, distinct – even if there are obvious social interactions – from religions and national or regional identities.

On that cultural renovation can be based a specific improvement of the Schengen institutions and a general renewal of the European project.

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[26] Olivier Roy, « Pourquoi le Front national est-il moderne ? Parce qu'il a lu Gramsci. » *La Revue des Deux Mondes*, oct.-nov. 2014, pp. 78-83.