# Scientific report

## "Migration and security in Switzerland: Evolution and present status of its link in politics and law"[1]

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*Christin Achermann, Clément de Senarclens, Robin Stünzi*

## Summary of the research work and its results

### *1. Research work conducted*

The main research questions of our project were as follows:

1. How is migration, in Swiss politics and law, securitized and what implications do these processes have?
2. When used in the context of migration politics and law, what understandings of security can be identified?
3. What differences and parallels regarding securitizing processes and regarding the understanding of security do we find at different moments, in different fields of migration law and politics and being used by different actors?
4. How does the Swiss case compare to other countries?

The following table gives an overview of the data, sites of interest, approaches and the different steps that we followed in order to answer our main questions.

| **Research work conducted** | | **Periods covered** |
|---|---|---|
| Literature review | Migration & Security Studies; Swiss immigration history | 2nd sem. 2011 - 1st sem. 2012 |
| Definition of historical periods | Identification of periods of increased density of political and legislative discourses and activities in the field of migration | 2nd sem. 2011 |
| Definition of relevant legal texts[3] | - Constitution<br>- Federal Act on the Temporary and Permanent Residence of Foreigners<br>- Federal Act on Foreign Nationals<br>- Nationality Act<br>- Asylum Act | 2nd sem. 2011 |
| Exploratory interviews with experts | 2 experienced migration scholars specialized among others on Swiss migration history | 2nd sem. 2011 |

[1] Project n° 100017_1348499, 01.05.2011 - 30.04.2013 and project n° 100017_146037, 01.05.2013 – 30.11.2014.
[2] Please refer to http://p3.snf.ch/project-146037 for up to date information on publications and presentations.
[3] This part of the project was conducted by Barbara von Rütte (MLaw).

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|---|---|---|
| Expert interviews | Members of the Parliament:<br>- Representative of SP, National Council, since 2011<br>- Representative of SVP, National Council, since 1995<br>- Representative of FDP, National Council 1991-2003, State Council 2003-2007<br>Judges:<br>- Judge at the second division of public law of the Federal Court (TF)<br>- Judge at the division IV of the Federal Administrative Court (TAF)<br>Federal Office of Migration:<br>- Senior analyst<br>- Legal specialist | 2nd sem. 2013 - 1st sem. 2014 |
| Gathering of the written data (legislative process) | "Messages" of the Federal Council, records of parliamentary debates, final bills and records of debates in commissions;<br>- Citizenship Acts : Elaboration of Federal Act on Citizenship (LN) 1876, revision 1903, revision 1920, initiative 1922, revision 1928, Bundesratsbeschlüsse 1940-1943, elaboration of the 1952 Bill, Initiative 1977, Arrêtés fédéraux 1979-1982, revision 1990, Federal Vote 1994, revision 2000, revision 2003, Federal vote 2004, initiative 2008, revision 2011<br>- Foreign National Acts: ordinances 1917-1921, Ausländerinitiative 1920, Art. 69 Cst 1924, elaboration LSEE 1929-1931, revision LSEE 1948, Initiatives 1967-1976, revision LSEE 1985, revision LSEE 1993, revision LSEE 1998, Elaboration LEtr 2002-2005, ALCP 1999<br>- Asylum Acts: Elaboration Asylum Act 1979, revision 1984, revision 1986, revision 1990, revision 1993, total revision 1995-1998, revision 2005, revision 2012 | 1st sem. 2012 - 2nd sem. 2012 |
| Gathering of the written data (case-law)[4] | Relevant case-law from the TF and TAF: about 100 clauses selected over 26 legal texts | 1st sem. 2012 - 2nd sem. 2012 |
| Codification of the data | Open, axial and selective coding with the computer based software MAXQDA | 1st sem. 2012 - 1st sem. 2013 |
| Analysis of the data | First round of analysis with an overview of the creation and evolution of three main fields of legislation (Foreign Nationals Acts, Citizenship Acts[5] and Asylum Acts). In-depth analysis with specific case-studies within each thematic domain (integration, exclusion, asylum). Analysis based on the principles of Grounded Theory, the use of Discourse Analysis and Critical Discourse Analysis | 2nd sem. 2012 - 2nd sem. 2013 |
| Presentation of the main results at conferences | Active participation at different national and international conferences. Organization of and participation in the conference "The Migration-Security Nexus: The case of Switzerland in international perspective", Neuchâtel, 13-14.11.2014 | 2nd sem. 2011- 2nd sem. 2014 |

[4] This part of the project was conducted by Barbara von Rütte (MLaw).
[5] This part of the project was conducted by Anna Neubauer.

## *2. Main research results*

In the following we present a summary of some of the main results of our research project. After a brief overview of the creation of the three main legal sources regulating the status and treatment of foreign nationals in Switzerland (which have been presented more extensively in the interim report of 8 June 2012), we will focus on selected aspects in each thematic domain thereby touching upon the different research questions before concluding with more general results.

The first period of the research project clearly demonstrated that the initial question whether there are processes of securitization of migration in the discourse and practice of Swiss politics, administration and law can be affirmed. Security rhetoric was central to the elaboration and evolution of the Federal Act on Citizenship (LN) of 1876, the Federal Act on the Temporary and Permanent Residence of Foreigners of 1931 (LSEE) and the Federal Act on Asylum of 1981 (LAsi). These findings call into question the widespread idea that it is only recently that immigration and asylum have become a security concern. However, our study illustrates how the definitions of the threats and referent objects differed depending on the period in question and the law under consideration. The early debates regarding the LN and LSEE clearly framed the presence of foreigners as a potential threat. First, there were concerns about possible problems to the country's external security due to potential conflicts with the states of origin of naturalization candidates or of political refugees. Then, the number of foreigners expressed as a percentage of the Swiss population was presented as the main source of danger. Later, specific categories of foreigners such as the "permanent resident" in the debate on the LSEE, the "non-assimilated" for the LN, or the "bogus asylum seeker" for the LAsi were seen as the danger against which measures had to be taken. If the threat was quite clearly defined, the referent objects were rarely mentioned and varied according to different debates and actors. They range from the country's autonomy to national identity, passing by the Swiss labour market. However, some debates related to the LAsi departed from this pattern in framing a specific category of foreigners, namely "refugees", not as a threat, but as a referent object. These results suggest that processes of securitization of migration occurred in the framework of the citizenship act and the foreign nationals during a considerable period of the 20th century through an explicit securitizing rhetoric in which the concept of "Überfremdung" (literally: overforeignization) played a central role as a leitmotiv conveying a general notion of threat. The same type of framing, even though in different terms, occurs in the case of the Asylum Act at the end of the century both through discourses and their resulting measures.

### a. Citizenship law

The following results stem from the analysis of Swiss citizenship law and the debates that have led to its adoption and revisions. They focus on the notion of security and on the role of security rhetoric and are particularly interested in their genealogy (Walters 2008). They thereby contribute to answering questions 2 and 3. The analysis was presented at an international conference and will lead to an article to be published in a peer-reviewed journal. At first sight and looking only at the federal citizenship acts, one would conclude that security as criterion in Swiss citizenship law only appears in 1990 and that it gains more importance in recent times with a considerable increase of its appearance in the completely revised version of the law of 2014. However, the notion of security did appear in citizenship legislation on two occasions before, once under the exceptional conditions of emergency legislation during the Second World War and another time in technical clauses present in the 1952 law. Leaving apart these exceptions we could thus conclude, in conformity with many scholars having worked on the nexus between migration and security, that citizenship law in Switzerland is a typical case illustrating the recent securitization of migration since the end of the cold war and even more specifically since 9/11 and the following attacks in Europe. However, if we look at things more in-depth, we realize that the nexus between security and citizenship is far from being new in Switzerland. Actually, ever since the Swiss confederation has had a say on naturalization (i.e. from 1874 onwards), federal citizenship acts have had a clear security orientation in terms of defining who could pose a direct or indirect threat to the country if naturalized (or if continued being a Swiss citizen) and who should, as a consequence, be excluded from access to Swiss citizenship or from

remaining a Swiss citizen. More specifically, we find two dimensions of security-related arguments present over time: those referring to what has been termed "external and internal security", and those relating to so called "public security and order". Both of these ideas have been present as conditions for the acquisition of Swiss citizenship ever since the late 19th century. However, the language used to refer to these ideas has changed over time. During the 19th century and at the beginning of the 20th legal texts stated for instance that "the relation of a candidate to his home country should not be prejudicial to Switzerland" and that the candidate as a person should have a "good reputation", "perfect morality" or "should not be prejudicial to Switzerland". Only in 1990 appeared the criterion that a candidate should "not compromise internal and external security". And only the most recent version of the federal citizenship act introduced the explicit condition of "respecting public security and order". It is interesting to remark that both in 1990 and in 2014 the introduction of explicit security language was, first, justified with the technical argument of creating coherence between different legal clauses regarding in particular deportation (aligning with the wording of the Constitution in the first case and with the one of the Foreign Nationals Act in the second), thereby creating a continuum between conditions for the loss of a right to stay and those for becoming a citizen. Second, by such a step there was no affirmed intention of introducing new criteria for naturalization, but the revisions rather aimed at clarifying and specifying the conditions that had been applied up to then. Nevertheless, this raises the question as to how the increased use of explicit security language over time can be explained – an evolution actually also present in the foreign nationals act. The formal argument of terminological coherence mentioned above is not fully satisfying as it does not explain why there is coherence towards security terminology. Following the literature on securitization one might think that the increased popularity of security language is to be seen in the context of general increase of the importance of a security atmosphere (Huysmans 2014).

To conclude, there is a clear affirmation that the dispositions of Swiss citizenship law relating to naturalization and deprivation of citizenship have been and continue to be a securitized domain, aiming at the protection of Switzerland as a state and as a nation against possible threats coming from new members. However, there is no evidence in our data regarding an influence of fighting against terrorism as a motivation for the introduction or the increase of security-related criteria as some of the international literature suggests (Boswell 2007; Gibney 2013). Furthermore, there is no evidence either that citizenship law has been securitized in the sense of a deliberate political strategy whereby a given actor elevates a certain topic to a security affair in the sense of Waever (1995). Rather, it seems as if there existed an intrinsic link between the conditions regarding naturalization (and deprivation of citizenship) on the one hand and security aspects on the other. Such an interpretation fits into an understanding of citizenship, following Brubaker (1999) referring to Weber (1968), as an instrument of social closure, meaning that it establishes criteria under which access to the rights and privileges associated with citizenship is granted or refused. As one of the privileges of citizens (usually) is protection against deportation and the right to political participation and since a state is responsible for guaranteeing the security of its citizens and of the country, it seems obvious that threats from the outside should be prevented and excluded by the means of selecting who to admit.

### b. Exclusion

The part of the project dedicated to "exclusion policies" especially focused on measures targeting foreign nationals who do not have authorization to remain on the territory. The following summary focuses on two types of measures that would be considered as security measures because they are measures typically used by security institutions such as the police or penal authorities and due to their exceptional character regarding infringements on individual liberties and regarding the strong degree of state coercion associated with it. Taking the existence of these measures as a starting point, we ask how they came to be legitimized and finally adopted into Swiss legislation by the parliament. We thereby contribute to answering research question 1.

The first set of measures analyzed is related to different forms of restriction and deprivation of liberty ordered on the basis of the administrative system of immigration regulation. These analyses entered into several presentations, conference papers and articles published in policy-oriented and scientific journals. They show that in the period between 1990 and 2005 security rhetoric (in the narrow sense of the term focusing on either criminality or military threats) was not decisive for introducing such exceptional measures allowing for the restriction and deprivation of foreigners' liberty in the Swiss immigration law by the parliament. Admittedly, the introduction of a new bill on "coercive measures in immigration law" allowing for new forms of restriction and deprivation of liberty for larger categories of foreigners and longer periods of time happened following a public debate on the involvement of asylum seekers in criminal activities. However, when it comes to the debates in the federal assembly, one observes that the federal council and the majority of the parliament did not support these measures with security arguments such as the necessity of fighting against criminality or the vital necessity to protect the population against threatening foreigners. On the contrary, such attempts were openly denounced and rejected. Rather, these new measures succeeded in passing through arguments related to the necessity of enforcing the removal of "bogus asylum seekers" in order to protect the "Swiss humanitarian tradition of asylum", the "credibility of the asylum system" and the "real refugees". Thus, the introduction of harsh measures regarding the administrative restriction and deprivation of liberty of foreign nationals were introduced in the Swiss legislation not through explicit security rhetoric, but through more consensual arguments that appeared stronger in order to rally a majority in parliament. The mechanism at work is thus different from the securitization approach defended by Waever (1995): it is not a speech act that elevates a certain topic to a security issue – the arguments are rather presented as not being security-related but justify nevertheless the introduction of exceptional measures characteristic of the security field. Depending on the precise understanding of what is considered to be at work as a securitizing mechanism one can thus conclude from these results that there is no securitization in this case-study. Or, taking on a broader perspective focusing on threat- and risk-rhetoric (including to such referent objects as "the humanitarian tradition" or "the asylum system") and extending to practices as having the power to securitize an issue (Bigo 2000; Huysmans 2006), we would nevertheless come to the conclusion that the creation of the legal prescriptions on immigration detention was part of a securitizing process, even though a subtle and indirect one.

The second set of exclusionary measures is related to legal norms concerning the administrative deportation of foreign nationals from Switzerland. These analyses were presented at public and academic conferences and led to an article which is about to be submitted to a scientific journal. The administrative deportation of foreigners has usually been legitimized in the federal parliament or by the federal court as a measure aiming at enacting and enforcing immigration control in order to exclude unwanted foreign nationals. The results of the analysis demonstrate however that the legislative changes made in the years 2000 led to an increasing conflation between the penal objectives assumed by judicial deportation that explicitly aimed at punishing foreign nationals for their crime, and the administrative form of deportations existing in immigration law. While this conflation eventually led to cancelling judicial deportation in the Swiss criminal law of 2007, the approval of the popular initiative on the deportation of foreign criminals will result - according to the latest draft bill of the federal council - to its reintroduction. Such a conflation between criminal law and immigration law – dubbed "crimmigration" (Stumpf 2006) – has been witnessed by several scholars in other countries (e.g. Chacón 2009; Mitsilegas 2015). It can be understood as one particular form of securitizing the field of migration – again not by the means of a speech act, but rather by associating migration and criminality through the construction and use of particular legal measures thereby contributing to the framing of migration and migrants as being related to criminality.

**c. Asylum**

The part of the project dedicated to the discursive, political and legal association of asylum and security issues has been the object of several presentations and conference papers, and we plan to publish the main findings in a peer-reviewed article. Drawing on the literature on Swiss immigration history, on texts pro-

duced by the federal parliament and administration during the legislative process, and on selected case law, our analysis of the linkages between asylum and security issues enables to contribute to the contemporary debates about what has been labelled as the "migration-security nexus" (Faist 2004) and to answering all of the four research questions.

First, evidence from the data suggests that the use of security rhetoric and practices in relation to the question of asylum has been present long before the end of the 20th century, challenging certain assumptions that it is only recently that immigration and asylum have become a security concern. On the contrary, we clearly find that the issue of asylum has been discursively and legally modulated as a security domain throughout the Swiss history ever since the creation of the Swiss federal state in the 19th century. Second, our study reveals the asymmetrical character of the securitization of immigration pointed out by several scholars (Eckert 2008), implying that potentially exclusionary and violent effects of this process target certain categories of migrants. In our case, we were able to observe how asylum seekers and refugees in general and certain sub-categories in particular have been targeted by this process in several episodes of the Swiss history. It has notably been the case at the end of the 19th century, with the figure of the socialist refugee whose political activities were considered as a potential threat to internal security, during the First World War, where the military refugees were regarded as endangering both internal and external security, during the 1930s and the Second World War with the figure of the "Jewish emigrant" and the dramatic closing of the borders in the summer of 1942, and since the end of the 1980s, with the threatening figures of the bogus, the criminal or the recalcitrant asylum seeker. Third, our analysis illustrates how the meaning of security cannot be limited to a unique source of danger (e.g. such as terrorism) and needs to be considered in all its potential dimensions, whether military, political, economic, societal, etc. (Buzan 1991; Waever 1995) and its variety of referent objects. Therefore, the analysis has enabled to illustrate a certain shift of the concept of security in its relation with asylum, from a notion of internal/external security that played a major role until the end of the Cold War, to a conception that focuses more on the public security and issues of criminality since the end of the 1980s. Furthermore, the presence of refugees and asylum seekers on the Swiss territory has often stimulated vibrant political debates illustrating the potential tension that can arise between what is called national, or state security in the literature (Buzan 1991), and what is labelled "human security" (Newman and van Selm 2003). Fourth, our contribution raises important theoretical and methodological questions about the most relevant processes that are to be examined. Although it is mainly based on the analysis of documents produced during the legislative process, our study goes beyond the idea that the process of securitization is limited to the rhetoric configuration of security through the successful performance of particular speech acts (Buonfino 2004; Waever 1995), and it seeks to integrate the insights of other scholars (Bigo 2000; Huysmans 2006), who invite to consider the dynamics of institutional fields, certain technical practices of security and the measures emphasizing police and defence within the field of immigration and asylum. Finally, we want to highlight how the process of securitization of the politics of asylum in Switzerland has contributed to ascribe identities and construct "dangerous" categories on one side, such as the criminal, the recalcitrant or the bogus asylum seeker, and categories "in danger" on the other side, such as the suffering victim. In our interpretation, these categories illustrate a will to construct asylum seekers as depoliticized victims of insecurity, but when their identity does not conform to this stereotype and they use their agency, they are designated as illegal, bogus or criminal. Then, such a labelling usually justifies exclusionary measures, be it in the physical sense of deporting or detaining them or in the sense of depriving them from access to certain rights.

### d. Conclusions

In the following we conclude on some of the main outcomes of the research project, focusing on conceptual and comparative issues. Some of them were inspired by the debates with the invited international scholars at our closing conference.

*The notion of security and the concept of securitization*

One of the major questions we have been dealing with throughout the project referred to the question of what "security" is and of what we mean by "securitization". The main point of discussion – confirming that security is "an essentially contested concept" (Dalby 1997) – refers to the scope of what is thought to be covered by the notion of security. Should it be understood in a narrow sense of relating only to explicit security language or referring mainly to existential threat situations related to military and police/ criminality issues? Or should there rather be a broader conception encompassing a variety of threats, risks, but also notions such as "abuse", "protection" or even an atmosphere of general unease? Due to our inductive approach there was a particular need to define criteria based on which we could delineate in the analysis of our data what to consider as being security or not. We finally opted for a framework which is inspired by the approach of Buzan et al. (1998), but which we adapted and widened. This means that we did not focus on existential threats exclusively, but extended the concept to include other types of threat. In addition we were interested in all types of referent objects and not in national security only. Nevertheless, we would not stretch the notion as far as for instance Huysmans (2014) does when referring to "security unbound" as a general "atmosphere of insecurity". The advantage of such an intermediate conception is that it is independent from a given context and its particular understanding of security (such as a crime-related notion dominant at present), allowing therefore for taking into account the plasticity of the notion of security.

Such an understanding of security implies a particular conception of securitization processes. For some authors (e.g. Boswell 2009), securitizing immigration and asylum necessarily involves associating these issues with terrorism. However, in coherence with the above mentioned definition of security our understanding of the process of securitization goes beyond the connection with issues of terrorism to include various discourses and measures that problematize the field of migration and asylum as a patchwork of insecurities and dangers to different kind of referent objects. In this sense, we examined discourses as well as practices typically associated to the security realm of crime, police and military that can be regarded as forming a "continuum of insecurity" (Bigo 2000) that can be disentangled through understanding what is hidden behind the catchword "security" in a given context. This implies further that we distance ourselves from the speech act theory defended by Waever (1995), in the sense that we do not understand securitization exclusively as an intentional practice of particular actors addressing an audience by elevating a subject to a security issue. Such a conception of securitization finally allows to distinguish between processes of differing intensity and scope.

*Comparison*

We will briefly elaborate on three comparative axes: between the three thematic fields and the three legal domains, over time and with respect to other countries and legislations.

As it was illustrated above, both the notion of security and more generally security rhetoric have been present in the three domains and legal sources over time, in particular when it comes to dispositions regarding the admission or exclusion of a foreign national. This means that the criteria of not representing a threat (in varying respects) is a constant condition for either being included into the access to certain rights (e.g. being present on Swiss territory) or for being excluded from legal presence or access to rights. Furthermore, we observe a general tendency in the evolution of the meaning of security in the three fields, which is characterized by a loss of importance of internal and external security in political and administrative discourse on migration legislation (though it continues to exist as a legal criterion). On the contrary, especially in the recent past "security" is mainly framed in the sense of "public security and order". Here, it is not the state and its authorities that are endangered (as it is the case for internal and external security), but it is a more horizontal version of security where the citizens and their possessions are deemed to be in danger. However, evidence from data suggests that the internal/external security issues continue to be of importance, but being much more treated by the specialized "security legislation" and the responsible

specialized bodies such as the secret service which we only included episodically. Finally, there is one meaning of security which appears almost exclusively in asylum legislation and discourse: human security or the need of protection of the migrant individuals.

If we compare the evolution of the notion of security and securitization of migration politics and law over time, we find that, in addition to the above-mentioned changing focus of the meaning of security, migration and asylum have not become a security concern only recently. Our historical perspective therefore enabled to contest the widespread idea that immigration and asylum were previously considered to be a social and economic phenomenon and were turned into a security question only at the end of the 20th century. Our analysis has allowed to identify historical episodes in which migration and asylum have been discursively and legally associated with security issue since the birth of the federal state of Switzerland in 1848. Ever since their beginning, migration politics and legislation have thus always taken place in a security framework aimed at preventing potential harms. Such a situation can be understood as being part of the nation-building process going on at that time during which the young federal state was confronted with the challenge of creating cohesion between the different cantons that had been accustomed to a lot of autonomy and sovereignty, not least regarding the regulation of migration of non-cantonal or foreign citizens. The mechanism at work which consist in fostering cohesion by the means of depicting "the others" – which were no longer citizens of other cantons but of other states – as potential threats is well-known in processes of social group formation and boundary-work (e.g. Brubaker 2004; Weber 1968; Wimmer 2013).

A certain number of parallels as regards the migration-security nexus in other countries have already been mentioned above. The main difference that makes the Swiss case to some extent a special one is the particularly small relevance of the topic of terrorism in the securitization of migration. This corresponds to the above-mentioned diminishing importance of the internal and external (or "national") security dimension in political discourse on migration. This said, there certainly is a discourse in parliament on for instance the risk of jihadist terrorism, but it is hardly present – and certainly not dominant – in debates on migration legislation which would contribute to a conflation of the migration and terrorism issues. Interestingly enough, though, Switzerland knows similar security-related practices towards certain categories of migrants as other countries (e.g. long term immigration detention, mandatory deportation, possibility to deprive a dual national of Swiss citizenship), but the legitimations leading to their adoption or preservation are – contrary for instance to the US or the UK – not related to preventing terrorism.

*Added-value of our study and approach*

Our study is one of the few – and in Switzerland the first – adopting both a historical and dynamic perspective on securitization and the notion of security and doing a qualitative analysis of empirical data such as discourses in parliament, official documents, legal texts and case law. This approach allowed to enlarge our focus and understanding of securitizing processes at work in the political and legal domains regulating migration. In addition, taking the federal parliament as the main site of analysis enabled us not to limit our attention to the particular discourses of certain political actors, but to grasp the more subtle democratic processes which turn explicit discourse used by parties during their campaigns into policies legitimized by all political actors. Our analysis confirms that and shows how securitizing discourses and practices can shift power relations and legitimate the adoption of exclusionary policies that would be difficult to justify without referring to a threat-scenario. Furthermore, our analytical approach to the notion of security allows to deepen our understanding of what is considered to be problematic for a given political community at a certain time and where the level of acceptable or non-acceptable threat is fixed at a certain moment. In addition, by defining what we consider as being "security" we create the possibility to focus further on where security is absent or where de-securitizing processes might be at work. Finally, we are convinced that the interest for securitizing processes raises more general questions about how a political community organizes itself and puts priority on particular values – such as security and risk-prevention – that potentially enter into conflict with other ones such as liberty or justice.

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