

REVIEW

On responsabilisation and remote border control instruments

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Bespreking van: S. Scholten, Privatisation of immigration control? A socio-legal study on the role of private transport companies in the Netherlands and the United Kingdom (PhD thesis), Nijmegen: Radboud University Nijmegen 2014.

In her informative and rich PhD thesis, Sophie Scholten deals with a highly relevant question regarding the consequences of involving private partners in the domain of immigration control for the development of carrier sanction regimes in the Netherlands as well as in the UK. In addition, she analyses the consequences of the development of these sanction regimes from the 1980s onwards for the mutual relationships between what Scholten coins as the triangle of states, carriers and passengers. Before answering these questions regarding the divergent consequences, Scholten unfolds the reasons behind the deployment of these private actors and places the privatisation of immigration control into a broader development in which governmental control is being transformed from a top down movement into a much more deregulated network approach of governance among which self-regulation as well as privatisation are becoming increasingly important. In an era where immigration control is one of the major issues and the fear of terrorism dominates safety policies, it is increasingly important for governments to share information and control the influx of foreigners.

In order to answer the questions about the consequences of involving private partners in the domain of immigration control for the development of carrier sanction regimes, Scholten analysed literature, case law, national and European legislations, policy documents and political debates. Next to this broad analysis of documents she also conducted a limited number of semi-structured interviews with governmental officials, experts as well as carriers and added to these interviews observations on the spot. Throughout her thesis Scholten accurately presents these divergent sources in an elegant manner, moving easily between statements of KLM managers and passages of annual reports of for instance Rotterdam Shipbrokers and Agents.

One of the theoretical starting points are the divergent interests of states and carriers by stressing the fact that the only interest carriers seem to have in screening passengers is the avoidance of fines or other liabilities. This in turn raises questions on how states enforce carrier sanctions provisions. Scholten theoretically describes a continuum of enforcement strategies from a legalistic deterrence approach on the one side to compliance on the other side. She thereby focuses on the mixed strategy of responsive regulation in which the degree of

sanctioning and persuading strategies are made depended of the attitude and motivation of the offender. Throughout the book several interesting and relevant cases are being discussed. Scholten describes for instance the development of the shelter for immigrants that was erected by the Red Cross in 1999 in Sangatte near Calais and the Eurotunnel. Numerous immigrants from the Sangatte shelter repeatedly tried to gain access to the railway terrain in order to enter the trains leaving for the UK. In this description Scholten vividly describes the complex interactions between the immigrants, the Eurotunnel Company, French and UK authorities, the media as well as other transport companies. The closing of the Sangatte centre in December 2002 of course did not put an end to the problems with the undocumented migrants as it did lead to the growth of other nearby camps and also fuelled the introduction of juxtaposed controls. Above all the Sangatte case illustrates how commercial, political and immigration interests mingle in the context of controlling illegal immigration.

At the moment, carriers in the UK as well as in the Netherlands are obliged to check the documents of passengers and prevent the so-called inadmissible passengers from continuing their journey. UK and Dutch carriers are obliged to re-transport these passengers on their own costs and carriers are responsible for taking accurate measures preventing people from traveling clandestine. In addition, the UK government requests additional passengers' data from carriers like the Dutch government does on a smaller scale from air carriers related to 'risk airports'. The Netherlands and the UK differ in the scope of the regulations: as an island outside of the Schengen treaty the UK deals with numerous air, land and sea borders and targets a broad spectrum of transporters. However, as a Schengen member state and lacking land borders, The Netherlands has to deal with a restricted number of air- and seaports as external borders and imposes sanctions on airlines. Another major difference between the UK and the Netherlands Scholten describes, refers to the nature of the sanctions: the government of the UK has chosen for civil sanctions whereas the Netherlands imposes criminal penalties on carriers. Scholten explains this from geographical and political differences between the Netherlands and the UK. As an island, outsiders will always have to travel by plane, train or by ship and, consequently, the UK leans much more heavily on involving carriers in the process of immigration control than the Netherlands do.

So what are the consequences of consequences of involving private partners in the domain of immigration control for the development of carrier sanction regimes in the Netherlands as well as in the UK? First of all Scholten argues that there is a re-location of borders through carrier sanctions. Quoting Scholten, she convincingly argues that carrier sanction policies have become remote control instruments in a complex, layered system of border control. Private transport companies function not only as remote hired employees of immigration control policies, but also increasingly as information providers in the fight against international terrorism and transnational organized crime. More and juxtaposed control measures by the carriers in turn, led to a decrease of (undocumented) fare-paying travellers and an increase of immigrants relying on much more dangerous means of clandestine traveling in order to reach the UK hidden in or under vehi-

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cles. This relocation of borders through carriers sanctions also lead to the conclusion that countries as well as asylum procedures have become much more difficult to reach for immigrants seeking refuge. Immigration control through carriers also results in a situation where transport companies decide who will be included or excluded from entering the country. And although governments have tried to incorporate measures within the carriers' regimes favouring immigrants who apply for asylum, the empirical research illustrates that these private companies do not make exceptions for (clandestine) passengers that claim asylum. According to Scholten, governments are aware of this serious omission, but seem to take it for granted as some kind of collateral damage. Simultaneously, this situation whereby non-state actors function as an immigration control poses serious questions with respect to international rights to seek asylum and non-refoulement principles.

And how has the evolution of the sanction regimes impacted on the mutual relationships between the triangle of states, carriers and passengers? Scholten describes several ways in which the governments of the UK and the Netherlands have overcome the resistance among carriers for additional document controls and data exchange. One important strategy is the development of arrangements that focused on compliance or cooperation between states and carriers instead of deterrence through sanctions. Interestingly this is not an uniform process including all carriers. The degree of co-operation between states and private transport companies is being shaped by the intensity of the relationships between the state and the carrier, the existence of catalyzing events through political pressure or media attention, as well as time and the perception of the nature of the legal sanction by the carriers (criminal or civil).

Scholten describes several limitations in the research design of the study but unfortunately does not clarify the rationale behind the choices that lead to these limitations. For instance, the author does not explain the unevenness in the empirical research between the Netherlands and the UK. And, more importantly, given the central importance of the three actors (state-carrier-passenger) in the specific immigration control triangle, the absence of passengers in the empirical research is rather unfortunate. Although Scholten does not deny these passengers agency, it still remains unclear whether and if so, how these refugees are confronted with the carrier sanction regimes and especially how these immigrants perceive and react on these remote border control instruments. Given this criticism and the fact that one should not expect it all in one research, I would rather like to stress my appreciation for the complex and rich insights presented in Scholten's thesis. The author rightfully stresses the need for research that goes beyond analysing the 'law in the books' and research with a more comprehensive historical and sociological perspective focus on how people appropriate these laws and the unintended consequences of these laws in daily social interactions. In doing so, Scholten made a fine contribution to the academic literature on contemporary processes of politicization and securitization of international migration.