

## 6 Fortress Europe and the Dutch Donjon: Securitization, Internal Migration Policy and Irregular Migrants' Counter Moves

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### 6.1 Introduction

Since '9/11', immigration and security policy have increasingly intertwined. Political elites have taken the view that immigration policy can contribute to combating and preventing terrorism (Guild 2009; Huysmans 2006; Boswell 2007; ACVZ 2003), adding to the longer standing view that flows of unwanted migrants are a security threat to a welfare state if these groups obtain straightforward access to public provisions. In the more comprehensive welfare states there is a paradox of solidarity and exclusion (Freeman 1995). Maintenance of national, comprehensive forms of internal solidarity (in the fields of health care, social security, education, public housing) for the benefit of native citizens and legal foreign residents implies the exclusion of outsiders from the welfare state's social entitlements. As Christian Joppke (1999: 6) concisely put it: "Because rights are costly, they cannot be for everybody". Aside from this, irregular migrants are assumed to undermine the labour market position of citizens and established residents through job displacement and unfair wage competition. This argument recently gained more importance in the Mediterranean countries due to the 2009 economic crisis and increasing unemployment.

This chapter focuses on irregular migrants, a category of migrants who do not have a legal residence status in the Netherlands. This is not to say that they illegally crossed the external borders of the EU. Many of them migrated legally on a (tourist) visa or had applied for asylum. They crossed into 'irregularity' at a later stage when their visa expired, or when their asylum application was rejected. By remaining in the country, they become 'irregular'.<sup>1</sup> Governments have responded in several ways to the presence of irregular migrants. One strategy is to accept and tolerate it for economic and humanitarian reasons. This policy characterized most West European countries in the 1970–1990 period (Cornelius/Tsuda/Martin/Hollifield 2004). A

second strategy, followed primarily by South European countries, is to assign a legal status to some of these persons through regularization programmes (Levinson 2005). A third strategy is to combat illegality. Termed as 'Fortress Europe' this strategy has been the principal line taken in most continental European welfare states since the early 1990's (Engbersen/Van der Leun 2001), and is now taking hold in other European countries, topping the European public agenda and gaining acceptance even in the United States (Jencks 2007; NCSL 2009). The 'combat' strategy has led to a stronger focus on 'internal border control', which includes various measures for excluding irregular migrants from the formal labour market and public provisions. Emphasis on controls led to increasing involvement on the part of employers and public housing corporations, welfare agencies, schools and health care bodies (Van der Leun 2003). The shift 'inward' also entails the tracing, identification and detention of unwanted migrants found residing in the territory in spite of external border control, as well as their exclusion from the formal labour market and the welfare state. Large EU databases now enable states to monitor migrant movements and to expel unwanted migrants more effectively. Furthermore, detention capacity has been increased to facilitate the identification and expulsion of apprehended irregular migrants (Broeders 2007, 2009a).

This chapter describes the current EU and Dutch policies for 'combating' irregular migration. The Netherlands is presented as a crucial case of the For-

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1 The term 'irregular migrants' is used here in order not to criminalize or de-legitimize *a priori* specific groups of migrants. The term 'illegal migrants' is often used in EU documents ("The fight against illegal migration") and will be used only when it is used in EU documents, or in other government documentation quoted in this chapter. The legal term 'illegal alien' denotes an alien who does not have a legal residence status.

tress Europe strategy of internal migration control. Second, we analyse the counter strategies of irregular migrants in reaction to the new restrictive policies. Irregular immigrants are not passive agents; they react to changing options and create new solutions for their problems (Broeders/Engbersen 2007). Analysis of these various positions enables assessment of the extent to which the new restrictive policies are generating new security problems. There are definite indications that the new systems of internal border control have led to unintended negative consequences – such as rising crime levels among irregular migrants and increasing dependence on the informal economy (Engbersen/Van der Leun 2001). The outline of this chapter is as follows. There is first a brief overview of the current Dutch and partly EU-policies for fighting irregular migration. Then we discuss the implications of these immigration policies for the residence strategies of irregular immigrants. Residence strategies are strategies that enable irregular immigrants to make ends meet and remain in the Netherlands. We will then analyse three important strategies: labour market participation, criminal behaviour and manipulation of identity to prevent expulsion. The final section examines the complexity of policies dealing with irregular migration, their unintended consequences, and their implications for security issues.

## 6.2 Fortress Europe and the Dutch Donjon

If the European Union can be characterized as a ‘fortress’, then the Netherlands can be seen as its donjon. A donjon, or a keep, is the fortified central tower that forms the heart of a fortress. It contains the most valuable supplies and the most important living quarters of the castle.<sup>2</sup> Translated into immigration policies, the Netherlands represents an important example of a ‘keep’ in the EU to shield from ‘irregular’ migrants. The donjon is the welfare state, the labour market and, in essence, the right of residence plus all the other rights and privileges which that entails. Obviously, modern donjons and fortresses do not rely solely, or even predominantly, on walls, gates and a moat. Actual ‘fortifications’ are to be found at the fringes of Europe where some of the external Schen-

gen borders have been strengthened with fences, surveillance equipment, guards and watchtowers; but the truth is that the external borders of the EU are too long to patrol effectively (Groenendijk 2002; Carling 2007). States have gradually realized that ‘keeping them out’ is only part of a possible answer to unwanted migration.

One important policy shift in recent years has been the growing importance of internal control on irregular migrants in the Netherlands, but also in countries such as Germany and Denmark. This comprises an array of measures including legislation, documentation and registration, exclusion from public services, employer sanctions and police control (Cornelius/Tsuda/Martin/Hollifield 2004; Van der Leun 2006), plus new forms of (digital) surveillance.

### 6.2.1 Strategies of Exclusion

One of the prime struggles between irregular migrants and the Dutch state apparatus is control over identity and identification. In matters of immigration, control over identity (passport, visa) has always been one key to inclusion and exclusion (cf. Torpey 2000); but in the age of computerization, database technology and cross-referencing identity control occupies centre stage. Moreover, in a constitutional state, such as the Netherlands, identification of irregular migrants is key to any policy of exclusion. Guarding the Dutch donjon is these days a matter of an internal migration control revolving around three main concepts: exclusion, surveillance and identification. The link between exclusion and surveillance can follow two separate, and essentially contradictory, logics (Broeders/Engbersen 2007; Broeders 2009b). The first logic is ‘exclusion from documentation’ and the second is ‘exclusion through documentation and registration’.

Exclusion from documentation and registration deploys surveillance to exclude irregular immigrants from key institutions of society, such as labour and housing markets and even informal networks of family and people from their home countries. Under this logic, irregular migrants are (formally) excluded from legal documentation and registration, and are thus excluded from the institutions themselves as they lack the proper ‘tickets’ to gain entry. This strategy of exclusion covers also the de-legitimization and criminalization of all those who may be employing, housing and aiding irregular immigrants. These strategies are prominent in the Netherlands and other North-Western EU member states where registration is routinely

2 ‘Donjon’ should not be confused with the *dungeons* – the prison cells – which all medieval castles would have, generally built in below the basic ground-level of the ‘keep’.

used to exclude irregular migrants from (semi-) public institutions and the labour market.

Exclusion through documentation and registration involves practices that aim to document irregular immigrants themselves through a strategy of recently developed detection and identification tools. Identifying and documenting irregular migrants is necessary for detection, but also for expulsion, as states have gradually found that “unidentifiable immigrants are constitutionally rather invulnerable to expulsion” (Van der Leun 2003: 108). The expulsion of irregular migrants can only function when one can establish identity, nationality and (preferably) migration history of individuals. If not, expulsion is likely to be resisted from within (lawyers and judges) and from abroad (countries of transit and origin) in addition to resistance from the persons themselves. It is therefore vital for the state to connect ‘irregulars’ with their ‘true’ legal identities.

Policies operating under this logic of exclusion aim to document and register the individual as an irregular migrant. Documentation and registration are to establish: 1) the irregular status of the person and 2) establish and (re) connect them with their individual ‘true’ legal identity. In other words, registration is used to identify or even re-identify ‘irregulars’ (Broeders 2007). This helps to facilitate exclusion in the ultimate sense: expulsion from the state. Investment in this strategy is much more recent than in the first, and has become dominant in advanced welfare states of Northern Europe.

### 6.2.2 Exclusion in the Netherlands

Since the end of the guest worker era, successive Dutch governments have enacted policies to address the issue of unwanted migrants. As in most countries, the labour market was the first target. The initial measures to curb (irregular) labour migration took effect in the late 1970’s in the area of employer sanctions. The primary aim then was to ‘demagnetize’ the labour market (Martin/Miller 2000; Martin 2004). In other words, sanctions and policy were directed primarily at domestic employers; the irregular migrants themselves were less affected. Resident irregular migrants did not become an explicit policy or public problem until the early 1990’s. The period up to the early 1990’s can be characterized as one of increasingly strict regulation of entry through immigration law and policy along with a simultaneous lax approach towards irregular residence and irregular work. Irregulars, once established were able to find

work even in the formal labour market. They could then still obtain a Social-Fiscal number (henceforth Sofi-number) which allows a person to hold jobs with tax-paying wages. The enforcement regime on informal labour was lax and in a number of sectors such as agriculture and horticulture, where in spite of high unemployment figures employers find it difficult to fill vacancies, the authorities often turned a blind eye.

In the early 1990’s, this informal policy of toleration changed drastically. In 1991, the government tied the sofi number to a legal residence requirement, thus barring the route to legal participation in the labour market. Other measures followed, such as the Mariages of Convenience Act in 1994 and the compulsory Identification Act of the same year. Also in 1994 the Aliens Act was amended in order to introduce new policies in the field of asylum policy. The centrepiece of the new policy of internal migration control was the Linkage Act of 1998, intended to exclude irregular migrants from the benefits of the welfare state. This Act amended the Aliens Act plus some 25 other legislative items (dealing with social security, housing, education and health care) and made entitlements in these fields dependent on residence status (Pluymen/Minderhoud 2002). Parallel to these legal innovations the Dutch government also invested heavily in database systems able to identify, register and track resident migrants.

Ten years on, in 2004, the Dutch Government published a White Paper on Irregular Migrants (*Illegallennota*). In this White Paper the regulations and policies of exclusion from institutions were supplemented with procedures aimed at the detection and identification of irregular migrants. Priorities in this white paper included: 1) cutting off access to employment and housing by intensifying controls, 2) intensifying the fight against identity fraud through increasing controls by the police, 3) increasing the detention capacity for irregular migrants, and 4) expelling more apprehended migrants through the expulsion policy programme. The growing importance of the second logic of exclusion is evident from the emphasis placed on identification and detection of identity fraud, use of detention and importance of expulsion policies. Other EU member states share some of the Dutch policy priorities. Many (northern) EU members have also been increasing their detention capacity for irregular migrants and rejecting asylum seekers with the aim of facilitating expulsion (Welch/Schuster 2005; Van Kalmthout/Hofstee/Van der Meulen/Frieder 2007; Jesuit Refugee Service, 2005).

Recently Fortress Europe came to the aid of its Dutch donjon in matters of *internal* migration control. The EU Ministers for Justice and Home Affairs eventually realized that the outer walls of the fortress lack sufficient deterrence, given that migrants who pass the hurdle of border controls (legally or illegally) are nevertheless able to live unimpeded in irregular residence in one of the member states (Lahav/Guiraudon 2006; Lavenex 2006). The European Commission's Return Action Plan of 2002, which states that the message should get across that "immigration must take place within a clear legal procedural framework and that illegal entry and residence will not lead to the desired stable form of residence" (Samers 2004: 41) expresses this most clearly. The most important instrument under development at the EU level is the emergent network of EU migration databases, consisting of the Schengen Information System (SIS), the Eurodac database and the Visa Information System (VIS). These may become important tools for the (re-) identification of irregular migrants. These databases will store massive amounts of data, including biometric identifiers, on potential irregular migrants. They will register as many immigrants as possible from 'suspect' legal categories (asylum seekers are registered in Eurodac) and 'suspect' countries of origin (visa-applicants will be registered in the VIS to get the percentage of immigrants that cross into irregularity at a later stage). These systems can re-identify irregular migrants who try to conceal their identity to avoid expulsion.<sup>3</sup> In matters of migration management, organizing and equipping data exchange at the European level has value for a country's domestic policies. The Netherlands and Germany are the leading advocates for such European data exchange.<sup>4</sup>

### 6.3 Shifts in Strategies of Irregular Immigrants

The realization that 'keeping them out' (border control) has to be supplemented with policies of 'getting them out' (internal migration control and expulsion) is but a first step. Putting such policies into practice requires political determination, budget resources and delegating the task of exclusion to private and public

agencies, but especially to public service employees working in agencies who interact directly with citizens by providing public goods like education, health, welfare or public housing (Lipsky 1980). In addition there is a layer of 'street-level bureaucracies' which involve police officers, labour inspectors and other law enforcement personnel.

During the 'toleration years' there was a big gap between national legislation and its actual implementation by municipalities and street-level bureaucracies. Professionals, public service workers and local officials used their discretionary and political powers to mitigate the social consequences of anti-irregular immigration or asylum policies for specific groups, thus enabling some groups to gain access to public services after all (Rusinovic/Van der Leun/Chessa/Engbersen/Vos 2002; Van der Leun 2003). With the introduction of stricter policies that gap has apparently narrowed (in the Netherlands) because new legislation and new technological equipment which makes effective control of immigrants possible now intersects with the discretion these professionals apply in their work. Of course, both employers and irregular immigrants still develop strategies to get around exclusionary policies by making use of quasi-legitimate and illegitimate means. Public service workers, professionals and local authorities also play a role in this respect (Jordan/Düvell 2002; Anderson 2005); but the margins between which irregular migrants can be supported are getting closer.

A crucial question is, how do irregular immigrants react to these new policies of exclusion and identification? Irregulars have shown remarkable creativity and inventiveness, developing strategies and informal institutions, enabling them to continue residing in the Netherlands. In response to changes in policy they change tactics, look for ways of circumvention and move to other spheres and contexts. Both the irregular immigrants and the institutional surroundings in which they exist, and are active, have a stake in resisting the state's efforts to make society legible and thus more controllable (Scott 1998). Their means to do this are less sophisticated than are those of the state but that is not to say that they are ineffective.<sup>5</sup>

3 For an analysis of these data systems see Broeders (2007).

4 See at: <<http://www.sussex.ac.uk/sei/documents/wp72.pdf>>; see Aus (2003, 2006).

5 Scott (1985) refers to everyday popular resistance to state policies in situations of extreme inequality as the "weapons of the weak": hardly impressive, but nonetheless effective in certain contexts.

## 6.4 From Formal to Informal Work

The first line of action governments took against irregular (migrant) labour was the introduction of employer sanctions. The penalization of employers (and irregular employees themselves) varies in severity from country to country; in some fines are high; employers can be imprisoned, licences revoked (Robin/Barros 2000). The consensus is that the effectiveness of employer sanctions to deter irregular entry and employment was declining by the turn of the century. Martin and Miller (2000: 2) assert that the effectiveness of employer sanctions has been undermined by a variety of practices, involving the spread of false documents, the rise of subcontractors plus intermediaries, together with inadequate labour and migration law, insufficient enforcement budgets and deficient cooperation between agencies. Shifting strategies of irregular migrants combined with inadequate means of implementing policies lie at the root of this ineffectiveness. Boswell and Straubhaar (2004: 5) suggest, however, that the Netherlands and some other governments are increasingly taking the “combat of illegal foreign labour” seriously. “Germany, the Netherlands and France all have tough legislation, and have stepped up efforts at enforcement since the early 1990’s.”

As stated earlier, the Dutch government laid a protective ring of documents and documentary requirements around the formal labour market from the early 1990’s onwards to block access to stable tax-paid jobs, with the intention to cut off any possibilities for people without valid documents to build up a quasi-legal position through the labour market (Van der Leun 2003; Engbersen 2003). With the easy venues into the labour market being cut off, irregular migrants have been seeking new ways to become employable. Assuming, borrowing or buying a ‘legal identity’ has been one main way to regain access. Many countries have seen the emergence of an illegal ‘paper market’ (Vesta 2008) producing and selling false papers. In addition there is a widespread practice of lending legitimate documents (passports, social security numbers, etc.) to irregular migrants, either freely or for money (Engbersen 2001).

Intermediary organizations also gained ground as it became more difficult for an individual irregular alien to gain access to the labour market. Subcontracting and temporary employment agencies have become important institutions to facilitate a match between the demand and the supply of irregular workers. Interestingly, often, official economic policies of deregulation and creating labour markets are more flexible

and offer opportunities for these intermediary structures. It is through these that the irregulars could find their niche. Yet, as Martin and Miller (2000: 16) remark, the general trend towards deregulation and greater flexibility in labour markets undercuts governmental policies aimed at curbing irregular entry and employment. The boom of legal, semi-legal and shady temp agencies in the Netherlands was clearly a direct result of the Government’s deregulation of temp agencies (Van der Leun/Kloosterman 2006). Portes and Haller (2005: 409) point to a paradox of state control: “... official efforts to obliterate unregulated activities through the proliferation of rules and controls often expand the very conditions that give rise to these activities”. This does not mean that regulations create informality, but they do seem to enhance opportunities for engaging in irregular activities. It has been suggested that a too repressive and authoritarian surveillance of informal activities drives them further underground, depriving authorities of information and control over them. “The systematic withdrawal of information from government agents has proven by far the most effective tool in the hands of civil society to resist authoritarian rule” (Portes/Haller 2005: 420).

During the 1990’s and into the 2000’s the Dutch government did try to get a firmer grip on irregularity in the labour market. To begin with there were legal initiatives such as the extension of the Dutch Act on Chain Liability to the garment sector in 1994 which made retailers formally responsible for the illegal practices of their contractors. Then labour market controls were intensified, inspections became more targeted (based on risk analysis) and in certain sectors and industries the government organized ‘crack-downs’. The introduction of a Clothing Intervention Team which organized raids on Turkish sewing shops and specifically targeted violations of the Foreign Nationals Employment Act (*Wet Arbeid Vreemdelingen* or WAV), was one of the main reasons for the nearly complete disappearance of the garment industry in Amsterdam (Raes/Rath/Dreef/ Kumcu/Reil/ Zorlu 2002). Comparable teams, in which all the relevant government agencies cooperate, were introduced for horticulture (Westland Intervention Team), and the new Social Security Inspectorate (*Sociale Inlichtingen en Opsporingsdienst* or SIOD) targeted temporary work agencies in the Netherlands. During the 2000’s, the Labour Inspectorate saw its ranks growing in size. Political priorities finally converted into extra funds, more personnel (the number of inspectors grew from 80 in 1999 to 180 in 2006) and a new legal basis for



the system of giving fines. Since 2005 the Labour Inspectorate can make use of an administrative fine, instead of going the lengthy and cumbersome route through the Public Prosecutors office; this has resulted in many more, and higher fines (*Arbeidsinspectie* 2006).

Another trend in labour market inspections is the growing use of computerized and networked checks on identities and other documentary requirements on site. Although these efforts to improve the state's grip on the labour market are certainly not without flaws, they do seem to have some effect. During 1992, 3170 irregular immigrants were interviewed in the city of Rotterdam. One-third of them were unemployed. In 2001, 156 irregular immigrants were interviewed throughout the country. Again, one in three proved to be unemployed; but a remarkable shift from the formal to the informal economy had taken place. While in the early 1990's 30 percent of the irregular immigrants had worked within the formal labour market, almost none of them still did so ten years later (see Engbersen/Staring/Van der Leun 2002; Van der Leun/Kloosterman 2006).<sup>6</sup> It is also striking that many of them were moving towards the restaurant and catering sector and into the domain of personal services. Irregular labour is more difficult to control in these sectors as compared with traditional sectors such as construction, agriculture and horticulture.

## 6.5 Rise in Subsistence Crime

Apart from the shift from formal to informal employment there is also a shift from legal economic activities to illicit ones. There are serious indications that under the influence of stricter policies irregular immigrants are more likely to become involved in specific forms of crime, such as theft and possession of false documents. These indications derive from a number of studies conducted in different periods on the possible interrelation between irregular migration and crime. The empirical basis of these studies is police data concerning the apprehension of irregular immigrants in Rotterdam between 1989 and 1994 and country-wide police data on the apprehension of irregular immigrants between 1997 and 2004. These studies

support the 'marginalization thesis' that a restrictive policy marginalizes irregular migrants by excluding them from the labour market and public provisions, and contributes to forms of subsistence crime. It is through criminal activities that some groups of irregular immigrants manage to continue to reside in the Netherlands (Broeders/Engbersen 2007). In other words, Government's legal construction of illegality, plus the measures taken to combat illicit activities more effectively, have tended to stimulate the involvement in criminal activities by specific groups of irregular immigrants. The 'marginalization' thesis builds on the premise that the exclusion of irregular immigrants from formal employment and public services has a criminalizing effect on those who find themselves excluded. Empirical data suggests that the intensification of restrictions against illegal aliens after 1997 was co-related with the rise in the number of crime suspects among irregulars. 31 percent of the apprehensions of irregular immigrants were found to be criminal offences in 1997 (Engbersen/Staring/Van der Leun, 2002). This had reached 45 percent by 2003 (Leerkes 2009) and 49 percent in 2004 (Boekhoorn/Speller/Trees/Kruijssen 2004: 156). These studies revealed that the majority of offences by irregular immigrants were theft and burglary. The relatively high increase in offences such as shoplifting, theft and burglary fits the marginalization thesis. It would seem that it has become more difficult for irregular immigrants to support themselves in a legitimate manner. The validity of the marginalization thesis was recently put to a critical test (Leerkes 2009). It turned out that the significant increase in crime could well be partly ascribed to other factors, especially the rise in cross border crime or 'criminal migration' owing to open borders and stronger focus on detection and monitoring. Yet, this analysis did not refute the marginalization thesis. Even when Leerkes (2009) cross-checked for other explanations, marginalization affects appeared responsible for at least one-third of the total increase in crime.<sup>7</sup>

These theoretical and empirical findings were confirmed in a research project on asylum migration and crime in the Netherlands (De Boom/Engbersen/

6 There are also 'legal shifts' that have great impact on irregular migrant labour in the Netherlands. For example, with the extension of the free movement of people to some of the new EU member states (including Poland) the number of irregular migrants in sectors such as construction dropped hugely overnight.

7 Leerkes (2009) took five alternative interpretations into consideration. The increase in crime could also be due to 1) practices of status reclassification by the state, 2) an increase in criminal migration, 3) a rise in crime detection and reporting, 4) a simultaneous rise in crime among regular immigrants, or 5) demographic changes with regards to the composition or size of the irregular population.

Leerkes 2006). This research was based on an analysis of all persons who applied for asylum in the Netherlands between 1995 and 2004 (N=235,000). A distinction was made between 1) asylum migrants who were in the Netherlands legitimately (their requests having been granted); 2) asylum migrants still awaiting the final verdict on their applications; and 3) asylum migrants whose requests had been refused but who remained illegally in the Netherlands. There are significant differences in the legal and social position of these three categories. Asylum seekers who have been granted a refugee status have full access to the labour market and the right to public services such as social housing, health care, education and social security. The position of migrants whose application for asylum is still in process is restricted; they cannot live where they choose and they have limited employment opportunities. They are in fact restricted to seasonal work because they are allowed to work only 12 weeks per year. Their financial position is poor.<sup>8</sup> The weakest legal and social position is, of course, that of asylum-seekers whose cases have been rejected and who then remain as 'irregulars'. Empirical results have shown a positive correlation between the weakness of legal status and the involvement in (subsistence) crime. The relative number of (crime) suspects among failed asylum migrants remaining illegally in the Netherlands is much higher (9.9 per cent) compared with those asylum-seekers whose applications are pending (5.4 per cent) or with asylum migrants possessing a legal residence permit (3.4 per cent). Analysis has also revealed that the majority of offences (of which failed asylum migrants are suspected) concern theft and burglary. These economic offences are often merely a means by which to gain sufficient income to stay in the Netherlands. The rise in subsistence crime is a typical example of an unintended consequence of internal immigration control. The body of international literature mostly pays attention to the unintended consequences of *external* border control, such as the rise of human smuggling organizations and migrants deaths along the borders (Kyle/Koslowski 2001; Carter/Merrill 2007; Carling 2007). Our analysis shows, however, that *internal* border control is generating specific forms of subsistence crime.

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8 The allowance for food, clothing and spending money is far from generous: adults receive an amount (around €40 per week in 2006), far below the statutory minimum income in the Netherlands .

## 6.6 Detention, Expulsion and the Importance of Not Being Earnest

Yet another expedient is the shift from being identifiable to unidentifiable. Until the early 1990's those irregular immigrants who could actually obtain a Sofi number became classified as 'white illegals' (irregular, but doing regular work). In the early 1990's the Dutch government closed this legal loophole, making it more and more important for irregular immigrants to be unidentifiable in order to shield themselves from state control. When the risk of detention, apprehension and deportation looms large on the lives of irregular migrants they develop various strategies to change and mask their personal identity and illegal status. Three major ones have been identified (Engbersen 2001). One is the structural or situational adoption of a false identity through the acquisition of false papers, or the use of legitimate documents (such as passports, sofi numbers and medical insurance cards) from legitimate others. Another is the destruction of their identity documents which amounts to the obliteration of their legal identity; this is done in order to prevent and obstruct deportation by the authorities. Unidentifiable irregular migrants are cases immigration authorities have the most difficulty coping with and they are seldom actually deported. A final course of action is the concealment of their irregular status not only from employers and public officials but also from members of their own ethnic community in order to avoid repercussion from within (Staring 1998).

A number of countries have recently developed more serious expulsion policies for irregular migrants. An important instrument in executing these expulsion policies has been increased use of incarceration in detention centres, which, in turn, has prompted (effective) perpetration of falsehoods and hidden identities among irregular migrants. These centres focus both on the organization of forced return programmes, and on establishing the identity and nationality of the apprehended unidentifiable immigrants. Identification of the unwilling is a struggle between the state and the person. Migrants who do not want to leave the territory refuse to cooperate and frustrate procedures. For example, by stating a false name or incorrect country of origin they force the authorities to enter into a complicated bureaucratic process of determination of the nationality of the alien and presentation to embassies for the purpose of obtaining a travel document (e.g a *laissez passer*).

The use of administrative detention is a general European trend justified by, and based on, the assumption that a prison regime will encourage a person to reveal his or her identity. Detention is also considered a deterrent to prevent immigrants coming to Europe through irregular channels. There are now nearly 200 detention centres in the EU located at strategic sites: traditional prisons, islands, airports and detention boats in large seaports (Jesuit Refugee Service, 2005). These detention centres are now used to accommodate apprehended irregular migrants who are difficult to remove; given that the practice of putting them back out on the streets has been discontinued (Van der Leun 2003). In 2006, the Netherlands had nine penitentiary centres with a capacity of 2,100 beds for irregular immigrants. In 2007 there was an additional use of more three 'detention boats' (in addition to the two other detention boats already in operation) and the opening of a new penitentiary centre with place for 1,300 beds. This means that in 2007 approximately 13 percent of total Dutch penitentiary capacity was for the detention of irregular immigrants (Van Kalmthout 2007: 103). Studies reveal, however, that less than half of the irregular migrants apprehended and detained in the Netherlands are expelled from the country and that contrary to what political rhetoric suggests the proportion of effective expulsions has been decreasing (Engbersen/Staring/Van der Leun 2002; Van Kalmthout/Hofstee/Van der Meulen/Dünkel 2007). According to Van Kalmthout and colleagues (2007: 123) who studied the detention of aliens in two Dutch prisons for the period 1994–2003, the percentage of those expelled is less than 35 percent of the total number detained. The ineffectiveness of the policy of expulsion is partly owing to reluctance of countries of origin to cooperate in taking back their irregular migrants (Noll 1999; Lavenex 2006; Ellermann 2008), but also to the difficult identification of irregular migrants. Non-cooperation and the hiding of the truth are very effective and many immigrants are still able to frustrate the administrative processing of return programmes.

Governments are obviously aware of the effectiveness of these simple non-cooperation strategies and have been working on an answer for quite some time. EU member states have been investing heavily in new methods of identification, both domestically and at the EU-level. Given that the struggle over identity is in essence a struggle over documents (since only a documented legal identity facilitates expulsion) states have turned their attention towards the traces left by the irregular migrants themselves in official administrations

and registers during the course of their journey into Europe. On the whole there are three possible 'migration histories': 1) the border was crossed illegally (with or without help); 2) the person was an asylum seeker who stayed after the application was rejected; 3) entry was with a legal visa but there was overstay beyond its validity. The two latter categories leave traces in the administrations of the immigration authorities.

In a Europe without internal borders, effective use of such data has to be organized at the level of the EU. In recent years European governments have been developing a network of immigration databases at the EU-level aimed at documenting these migration histories in order to re-identify irregular migrants found in the member states (Broeders 2007). These European databases seek to register as many immigrants as possible from 'suspect' legal categories (e.g. asylum) and 'suspect' countries of origin (visa), in order to discern what percentage of immigrants cross the line into irregularity at a later stage. The Eurodac system registers all asylum applications in the EU and, when it becomes operational, the Visa Information System will register all visa applications for entry. Any irregular migrant apprehended in one of the EU member states can be registered in the Schengen Information System (II). All the entries into these systems consist of both the application data and the fingerprints of the applicant, making the link between a dossier and an irregular migrant a matter of cross-referencing. These systems potentially undermine the most effective strategy – that of being untruthful. A potential side effect of this new policy approach that closes off the identity routes of asylum and a visa may be an increasing dependence on smuggling and trafficking organizations in order to gain access to a direct route of illegal entry.

## 6.7 Discussion: Security and Internal Migration Control

Through the first decade of this century the Dutch state initiated a number of measures to make the strategies of immigrants more visible in order to exclude, or apprehend and expel, illegal migrants more effectively. Policies have become more restrictive, more legalistic and more embedded in the logic of security; and the scope for irregular immigrants to manoeuvre within the legitimate social institutions is increasingly limited. The stricter policies and enforcement are pushing irregular migrants towards the fringes of legality and beyond. This is a serious side effect of these



control policies. Stricter interpretation of the law plus stricter enforcement create new security problems. Other European countries are also investing in policy programmes to strengthen their internal control of migration and are stepping up implementation. Three shifts in the residence strategies of irregular immigrants have been documented: 1) from formal to informal work; 2) from legitimate to criminal behaviour; 3) from identifiable to unidentifiable. In reaction to these strategies the state is countering again with new measures with special instruments to (re-)identify immigrants who do not reveal their identity.

The state is also trying to dismantle those illegitimate organizations (such as illegitimate temporary work agencies, and markets for false documents) which have been established in reaction to restrictive policies and were sometimes aided by the introduction of liberalization policies. There is a constant struggle in the migration arena, in which individual and collective actors involved respond to each other with different strategies (Black 2003; Vesta 2008). But the state is clearly the most powerful party and in the end may gain and keep the upper hand.

There is, nonetheless, empirical evidence that attempts by the state to fight irregular migration are pushing irregular immigrants further underground. The same mechanisms that play a role in external border control are being replicated through the internal border controls. Both forms of control are creating incentives for illegitimate actors to organize illegal entry and residence (including illegal employment, false documents) resulting in greater victimization of aliens. "The result is sometimes", writes Miller (2001: 329), "that the medicine makes the illness worse". Security-oriented discourses and policies aiming to end informal toleration practices are directed at internal control over the migrant population. The matter of there being too many 'white' irregulars having regular jobs has raised serious questions of displacement of workers who are citizens in an era of serious unemployment. Also the view that too many irregular immigrants have gained access to public services has contributed to the image of them as 'welfare abusers', and therefore provides a legitimate base on which to put the onus of the crisis of the welfare state on them. Yet, Dutch citizens are increasingly distrustful of a state that is unable to enforce the law. Nonetheless, the current restrictive policies also produce negative side effects of which subsistence crime is one. Putting people, who are determined to stay, up against the wall will inevitably lead to new avoidance strategies. Their involvement with new (illegitimate) actors and

institutions will carry new security risks. The challenge of immigration control will be to find the *right balance* between 'closedness' and openness, and between effective law enforcement and practical toleration policies, capable of dealing with the economic and social ambiguities of advanced immigration societies.