Tracing mobilities regimes: The regulation of drug smuggling and labour migration at two airports in the Netherlands and Indonesia

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OK to board?

Selective immobilization and pre-emption in an anti-drug-smuggling mobilities regime

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**Introduction**

In October 2002, two travellers with a return ticket to Curacao checked in for their flight at Schiphol. KLM, however, refused to take the two on board because the airline had received a negative travel advice for the two travellers from the border police. The travellers were suspected of intending to smuggle drugs on the return flight. Refusing to accept the outcome of this pre-flight check, one of the travellers brought legal action against KLM and the travel agency that had sold her the ticket, and demanded restitution of the money she had paid for her ticket. KLM countered that its conditions of carriage state that passengers do not get a refund in case of a negative travel advice, and that the woman, by buying a ticket, had agreed with the terms and conditions. In the court’s ruling, the judge decided in favour of KLM, and the traveller had to pay the court costs (Rechtbank Rotterdam, 18-02-2003).

The previous chapter showed that technologies of classification and examination do more than target arriving passengers at the border at Schiphol Airport. This chapter will examine where and when mobilities are regulated, and what actors are involved. The court case above, for example, shows that travellers are also subjected to checks when they leave Schiphol Airport for a round-trip to the Caribbean. The two travellers wanted to board a flight from Schiphol to Curacao, and they were not suspected of smuggling drugs on this particular flight. Still, their journey to Curacao was blocked because they were suspected of the intention to smuggle drugs on the return flight, from Curacao to Schiphol. How are such pre-emptive measures possible? In addition, the court case shows that not only the state but also private parties are involved in regulating mobilities. What is the role of airlines in such pre-flight checks and why did they get involved in the first place? Which party actually blocks mobility here, who can be held accountable for that decision, and how is appeal possible? This chapter looks more closely at regulatory practices for mobility between the Caribbean and the Netherlands and discuss how both state and private actors are involved in the screening, which increasingly takes place even before travellers have started their journeys.
I) Public–private collaboration in regulating mobilities

Public–private collaboration in regulating mobilities is not unique to anti-drug-smuggling measures or to the present time. Chapter 2 mentioned several public–private arrangements to regulate the movement of people at and between airports, such as security checks, the use of airline data in migration control, and registered traveller programs. The incorporation of transport companies in border control, and in curtailing (undocumented) migration in particular, is a longstanding practice. In the 19th century, shipping companies played a role in regulating migration to the United States by not allowing undesirable travellers (mainly ill people or people with ‘bad intentions’) to board their ships (Zolberg 2003; Kraut 1994). Nowadays, too, public–private collaboration in regulating mobilities is not confined to air travel. Not only airlines, but also shipping and trucking companies can be fined for transporting people with forged or incomplete documents (Guiraudon & Lahav 2000; Walters 2006). Hence, transport companies have historically been involved in regulating international mobilities by refusing to take particular passengers on board.

Airlines have a range of responsibilities in contemporary practices of controlling undocumented migration and terrorism. As one of the parties in immigration control at European level, airlines are required to check travel documents at the airport of departure, forward passenger data to immigration authorities in the country of arrival, and deny boarding to people with forged or incomplete documents (Scholten & Minderhoud 2008). European policies to ensure that airlines collaborate include carrier sanctions: if an airline transports people who are not in possession of the required documents into the country, a fine will be imposed on the airline. Other countries, such as the United States and Australia, also make use of public–private partnerships with airlines to control their borders. The Australian government operates a system in which Australian Airline Liaison Officers [ALOs] are placed at airports abroad to work together with airlines in order to screen passengers before they board the airplane. Wilson & Weber (2008) argue that since the Australian ALOs do not have statutory power abroad, ‘it is an airline employee who technically makes the decision about whether to allow a passenger to board’. In the United States, the duty of airlines to remove inadmissible travellers is part of a liability system that dates back to

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48 European immigration control policies require airlines to gather and forward Advanced Passenger Information (API) to the immigration authorities in the country of destination before the airplane departs (EC Directive 2004/82/EC of 29 August 2004). A proposal by the European Commission to oblige carriers to send more elaborate Passenger Name Record (PNR) data to national authorities for all flights to and from the European Union is currently under discussion. For flights to the United States and Australia, airlines are already required to send ahead PNR.
the early 20th century (Gilboy 1997). At present, this system includes carrier sanctions and the imposition of detention costs and custody responsibilities (Gilboy 1997; Lahav 2008). At the international level, the International Civil Aviation Organisation (ICAO) has set out the obligations of states and airlines with regard to the transport of potentially illegal migrants (and similar ‘problem’ cases) (Chicago Convention, Annex 9). Yet many scholars point out that despite the long history of the incorporation of non-state actors in regulating mobilities, the terrorist attacks of 11 September 2001 provided an incentive to implement more public–private partnerships (Lahav 2008).

Because the impetus for these public–private arrangements has often come from the state (Lahav 2008), the question arises why governments seek the collaboration of airlines in blocking unwanted movement. Scholten and Minderhoud argue that in immigration control, incorporating private actors is a way to limit the costs and increase the efficiency of migration control. When the government delegates control tasks to private actors operating in other countries, it avoids having to employ and train staff to do these tasks. Moreover, it may not even be possible for a government to directly influence border control in another sovereign country. Also, airlines can intercept travellers when they are still in the country of departure. This means that undocumented migrants will not arrive at the physical border, which will reduce the costs for accommodating them, for asylum claims, and for deportation (Scholten & Minderhoud 2008). A second reason why states collaborate with airlines is to circumvent legal constraints in immigration control (Guiraudon 2006). If unwanted migrants are intercepted in the country of departure, this prevents them from accessing the system of legal protection and the asylum process in the country of arrival. Hence, private actors play a role in checking documents, screening travellers and blocking ‘unwanted’ movements, and have done so for decades. But what exactly is the role of airlines in anti-drug-smuggling checks?

Pre-flight checks and the black list: the different stakes of the state, travellers, and airlines
Airlines that offer direct flights between the Caribbean and the Netherlands play a role in several of the measures to curtail drug smuggling on this route. Among these measures are the pre-flight checks that brought to a halt the journey of the two travellers described in the introduction. The Dutch government introduced these pre-flight checks for Curacao-bound flights from Schiphol in April 2002 as a preventive measure to intercept (potential) drug smugglers before they start moving. The checks rely on collaboration between the government and the airline. Before departure of a flight to Curacao, Dutch airline KLM
makes the passenger list available to the border police. The border police use these data, combined with the swallow criteria and interviews with passengers at the check-in area, to assess whether there is a passenger who could be suspected of having the intention to smuggle drugs on the return flight to the Netherlands. Travellers at check-in are thus checked not for smuggling drugs on that flight, but for the intention to smuggle drugs later, on the flight back to Schiphol. If the border police suspect a traveller of having such an intention, they issue a ‘negative travel advice’ for this passenger to KLM. At the gate, KLM may then refuse to take the passenger on board.

Pre-flight checks are not the only measures in which the government and airlines work together. The black list for convicted drug smugglers and the digital profiling that were discussed in Chapter 3 are also the result of such collaboration. The black list was introduced in 2004 in order to prevent second offences by convicted drug smugglers, and was based on a covenant between the Ministry of Justice and the airlines. The border police compile a black list using data from police files, including the names and other personal data of convicted drug smugglers, and provide the airlines with a new version of this black list each week. As discussed in the previous chapter, the black list is available to all airlines that offer direct flights between the Netherlands and the Dutch Caribbean islands or Suriname.

Through pre-flight checks and the black list, airlines thus play an active role in intercepting potential drug smugglers, but what is the reason behind this? It seems the Dutch state on its own cannot easily block the mobility of potential drug smugglers. By having airlines participate in intercepting drug smugglers, however, it is possible to do this. The pre-flight checks at Schiphol Airport, whereby people are assessed for the likelihood that they will smuggle drugs on the return flight, would not have the required effect if they were carried out by the border police alone. The border police are not authorized to deny somebody exit from Dutch territory solely because that person might return with drugs a few weeks later. By collaborating with airlines, however, the border police can stop potential drug smugglers before they fly to the Caribbean. A negative travel advice is issued by a government authority (the border police), but when an airline follows the advice, the airline’s conditions of carriage become the basis for the refusal to take a passenger on board. This means the

49 Since 2008 the legal basis is the Wet en Besluit Politiegegevens, a privacy act for police work.
50 Negative travel advices are legally based on the Police Act 1993 (as part of the task of the police to prevent criminal activities) (Aanhangsel Handelingen II 2002/03, no. 653).
51 KLM’s conditions of carriage state that it has the right to refuse carriage when: ‘Immigration and/or Customs authorities and/or any other government authority [sic] informed the Carrier (either orally or in writing) that the Passenger is not allowed to travel and/or the Carrier has notified the Passenger (either orally or in writing) that the Carrier will not carry the Passenger on his flights, for a certain period or forever. This includes situations in which the Carrier has received a negative travel advice
airline can unilaterally end the transport contract with the traveller. In pre-flight checks, therefore, it is not the border police who arrest a suspected person, but the airline that refuses to take a ‘risky’ passenger on board. In fact, it is the journey by airplane that gets blocked, not the crossing of the border checkpoint at the airport. Hence, the actual blocking of mobility does not take place at passport control, but at the check-in area or at the gate.

The introduction of the black list provided an easy alternative to the contested passport measures or travel prohibitions the government had wanted to introduce. In 2004, the Dutch Parliament asked the Minister of Justice to explore the possibilities of limiting the freedom of movement of convicted drug smugglers in order to prevent second offences. The government looked into different ways of blocking the future mobility of people who had been caught with drugs at Schiphol Airport. One way to limit the freedom of movement of a drug smuggler is to confiscate or limit the validity of his or her passport. The Minister of Justice proposed including a travel prohibition as part of the sanctions package for drug smugglers. A bill was prepared that would refuse entry to the Netherlands (for a set period of time) to drug smugglers with Dutch nationality who lived in the Dutch Caribbean. Introducing such a measure, however, would require adapting the criminal code and the passport act, and would only apply to Dutch nationals from the Dutch Caribbean and not to drug smugglers from other countries. While the Dutch government was investigating these options, the Antillean Public Prosecution Service in the former Netherlands Antilles started in 2004 to confiscate the passports of convicted drug smugglers. Instead of imprisoning drug smugglers, which was often impossible because prisons were overcrowded there, a drug smuggler who was stopped at Curacao’s Hato Airport received a conditional sentence that included the confiscation of the passport for the duration of that sentence. This meant that a person who had attempted to smuggle drugs to the Netherlands was unable to leave the islands, often for several years. This person was not only unable to travel to the Netherlands, but also to the rest of the world. In several court cases, the Supreme Courts of the Netherlands Antilles and the Netherlands later ruled that such a drastic infringement of the right of freedom of movement of the suspect was not permissible (Hoge Raad 06-11-2007; Hoge Raad 25-11-2008). Hence, when travel prohibitions became problematic because they might infringe on international and European rights to freedom of movement, the black list provided an alternative, and, according to the Dutch Minister of Justice, a simple regarding the Passenger from such authority, for example in cases where the Passenger is suspected of (intent to) drug smuggling and situations where the authorities have notified the Passenger in writing that Carrier shall no longer carry the Passenger on its flights’ (KLM Conditions of Carriage, article vii: refusal and limitation on carriage, 2010).
and very effective way of preventing convicted drug smugglers from moving internationally (Kamerstukken II 2004/05, 28192, no. 35). The black list works on the same principle as the pre-flight checks: the list is provided by the border police, but the airline denies transport to a person on the basis of the conditions of carriage. Again, it is the journey by airplane on a specific route that is blocked, not international movement in general.

This suggests that collaboration with airlines enabled the government to experiment with a range of unorthodox measures that serve as a ‘legal shortcut’ to block potentially malafide mobility. State authorities issue negative travel advices and black lists that form the basis for airlines to refuse to carry a passenger by referring to the conditions of carriage. The black list makes it possible to block the mobility of convicted drug smugglers, regardless of their nationality, for a period of three years. The effects of the pre-flight checks were particularly noticeable during the first year. From the start of the pre-flight checks in April 2002 until June 2003, the border police at Schiphol issued 1,649 negative travel advices. The pre-flight checks probably also discouraged potential drug smugglers from going to the airport: the number of passengers who did not show for their flight was almost 5,000 above average. In addition to the pre-flight checks at Schiphol, the Antillean Ministry of Justice also made an agreement with KLM to conduct pre-flight checks on flights departing from Curacao to the Netherlands. Pre-flight checks at Curacao decrease the burden on the capacity of Dutch detention centres, by preventing drug smugglers from reaching the Netherlands. In Curacao, the pre-flight checks resulted in 7,457 negative travel advices and over 8,000 ‘no-shows’ during the first 14 months (Kamerstukken II 2003/04, 28 192, no. 23). These numbers convinced the Dutch government that pre-flight checks were effective in discouraging drug smuggling from the Netherlands Antilles to Schiphol, and it decided to continue the checks.

The fact that both state and private actors are involved in pre-flight checks may make it difficult for refused travellers to understand the legal basis for blocking their mobility, and whether and how they can appeal. The case of the two refused travellers in the introduction shows that travellers cannot turn to the airline to challenge a negative travel advice. Although technically it is the airline that blocks movement, it is the border police who decide which passengers get a negative travel advice. The criteria on which the border police base a negative travel advice are, however, secret, so airline employees and passengers do not know the exact reasons for the advice. This is further complicated by the fact that the aim of the border police is prevention: even though travellers are not carrying any contraband

52 Airport term for passengers who have booked a ticket but do not show up for a flight.
yet, the border police may conclude that there are ‘indications’ that they may do so later. Whereas in principle the airline is allowed to ignore a negative travel advice, KLM argues it is obliged to guarantee safety on board and that it acts according to the government’s wishes (Commissie Gelijke Behandeling, 15-12-2003). In the court case above, the claimant was told to turn to the government and not the airline if she wanted to appeal against a negative travel advice. After the court case, the border police did set up a complaint procedure for travellers, but so far they have not been challenged in a court case about a negative travel advice.

Furthermore, whereas airlines may claim they are acting according to the government’s wishes, the way the black list is used shows that airlines sometimes do have, and make use of, room to manoeuvre. In special circumstances, airlines allow exceptions to the ban on the transport of convicted drug smugglers. According to a lawyer who often defends drug smugglers at Schiphol’s special drugs court, a blacklisted traveller who lives in the Netherlands and who wants to attend the funeral of a family member in Curacao can ask the airline to make an exception and the airline sometimes agrees to do so (personal communication, 28-11-2008, Ombudsman Report 2006b, p. 61). This leads to the rather peculiar situation that a transport company assesses whether a convicted drug smuggler is allowed to fly in spite of the travel ban.

For airlines there are several reasons to participate in public–private partnerships. On the one hand, there was pressure from the Dutch government which argued that since airlines were (unintentionally) facilitating drug smuggling, they could be called upon to take responsibility for preventing drugs from being taken on board their airplanes. Should airlines refuse to cooperate, the government threatened that it would seek to prosecute airlines for breaking the Opium Act, or impose a flight ban. These threats, however, did not result in sanctions in the way we see them in European immigration control policies, where the imposition of carrier liability legislation is intended to ensure that airlines play their part. In the context of European immigration control policies in the Netherlands, for example, airlines can be fined and held responsible for the return of inadmissible persons as well as for the costs associated with their stay (Scholten & Minderhoud 2008). On the other hand, it is in the interests of the airlines to collaborate in intercepting drug smugglers. KLM employees complained that drug smugglers cause unrest on board and, for some time, the airline even employed private security guards on flights to and from Curacao (Trouw 25-01-2002). Sometimes a swallower who was ill needed medical assistance and the airplane had to make an unplanned stop-over, a costly practice for the airline. On a very few occasions,
drug swallowers even died on board. At one point, KLM even threatened to stop flying to the Antilles if the Dutch and Antillean governments did not take additional measures, and it was later that month that pre-flight checks were introduced. Hence, preventing potential drug smugglers from boarding – through the black list and pre-departure profiling – is beneficial to airlines, and may even be advocated by them. Furthermore, as the previous chapter showed, the public–private partnerships involving digital profiling are also advantageous to airlines as they increase passenger flow and reduce turnaround time of airplanes.

In the literature on public–private collaboration in immigration control, however, these are often seen as practices in which the state is put in the ‘ultimate beneficiary and authoritative position’ (Lahav 2008, p. 95). John Torpey (1998, p. 243) has argued that private entities such as shipping companies and airlines participate in regulating movement at the behest of states, and have been ‘reduced to the capacity of “sheriff’s deputies”’. Not only are airlines forced to participate, he argues, they have also resisted participating in such ‘quasigovernmental’ control practices because they might hurt their profitability (idem). Moreover, in a study on the involvement of airlines in immigration control, Guiraudon (2006, p. 87) stresses that airlines ‘not only bear the costs of control but also the legal responsibility’, and gives examples of airlines being accused of discrimination. Scholten and Minderhoud (2008, p. 140), however, revise the view of airlines as ‘victims’ of carrier sanction policies and discuss how KLM was able to negotiate a Memorandum of Understanding with the Dutch government which exempted the airline from sanctions. Gilboy (1997) comes to similar conclusions in approaching the collaboration between government actors and airlines as an exchange relationship, and shows that airline personnel and immigration inspectors have an interest in helping each other even when there is no legal obligation to do so. While for immigration control, airlines may be co-opted into participating in public–private partnerships through carrier sanctions, for the curtailing of drug smuggling it is too simplistic to argue that airlines are no more than sheriff’s deputies in regulating mobilities.

II) Relocating regulatory practices in space and time

Measures such as pre-flight checks and a black list not only show how public and private actors collaborate in anti-drug-smuggling measures, they also represent a relocation of regulatory practices to spaces beyond Schiphol, and even beyond Dutch territory. In Chapter 3, we followed traveller Roy Narain and others on their trip from Suriname to the
Netherlands. We saw that classification of travellers is located partly in the physical spaces of Schiphol Airport (for example at the gates, and in the baggage claim hall), but also at the airport of departure in Suriname. And digital profiling allows Dutch authorities to perform checks on passengers who are physically still in Suriname, or in the airplane crossing the Atlantic Ocean. The pre-emptive measures of pre-flight checks and the black list clearly entail a relocation of checks away from Schiphol, since these make it possible to refuse boarding to a passenger irrespective of whether the airplane is parked at Schiphol or at a Caribbean airport. How does such relocation work, and what are its limits?

**Relocation of screening: pre-flight checks, the black list, officials, and scanners**

Ever since the implementation of anti-drug-smuggling measures, there have been attempts to relocate procedures for detecting drug smugglers from Schiphol Airport to the country of departure. The assumption behind relocation is that more effective checks abroad will prevent drug smugglers from flying to the Netherlands, where they cannot be detected and arrested until they arrive. Relocation in space, thus, often implies a temporal relocation, because the checks take place earlier. The Dutch government actively sought collaboration with the governments of the Netherlands Antilles and Suriname. On the Caribbean islands, the Dutch government attempted to influence border control at airports by sharing expertise and by sending Dutch officials to assist local authorities, and by donating technologies such as x-ray scanners. At the international airports of Curacao and Bonaire, in 2005, joint border inspection teams (Gemeenschappelijke Grens Controle Teams) were set up, consisting of both Dutch and Antillean officials (Kamerstukken II 2003/04, 28 192, no. 23). Collaboration with Suriname is less close, but the Netherlands did support Surinamese authorities in curtailing drug smuggling by providing material support and training (Kamerstukken II 2008/09, 20 361, nr. 132). The Dutch government also sought collaboration with airlines in order to relocate regulatory practices. The black list allows airlines that operate ‘risk flights’ to deny boarding to blacklisted passengers, irrespective of whether the airplane departs from the Netherlands or the Caribbean. The pre-flight checks at Hato Airport in Curacao aim to prevent drug smugglers from flying to Schiphol. As with the pre-flight checks at Schiphol Airport, a negative travel advice here can be based on a reasonable suspicion that a person is a drug smuggler, without actual proof that the person is carrying contraband.

Joint border control teams, pre-flight checks at airports abroad, and the exporting of technologies and expertise resemble measures used to control immigration flows. In immigration control, governments place liaison officers (also known as airline liaison
officers or immigration liaison officers) at airports of countries that are known as sources of ‘unwanted’ migration (Brouwers 2010). These liaison officers advise check-in staff of airlines on the documents that passengers present, and train airline staff about passport and visa requirements and document forgery. Also, the exporting of border security and surveillance technologies is not uncommon. Australian government funding of Closed Circuit Television (CCTV) installations in Southeast Asian countries (Wilson & Weber 2008) is but one example.

One of the questions such relocation poses is to what extent states can influence border control in other sovereign countries. The exporting of security technologies such as scanners represents one way in which the Dutch government seeks to improve security checks in the country of departure without encroaching upon the autonomy of Caribbean countries to control their own borders. Also, the sharing of expertise and the training of local officials do not directly infringe on the sovereignty of the Caribbean countries. When foreign officials become involved in operations on the ground, however, this changes. Dutch officials are not formally authorized to conduct border checks on their own behalf at Caribbean airports in order to intercept malafide travellers there. Suriname is a sovereign country and the constituent countries of the Kingdom of the Netherlands are autonomous, which means they control their own borders. The examples above, however, show that there are ways to circumvent such obstacles. The joint border control teams at Curacao and Bonaire are a good example of this. These teams consisted of Antillean officials, and 13 Dutch border guards and 12 Dutch Customs officials (Kamerstukken II 2004-2005, bijlage). When these teams were set up, then Secretary of State Wijn told the press: ‘We will check for drugs literally shoulder to shoulder’ (Luchtvaartnieuws.nl 03-06-2005). Such close collaboration on an operational level, however, was only possible because the Dutch officials were operating under the authority of the Antillean Public Prosecution Service.

Another solution is to give foreign officials an advisory role. The liaison officers that some countries use in immigration control, for example, have no legal powers abroad and therefore cannot instruct an airline to deny boarding to a passenger. Instead, they advise the airline about whether a passenger is correctly documented, and the airline makes the final decision whether or not to take the passenger on board (UK Border Agency 2012). Carrier sanctions may provide an incentive for the airline to follow such advice. Yet, in the case of pre-flight

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53 After the Netherlands Antilles was dissolved as a country, on 10 October 2010, the Royal Netherlands Military Constabulary became responsible for border control in the Caribbean Netherlands (the three special municipalities Bonaire, St Eustatius, and Saba). In the constituent countries of the Kingdom of the Netherlands (Aruba, Curacao, and Sint Maarten) the Royal Netherlands Military Constabulary supports the local border control services.
checks for drug smuggling at airports in the Netherlands Antilles, the mechanism was slightly different. In order to enable KLM to do pre-flight checks in the Netherlands Antilles, the Dutch Ministry of Justice worked together with its counterpart in the Netherlands Antilles. The Antillean government’s collaboration was needed, because even though it is technically Dutch airline KLM that refuses to transport a person, the pre-flight checks still depended on negative travel advices that needed to come from an Antillean authority such as Customs or the border police. The black list, on the other hand, makes it possible to ‘bypass’ Caribbean authorities, because there the airlines use information obtained from Dutch police files. The black list allows airlines that operate risk flights to refuse boarding to a passenger whose name is on the black list – whether the airplane is leaving from Schiphol or from an airport abroad. In this way, collaboration with airlines in some instances not only provides a ‘legal shortcut’, but also allows the Dutch state to intercept potentially malafide mobilities at an airport abroad. Given that the authority to control movement is often viewed as being in the hands of the state, the role of private actors in relocating checks to airports abroad is particularly interesting.

The Dutch government is not alone in attempting to influence border control in the Caribbean. Similarly high levels of drug smuggling occurred between other European countries and their former colonies, among which the United Kingdom and Jamaica. In 2002, the British government set up Operation Airbridge to support Jamaica in intercepting drug smugglers, and swallowers in particular, before they embarked on a flight destined for the UK (House of Commons 2010). At airports in Jamaica, Operation Airbridge involved the introduction of ion scanners for detecting drugs (Haughton 2007), as well as assistance by UK officers. In one of the few empirical studies dealing with the work of overseas drugs liaison officers, Ben Bowling describes how UK officers assist local Drug Squad and Customs officials at the check-in area for flights departing for the UK. He describes the working together on the ground as ‘the most controversial aspect of this [the drugs liaison officers’] work’ (Bowling 2010, p. 266). The drugs liaison officers are employed by UK Customs and officially only assist local officers in detecting drug smugglers, but Bowling gives examples of how in practice they also ask passengers questions and check passengers’ passports against UK databases. He quotes one UK officer who explains his role as follows: ‘It is a bit like training, but it isn’t just an exercise, you are actually doing on-the-job training, advising, encouraging, and actively directing’ (idem, p. 266). As Bowling argues, such transnational collaboration on the ground poses interesting questions about where the accountability for the operations of the UK drugs liaison officers lies and to what extent their work infringes
The boundaries of relocating procedures
The Netherlands has a special relationship with Suriname and the Dutch Caribbean islands based on a shared (colonial) past. On the other hand, it makes the involvement of the Netherlands in controlling drug smuggling a sensitive issue in Suriname and the Dutch Caribbean. Although the Dutch Caribbean islands and Suriname do collaborate with Dutch authorities in curtailing drug smuggling, the countries do not always appreciate this intrusion by their former colonizer. It is no coincidence that more Dutch screening procedures have been implemented in the islands than in Suriname. The Caribbean countries are autonomous in developing and implementing measures to curtail drug smuggling, but because they are part of the Kingdom of the Netherlands, they work in closer collaboration with the Netherlands than does the sovereign country of Suriname. For example, although Surinamese airline SLM does employ a blacklist, there have never been pre-flight checks at the airport in Suriname. The 100% check for flights from Suriname at Schiphol Airport is a particularly sensitive issue in the relations between Suriname and the Netherlands. A few years ago, former Surinamese president Venetiaan, in a letter to then Dutch Prime Minister Balkenende, qualified the body searches in the 100% check at Schiphol as ‘criminal acts of humiliation, sexual assault, torture and ethnic profiling’ (Cairo 09-11-2006). When a Surinamese minister was subjected to the 100% check at Schiphol, it spurred a diplomatic row after which the Netherlands and Suriname agreed that the president and Surinamese ministers would be exempt from the 100% check. The Dutch government is well aware of the sensitivities. In its final progress report on anti-drug-smuggling measures, it states that ‘The Netherlands will, of course to the extent that Suriname wishes so, keep making an effort to support the screening process in Suriname’ (Kamerstukken II 2006/07, 28192, no. 41, p. 6 [my own translation]).

Dutch involvement in checks at airports in the Caribbean islands has not always gone uncontested either, as seen in the case of the donation by the Dutch government of an x-ray scanner to the authorities at Hato Airport in 2002. With this scanner, an image of the inside of the stomach can be made to detect swallowed capsules filled with cocaine. The scanner needed to be introduced after the outcome of a court case by a passenger who was denied boarding for a flight to the Netherlands as the result of pre-flight checks.
He was suspected of having swallowed drugs and had received a negative travel advice, although no drugs were found. Similar to the Dutch case, the court ruled that airlines did not need to refund the tickets of refused passengers. However, it also decided that suspected travellers needed to have a chance to prove their innocence (Court of Curacao, 16-08-2002; Aanhangsel Handelingen II 2002/03, no. 678). An x-ray scanner would allow travellers to demonstrate that they were not smuggling drugs. The donated scanner came from a Dutch hospital where it had been used as a demonstration model for several months. Originally a medical technology, the scanner now became a tool to detect the presence of drugs. The scanner is used only for passengers with a negative travel advice: the health risks associated with x-rays do not allow the scanning to become a standard procedure for all travellers. The scanner therefore is not a tool for the authorities to prove guilt, but a tool for travellers to voluntarily prove their innocence. This means the health risks become the responsibility of the traveller. The scanner was a gift from the Dutch government but it soon became part of a political struggle over Dutch influence on the Antilles. Several radiologists questioned the safety of the scanner and the Antillean Minister of Public Health demanded an expert opinion before the scanner became operational (NRC 15-01-2003). Later in 2003, Anthony Godett, brother of the Antillean Prime Minister Mirna Godett and leader of a political party, proposed removing the scanner from Hato Airport. He claimed that the scanner hampered the circulation of drugs money in the Antillean economy (Ramdharie, 02-09-2003). When Antillean minister Komproe announced he would remove the scanner, the Dutch government threatened ‘financial consequences’ for the Antilles and the closing down of air routes (NRC 13-08-2003; Verlaan, J. 31-10-2003), and in the end, the body scanner was kept in operation. The debate about the body scanner and the checking of Surinamese ministers are symbolic of the disputes over who decides how, when, and where anti-drug-smuggling checks take place.

III) Anti-drug-smuggling measures as a mobilities regime of selective immobilization

I argue that the participation of airlines in pre-flight checks and black lists and the attempts of the Dutch government to influence border control in the Caribbean together constitute a mobilities regime of selective immobilization. Wilson and Weber (2008) use the term selective immobilization in an article discussing how the Australian government operates an
‘offshore border’ that aims at preventing unwanted arrivals by screening and immobilizing high risk travellers in countries of embarkation and transit, instead of at the physical border of Australia. Most measures of the Dutch anti-drug-smuggling mobilities regime are similarly aimed at immobilizing (potential) drug smugglers. Yet, while Wilson and Weber emphasize the way potential asylum seekers are immobilized, I want to stress that the immobilization of travellers in the anti-drug-smuggling regime is selective not just in the sense that it is only passengers considered high risk travellers who are stopped. The aim of the anti-drug-smuggling mobilities regime is to immobilize those people who are considered a risk while at the same time seeking to facilitate the movement of those travellers who are considered bonafide. This does not mean that travellers who do not pose a risk are not subjected to extra controls, but that these controls are intended to cause these travellers as little delay and discomfort as possible.

In this regime, selective immobilization takes place earlier and earlier. Digital profiling with passenger data takes place even before a passenger travelling from the Caribbean has reached Schiphol Airport. In this way, Customs officials know which persons are considered risky and can therefore select them for a secondary check even before they see these travellers in person. Selective immobilization also works pre-emptively, by intercepting drug smugglers at the point of departure in the Caribbean. This strategy of preventing the arrival of ‘unwanted’ travellers at the border has often been discussed in the literature on migration control. Yet in the anti-drug-smuggling regime, risky travellers are intercepted even before the crime of attempting to smuggle drugs across the border has been committed. The pre-flight checks at Schiphol Airport for flights to the Caribbean and use of the black list constitute a pre-emptive selective immobilization in which potential future smuggling activities are prevented. The pre-flight checks at Schiphol are intended to ‘prevent that potential drug couriers travel from the Netherlands to the Netherlands Antilles with the apparent purpose of subsequently travelling back to the Netherlands with drugs’ (Kamerstukken II 2003/04, 28 192, no. 23, p. 5 [my own translation]). In this ‘pro-active action’, as it has been called (Kamerstukken II 2002/03, 28192, no. 16, p. 2), risk profiles are used to intercept travellers now in anticipation of criminal activities they might engage in in the future. The same anticipatory mentality can be seen in the use of the black list of convicted drug smugglers that forbids these persons from travelling on direct flights between the Caribbean and the Netherlands for three years in order to prevent potential second offences. With the pre-flight checks at Schiphol and the black list, it is not simply journeys being blocked at departure, but future journeys that are prevented.
Selective immobilization also takes place at more than one location. While some procedures take place at the arrival gate at Schiphol Airport, other procedures such as the pre-flight checks at Hato Airport take place in the Caribbean. The black list intended to block the mobility of convicted drug smugglers is used by airlines during check-in in both the Netherlands and the Caribbean. Furthermore, as noted in the previous chapter, besides tracking physical travellers we should also pay attention to how data doubles may move separately from the physical traveller. With the movement of data doubles to other Schengen countries and even to some countries outside Europe, the mobilities regime potentially extends to many new locations. As the previous section showed, the anti-drug-smuggling mobilities regime builds on a shared colonial past which allows it to extend to the Caribbean region, and to some Caribbean countries and territories more intensively than to others.

Second, in many selective immobilization practices, state actors work together with airlines. In pre-flight checks and the black list, the airline’s conditions of carriage are the legal basis for selectively immobilizing particular travellers, in this instance by preventing them from boarding the airplane. It could even be argued that without the participation of airlines in this regime, the mobilities regime could not have extended this far beyond the physical border at Schiphol Airport. The case of anti-drug-smuggling measures thereby illustrates how a mobilities regime may consist of state and private actors sharing some of the responsibilities of regulating mobilities. This challenges the assumption of John Torpey (1998), who has argued that modern states have monopolized the legitimate means of movement, or, in other words, the right to authorize and regulate movement. In the anti-drug-smuggling regime, airlines as private actors do not just facilitate mobility, but are also involved in classifying travellers and halting potentially malafide travellers. Torpey too notes that private actors play a role in regulating movement, but he stresses the ‘sheriff’s deputies’ function. Whereas the government plays an important role in the anti-drug-smuggling mobilities regime, and may indeed encourage airlines to collaborate in pre-flight checks, the black list, and digital profiling, the view of airlines as simply ‘sheriff’s deputies’ is too narrow. Airlines too may benefit from collaboration with state actors, and KLM actively encouraged implementation of pre-flight checks. Hence, instead of seeing states as restricting or enabling movement across borders, and transport companies as private actors facilitating journeys, we should pay attention to how these responsibilities are blurred. With procedures such as pre-flight checks and the black list, it is the journey by airplane that is prevented, not the crossing of border checkpoints.
Third, the workings of the Dutch mobilities regime are contested and the legitimacy of selective immobilization practices has been questioned. As noted above, the accuracy of the swallower criteria has been challenged in a court case by a Surinamese organization. This chapter discussed how travellers challenged the pre-emptive blocking of their journey, and while the judge deemed the principle of pre-flight checks to be in accordance with the law, the cases did result in more possibilities for travellers to challenge a negative travel advice. The previous chapter showed that the legal basis for conducting body searches in the ‘search phase’, for which Customs is responsible, had long been unclear. In 2006, the Ombudsman had argued that visual body cavity searches in this phase were unacceptable, and a year later the Supreme Court ruled that they were unlawful. In 2007, the Supreme Court ruled that the confiscation of a passport was such a drastic infringement on a suspect’s right to freedom of movement that it was impermissible. In addition to the court rulings, several other independent bodies, such as the Dutch Equal Treatment Commission and the Dutch Data Protection Authority, have been critical of mobilities regime procedures. Nevertheless, as this chapter showed, the participation of airlines made travel prohibitions on particular routes an alternative to the confiscation of passports, and pre-flight checks allowed for pre-emptive interception of potential drug smugglers. Guiraudon’s (2006) argument – that one of the aims of remote control in EU immigration policies is to short-circuit judicial constraints – is also valid in the case of anti-drug-smuggling checks. Collaboration with airlines enabled the government to experiment with a range of unorthodox measures which not only provided a ‘legal shortcut’ to block potentially malafide movements, but also made it possible to influence border control in sovereign and autonomous Caribbean countries.

IV) Conclusions

While the previous chapter discussed how mobilities regimes are characterized by particular ways of examining, classifying and controlling mobilities and how these practices ascribe a particular meaning to movement, this chapter traced where and when mobilities are regulated and identified the multiple actors that play a role in the mobilities regime. Since the start of the anti-drug-smuggling checks, the mobilities regime has expanded in time and

54 To support their judgements, the Supreme Court referred to constitutional documents such as the Dutch Constitution – especially article 10 on privacy, and article 11 on inviolability of the body – and the European Convention on Human Rights – article 8 on privacy, and protocol 4, article 2 on the freedom of movement.
space, spatially extending to places outside Schiphol and the Netherlands and temporally extending to include the phase of departure as well as future journeys. In addition, airlines have become part of the mobilities regime and now participate in ‘traditional’ border functions of the state, for example through not allowing travellers who are considered risky to board the airplane. Tracing the times, spaces, and actors of regulation also showed how collaboration between the Dutch government, airlines, and Caribbean authorities problematizes issues of accountability and sovereignty, and how the legitimacy of certain regulatory practices has been contested, for example in court.

I proposed to understand the anti-drug-smuggling checks as a mobilities regime of selective immobilization in which (potential) drug smugglers are, with the help of airlines, joint border control teams, and exported technologies, increasingly screened before they reach the arrival gate at Schiphol Airport. Following the line of reasoning in Chapter 2, this chapter portrayed the airport as a key site where mobilities regimes are carried out. When airlines participate in anti-drug-smuggling measures, the gates and check-in area at both Schiphol Airport and Caribbean airports become border-like spaces where potential drug smugglers are intercepted. These findings allow me to reformulate my earlier suggestion that we need to move away from a focus on regulation of crossings at the border: in the anti-drug-smuggling regime it is not the crossing of the border, but movement itself that has become the object of regulation. The black list, for example, by preventively blocking journeys on particular routes, is a prohibition on travel rather than a prohibition to cross the border at Schiphol. In the pre-flight checks it is journeys that are blocked, rather than arrival at the border (see also Weber 2007).

As I argued in Chapter 2, each airport has its own mix of travellers and goods passing through. While drug smuggling may be seen as a problem that is particularly strong at Schiphol Airport, selective immobilization is a form of regulation that is also used by governments to intercept other unwanted arrivals, such as undocumented migrants and potential terrorists. The regulation of mobilities at airports, however, encompasses more than efforts to intercept unwanted arrivals. As we shall see in the following chapters, at other airports there may be different types of mobilities that are viewed as problematic, for reasons that may have little to do with security. In Chapters 5 and 6, I give heed to Sheller’s call to pay attention to the ‘less privileged travellers’ (Sheller 2011b), and examine the regulation of the arrival of labour migrants at Soekarno-Hatta Airport in Indonesia as a mobilities regime.