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Title: Geruisloos inwilligen : argumentatie en speelruimte in de Nederlandse asielprocedure, 1945-1994

Date: 2012-04-24

Summary: Silently giving-in

Margins in the Dutch asylum procedure, 1945-1994

For sixty years already, the 1951 Geneva Refugee Convention offers tools to assess cases of asylum seekers. Using this Convention it is believed to be possible to distinguish asylum seekers, who deserved a refugee status, from those who did not. Key elements of the Refugee Convention are 'well-founded fear of persecution' and the *non-refoulement* principle, which forbade extraditing asylum seekers to a country where they could be exposed to persecution. This thesis shows that the tools the Geneva Convention offered were in fact not very helpful and led to endless debates. Those who pleaded in favour of asylum seekers argued that the applicants were credible and met the criteria of the Convention, while those who opposed admission argued that they were unreliable and did not fear persecution.

The leading question of this thesis is how and why, in the post-war period, genuine refugees were distinguished from non-genuine ones, and who played a role in doing so. To answer this question, I analyzed 497 individual case files of asylum seekers compiled by the Ministry of Justice. These case files showed who interfered in the asylum procedure of individual asylum seekers, and why. The case files contain letters, assessments and memos of civil servants, and letters of individuals and groups in which was explained why one asylum seeker deserved admission. The files that date from the late 1940s to the 1960s contain letters of action groups, employers and relatives. In the 1970s the asylum procedure changed, and became much longer (and sometimes lasted for years). Asylum seekers met Dutch people in church, on a bench in a public park or in school. Such encounters resulted in friendships and these are visible in the files. The files showed that asylum seekers were helped not because lobbyists felt that all asylum seekers should stay, but rather because a specific person, who they knew personally, deserved a residence permit. All the letters contained arguments actors believed would be influential. The letters also proved that over time lines of argumentation changed.

Table 20 lists the six types of actors, which were involved in the asylum procedure. The first group consisted of the people who took decisions: the civil servants of the Ministry of Justice and Foreign Affairs. Employees of the Ministry of Justice argued that the Netherlands had to pursue restrictive immigration policies because of its small size, housing shortage, (potential) unemployment and population density. The influence of civil servants belonging to the Ministry of Foreign Affairs is remarkable. They had to check if the Netherlands fulfilled the obligations that resulted from signing the Convention. Until 1991, the civil servants of this Ministry had to endorse each decision to grant an asylum seeker a refugee status. Furthermore, this Ministry was responsible for obtaining information about the countries of origin of asylum seekers. The case files showed the influence of diplomatic relations with the countries of ori-

gins of asylum seekers. The Minister of Foreign Affairs worried that relations with countries of origin of asylum seekers were harmed if an asylum seeker was admitted. This became apparent when a few hundred Portuguese men and a single American draft resister applied for asylum. It was the Minister of Foreign Affairs who argued that they should not get a refugee status, because that would mean Portugal and the U.S. – NATO allies – persecuted their citizens.

TABLE 20 ACTORS IN THE DUTCH ASYLUM PROCEDURE

1. Decision takers	Civil servants at the Ministries of Justice and Foreign affairs
2. Other civil servants	Civil servants belonging to Ministries of Social Affairs, Finance, Interior Affairs, the police and attorney-general
3. The judicial system	Lawyers, members of Advice Committee of Aliens Cases, Judge, UNHCR
4. Pressure groups	Legal Aid, Amnesty International (and others)
5. Individuals who interfered due to their professional background	Scientists, doctors, clerics (and others)
6. Private persons	Asylum seekers, relatives, friends, neighbours, employers, classmates (and others)

Secondly, there were actors who belonged to other ministries. Employees of local aliens' services (part of the Ministry of Interior) were the first Dutch officials to speak with asylum seekers and conducted the first interview (the intake). The Ministry of Social Affairs looked after the interests of the labour market. Until the early 1970s it was possible to issue work permits to asylum seekers who, according to the decision makers, did not qualify as refugees. After 1975 the labour market could no longer function as an escape route. The mid 1970s was a turning point. From then on Dutch authorities had to find alternative solutions for those who in their eyes did not meet the conditions of the Convention, but who could not be deported.

Judges and other legal advisors of the Ministry of Justice formed the third group of actors. As time went by asylum seekers got more legal possibilities to challenge rejections. In the late 1940s, and the 1950s, asylum seekers did not have the right to lodge an appeal. From the 1980s onwards asylum procedures dragged on, with several appeals, new applications and summary proceedings. Lawyers and employees of the United Nations High Commissioner for Refugees (UNHCR) supported asylum seekers during the asylum procedure. Since the late 1970s the case files from refugee support groups and courts were confronted with more and more expertise from refugee support groups, lawyers and other professionals. Support groups started to use alternative country of origin information in their pleas. With the passing of time, they challenged negative outcomes of asylum applications in several ways. They organized demonstrations, sit-ins, hunger strikes, postcard actions and occupied churches. Protests or threats to protest were needed to generate public attention, which was needed to secure a residence permit. In the archives of the Ministry of Justice letters were traced of people who opposed admission of asylum seekers. Since the 1950s, the action groups combined their efforts and started to work together. This resulted in one organiza-

tion: the Dutch Council for Refugees. The volunteers of this organization were highly visible in the case files. They sent letters after they befriended asylum seekers. Letters were also sent by those who worked with asylum seekers – doctors, scientists, clerics – and also private persons. Especially from the late 1970s onwards friends, classmates of the children, neighbours and relatives pleaded in favour of asylum seekers.

This thesis showed that throughout the period 1945-1994 actors succeeded in altering the outcomes of asylum requests. New groups of asylum seekers were defined as refugees by (often) new groups of actors with new arguments. This thesis showed which arguments led to success, meaning that the asylum seeker could stay. The characteristics of the group the asylum seeker belonged to influenced if he or she received help: Christians from Turkey were helped, because they were Christians. The anticommunists from behind the Iron Curtain were helped because there was a common enemy. The Portuguese draft resisters were helped by left-wing action groups, because they and their supporters opposed the colonial war in Africa (mainly in Angola and Mozambique). This thesis highlighted what determined the recognition rate of asylum seekers. Success was in the eyes of asylum seekers and their actors the issuance of a refugee status, but also a residence permit (on humanitarian grounds or in combination with a work permit). Scholars who have studied the success rate of asylum seekers focussed on the chances of getting a refugee status and not on the chances of getting a residence permit. They argued that a lack of fear of persecution or a lack of credibility were the most common reasons why asylum seekers did not get a refugee status. They concentrated on the influence of gender, restrictiveness of asylum policies, nationality, age, economic conditions in country of origin and destination.

The first contribution of this thesis to the scholarly debate is showing continuity: frequently Dutch authorities argued that an asylum seeker did not have a well-founded fear for persecution, was not credible and that the Netherlands was ‘flooded’ with asylum seekers, but these arguments were seldom decisive. In the period 1945-1994, there was a *gap* between asylum policies and refugee law, which aimed to reject and repatriate asylum seekers, and a reality in which many asylum seekers were admitted on other grounds. Those who pleaded in favour of asylum seekers convinced the Dutch officials that repatriation of one particular asylum seeker was life threatening and inhuman. This thesis showed that Dutch civil servants had margins within which they could assess cases of asylum seekers. The *gap* was filled with arguments that were acceptable to all of those who were involved in the asylum procedure.

Rejection and a subsequent departure was not a hard and fast rule in case officials decided that an asylum seeker would not fear persecution in his country of origin. Over 70 percent of the cases files that were studied resulted ultimately in a residence permit for the applicant. Most of those who left, did so voluntary. An explanation is that no univocal definition of fear of persecution exists. Lack of fear of persecution was used to reject applicants, but it was almost impossible to prove that an asylum seeker would not face persecution in his or her country of origin. Lobbyist stressed that rejected asylum seekers did not flee to improve their economic conditions, but escaped because they had to. They used country reports to prove that per-

secution threatened this particular asylum seeker. The burden of proof lied with the civil servants. They had to prove that an asylum seeker would not face persecution and this was almost impossible. That a lack of fear of persecution seldom decided asylum cases is surprising, because the existing literature stressed the importance of the arguments persecution. Civil servants and others involved in asylum cases doubted the credibility of asylum seekers, and this often resulted in a stalemate. Asylum seekers argued that they were telling the truth and were persecuted and the authorities denied both. Even those who escaped communism in the 1950s were not automatically granted a refugee status. It was easy to reject asylum seekers, but it was difficult to deport a rejected asylum seeker.

Dutch officials used the 'number-argument' to legitimize restrictive asylum policies. Civil servants worried about the number of asylum seekers who would arrive and stressed that the Netherlands was a small and densely populated country. Large numbers of potential asylum seekers were waiting for a sign to move to the Netherlands, several people feared. The fear of a precedent was visible in all pleas. The authorities feared that in case one particular asylum seeker was admitted, thousands of others would follow. Those who pleaded in favour of asylum seekers focussed on one asylum seeker only, not on the group as a whole. As long as numbers were low – or at least did not increase much – admission of one asylum seeker was not an issue. Personification was a favoured and frequently successful strategy: detailed stories described individual asylum seekers and the fate that awaited them when they returned. Individuals were singled out, while those who opposed admission spoke about the whole group of asylum seekers.

Throughout the period 1945-1994, Dutch authorities deported asylum seekers to 'safe countries of reception'. If Dutch officials could prove that an asylum seeker passed through a European country before he or she arrived in the Netherlands – and stayed there for a while – it was possible to deport the applicant to that country. This proved to be the only possibility for the Dutch authorities to deport asylum seekers. Asylum seekers who travelled directly to the Netherlands or when no proof existed that they had stayed in a safe country, were also rejected, but it was difficult to deport them.

To escape the deadlock, asylum seekers were admitted (often after lengthy procedures), but often not as refugees. Different kinds of arguments, during different periods were used to find a solution. I distinguish three types of arguments that offered a way out. It was possible to give asylum seekers a humanitarian status. Asylum seekers were vulnerable, sympathetic, traumatized, and sick, or waited for many years in the Netherlands, as a result of which they were integrated and westernized. The second solution was stressing certain (personal) characteristics of an asylum seeker: a single woman, a Christian or a homosexual for whom it was unsafe to return to the country of origin. Such pleas were larded with references to the past, when the Dutch 'still warmly welcomed refugees', and to the Bible, which instructed people to offer a safe place to strangers in need. Frequent reference was made to the late 1930s, when Dutch authorities stopped German Jews at the border and sent them back to Nazi Germany. The Minister of Justice had to be aware that the same would happen to asylum seekers, who were returned against their will to their country of origin, support

groups argued. The third argument resulted from a cost-benefit analysis: an asylum seeker was useful, because there was work in industry. When such arguments resulted in success the asylum seeker did not get a refugee status, but an ordinary residence permit or another status. We see a role reversal: asylum seekers claimed to fear persecution in their countries of origin, but were admitted because they were vulnerable or were beneficial to the Dutch society.

The second contribution of this research was that it showed that those who pleaded in favour of admission used the same lines of argumentation as those who were against admission. The arguments *persecution* and *credibility* were used to justify issuances of statuses and absence of both was used to justify rejections. Civil servants argued in first instance that this asylum seeker lied, never had problems with his or her authorities and that at that time the Netherlands was 'flooded' with immigrants and suffered economic problems. When the procedure dragged on, these arguments proved to be flexible. Unreliable asylum seekers became more reliable and officials agreed that asylum seekers were persecuted in their countries after they lodged an appeal. The same shift was visible when the arguments *labour market* and the *numbers* were used. The country could not use more labourers, some argued, while employers expressed their wish to employ a specific asylum seeker. Some actors stated that the Netherlands was overcrowded, others stressed that there was still place for this one person extra.

The third contribution to the debate relates to discontinuity. In the public and scholarly debate it is stressed that asylum policies and asylum law is best described by focussing on changes. Subsequently, scholars focus on watersheds. Politicians and policy makers warned about a forthcoming crisis and introduced restrictive measures in response to these forecasts. Time and again new policies were introduced, which were in reality not that new. However by claiming that stricter measures were introduced, politicians criticized the work of predecessors whose earlier response to the arrival of asylum seekers had been inadequate, in their view.

The spirit of time was influential when cases of asylum seekers were assessed. When Dutch economy boomed, admission of rejected asylum seekers, on other grounds, was not a problem. In the 1940s and 1950s housing shortage, food shortage and the arrival of 400,000 repatriates from the Dutch East Indies were used to justify rejections. From the early 1950s onwards the shortages on the labour market enlarged the margins the civil servants had: rejected asylum seekers were issued work permits. In the mid 1970s unemployment was on the rise. Economic problems went hand in hand with an increase in the number of asylum seekers. Between 1982 and 1987 the number of applicants became thirteen times as high and their nationalities became more divers. We also see that after the mid 1970s no longer mainly single men applied for asylum, but also single women and families. The Dutch labour market did no longer offer an escape route. The Dutch authorities used (albeit with some regrets) humanitarian arguments to admit rejected asylum seekers after frequently lengthy asylum procedures.

Although economic conditions in the Netherlands changed, the way the Dutch authorities dealt with asylum seekers showed continuities. In the period 1945-1994, few

asylum seekers got a refugee status and few asylum seekers were repatriated. New groups of asylum seekers were rejected, because their image did not match the prevailing image of a refugee. Newcomers were not male, did not originate from Europe, were not Christians, or not anticommunists. Their background made the civil servants suspicious. The asylum seekers who arrived during the Cold War, the Portuguese war resisters, the Christians from Turkey and the Tamils that arrived in the mid 1980s were often rejected at first instance. Their arrival was followed by the introduction of restrictive policies that aimed at deterring the arrival of more asylum seekers or if they were in the Netherlands the asylum seekers would get discouraged and leave voluntary.

Finally, thesis showed that the *gap* between Dutch asylum law and practice can be best explained by the impossibility to implement the Convention and strict (Dutch) asylum policies. In 1994, the *gap* hypothesis was introduced to explain the difference between (immigration) policies and their intended outcome. Conflicting interests between different ministries, the influence of regulations within Europe and the impact of international treaties were used to explain the *gap*. This thesis proved the *gap* existed because asylum policies were not feasible. The Dutch authorities continuously stressed the need to be strict: only credible and persecuted asylum seekers deserved admission. Not surprisingly, this resulted in many rejections, but, more surprisingly, not in many departures. Analysis of individual case files showed this stalemate. The only acceptable solution to all parties was allowing asylum seekers to stay, but not as refugees. Civil servants silently gave in, but stressed that this asylum seeker was unique, useful or vulnerable and no precedent was created, because the asylum seeker got an economic or humanitarian status and not a refugee status. Not the fact that they claimed to be persecuted in their countries of origins was decisive, but how they behaved in the Netherlands.

The Netherlands proved to be a hospitable country, albeit not voluntary. The authorities tried to pursue strict policies and distinguish genuine refugees from bogus refugees. A solution had to be found for asylum seekers who had exhausted all legal procedures, but could not be deported and who were unwilling to leave the Netherlands voluntary. Analysis of individual case files showed that civil servants believed many asylum seekers were 'economic refugees' and 'fortune hunters' and therefore had to leave. Implementing rejections was difficult. Public actions forced authorities to reconsider the rejections. Asylum seekers who were first depicted as economic refugees and fortune hunters were later admitted because they were useful to the Dutch economy or had waited for many years. How this space to manoeuvre was interpreted over time changed: asylum seekers could work and therefore got a work permit or they were fellow-Christians, were traumatized or had waited endlessly and therefore deserved a humanitarian status. Strict policies were combined with a more liberal practice. The backgrounds of those who sought asylum varied. Their sex, numbers, support groups, professions, religions, nationalities, ages, family composition, length of their procedures, marital status and the diplomatic relations with their countries of origins differed. Because of these differences it was remarkable how similar civil servants dealt with asylum seekers. In the period 1945-1994 most asylum seekers

met with suspicion after their arrival, especially groups from countries where no asylum seekers had come from before. This resulted in the introduction of new policies, which had to deter newcomers. In case they decided to stay, officials found the solution in silently giving in. The margins of asylum policies offered a way out. The *gap* between strict policies and liberal outcomes was not a problem. It offered a way out in cases, where no alternative escape path existed.