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Contents

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Human Rights Discourses in the Context of the Regionalisation of Border Regimes: Comparing Mexico and Turkey[1]

ABSTRACT *Turkey and Mexico have been recently transformed from emigration to transit and immigration countries. Mexico (2012) and Turkey (2014) recently adopted new migration laws, which were presented as completely novel legislative constructions strengthening human rights by national and international actors. In this article, we analyse and compare the emergence of human rights discourses in the development and negotiation of these laws in Turkey and Mexico in relation to the irregular migration and refugees, and in the context of the regionalisation of migration policies. With reference to the concepts of the 'human rights from above' and 'human rights from below' we show how the different use of frames in legal developments in the migration field between Mexico and Turkey highlights two fundamentally different approaches to the discursive use of human rights.*

1. Introduction

Discourses on, and policy responses to, international migration are becoming regionalised in the Global North, as well as in the countries of the semi-periphery and the Global South, countries characterised by transit migration and immigration. On the one hand, practices and policies of migration management emphasise the securitisation of borders through laws and border enforcements in order to control increasing irregular migration. On the other hand, the global paradigm of human rights is being increasingly executed as a principle of migration management, strengthening basic rights of irregular migrants and refugees. Literature on migration policies contrasts these two approaches, securitisation and

human rights, and highlights the tension between national interests, principles of selective restriction of movement and migration management on the one hand, and cosmopolitanism and the universality of post-national rights on the other (see Basok/Piper 2012; Morris 2009).

We take this supposed paradox between the securitisation and the human rights approach as the starting point for this article. The overlapping and conflicting regional and national interests in the field of migration are expressed in the adoption of new migration laws in Mexico (2012) and Turkey (2014), which were approved unanimously by the respective national parliaments. In this paper we discuss and compare negotiations of human rights in relation to irregular migration, refugees, and borders, in both Turkey and Mexico. These laws are not only reforms of already existing migration laws, but instead are presented as completely novel legislative constructions strengthening human rights by national and international actors. The aim of this paper is therefore to analyse and compare the role the emergent human rights paradigm plays within the interdependent and conflicting processes of national reorganisation of the migration fields in Mexico and Turkey on the one hand, and processes of regionalisation of migration policies on the other.

Mexico's and Turkey's geographical position at the external borders of North America and European Union respectively, turned them into crucial geostrategic and political actors in processes of the regionalisation of migration and border policies, since both countries are increasingly important places of – mainly irregular forms of – transit migration movements from Africa, Asia, the Middle East, South and Central America towards 'the North' in order to reach the USA or the EU. Mexico and Turkey show some similarities and parallel developments with regard to the fields of migration and borders. However, until now only scant comparative research has been carried out (for exception see Escobar et al. 2006; Martin 2012). Both countries have transformed from classical emigration countries to transit countries and even to sites of immigration. Nevertheless, we can observe emerging human rights discourses in relation to migration policies in both countries. Historically, intergovernmental organisations, NGOs, and the US/EU have condemned poor policies and measures of the Turkish and Mexican governments in protecting the human rights of their citizens and minorities. However,

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the increasing vulnerability and poor conditions of irregular migrants and refugees in both countries has led to the emergence of human rights debates and practices.

Departing from theoretical considerations on regionalism and human rights, we argue that human rights do not form a normative set of values but rather a contingent framework of discourses on universal rights. Human rights may therefore take on quite different meanings, depending on who speaks of human rights, for whom, and in which political, regional and historical context. The specific meaning of human rights is negotiated by their protectors and their bearers depending on the context: "[…] Human rights can be socially constructed from below, they can likewise be constructed from above […]" (Morris 2010: 327). This means that human rights form a contested field: they may be used to gain agency through social movements in order to challenge power relations, or used strategically as an instrument to execute power and control. We further claim that the global human rights paradigm translates into regionally specific discourses and practices within the processes of regionalisation of migration policies (see Kron 2013; TRANSIT MIGRATION Forschungsgruppe 2007).

In this article, we focus on the negotiations of human rights in the context of the regionalisation of border regimes. We analyse how the new migration laws in Turkey and Mexico are framed, placing particular emphasis on the constitutive role of human rights in this process. The analysis aims at answering the following questions: Which references are made to human rights in the law texts as well in related debates? Which discursive figures are constructed as bearers of human rights? Which discursive alliances emerge between human rights and other frames, such as securitisation and migration management? In order to reconstruct the debates and negotiations of human rights, we apply the method of frame analysis (Benford/ Snow 2000). This method assumes that political decisions are structured by policy frames, i.e. specific interpretative schemes that shape political imagination and goals (ibid.; see also Bachhi 2009; Verloo 2005). Consequently, our analysis aims at identifying patterns of meaning which reflect dominant understandings of migration and which shape migration laws. The materials of our analysis are mainly the legal texts of the Turkish and Mexican migration laws, but also the comments of various national actors on the laws including politicians, NGOs, intergovernmental organisations, and

foreign governments. We also include contextual information on the role of civil society actors and other actors in the policy-making process in order to embed the outcomes in the regional context of both countries.

2. Competing discourses: human rights from above and below[2]

The human rights discourse emerges increasingly in the context of migration and border regimes that are governed through processes of regionalisation (see Ghosh 2008; Kron 2013; von Koppenfels 2001). The regionalisation of migration regimes particularly takes place through the process of regional economic integration, since the regulation of labour migration builds an essential part of this process, as in the cases of NAFTA or European integration process. The emergence of regional consultative processes also reflects changes in the international migration management system, which moves away from the nation-state and toward a more regional approach, "a shift which suggests that the international migration management system might likewise be supplemented by a regional element" (von Koppenfels 2001: 67). As the regulations are implemented, asymmetrical power relations are in play throughout the migration management paradigm. The US and the EU either engage directly in the control of borders in order to control transit movements of irregular migration, or pressure the Mexican and Turkish governments to take stronger measures in order to better control their borders. Within this context, the core principles of security, development and – more recently – human rights, might be seen as requisite standards of migration regulation that are required to be learned and applied by the states that seek to join a region – the 'deficit but learning partners'.

In the 2000s, Migration and Refugee studies started to debate irregular migration and border regimes as a paradox residing within the tension between internal security considerations as a "security-based" approach and human rights issues as a "rights-based" approach (Lavenex 2001; Gwendolyn 2005). The emergence of the "securitization" discourse type (Huysmans 2000) started to dominate the migration and asylum policies in Europe and the US when the rising number of asylum-seekers and irregular migrants was increasingly perceived as a threat to security and stability (Lavenex 2001). Parallel to measures by national governments

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to control influxes, the portrayal of immigration as a threat and a security concern has become the hegemonic discourse type in government policy. The rights-based approach and concepts of "postnational citizenship" challenge this approach (Gwendolyn 2005; Soysal 1994). Nevertheless, issues such as human rights and solidarity have become secondary to issues of security, which have created boundaries between the inside and the outside, while stigmatising and endangering the livelihoods of irregular migrants and asylum seekers (Buonfino 2004: 24).

Only a small number of the human rights are guaranteed in existing trans-national conventions, while access to most rights is administered by the nation states, which makes only a limited number of rights "truly universal" (Morris 2010: 328). Besides, some of the universal human rights can be qualified, and defined with reference to national security, public safety or economic well-being. There exists a close relationship between rights and controls, which manifests itself most clearly with respect to the rights of non-citizens, a group which provides one litmus test of how far universal rights have truly been established. In this context, Lydia Morris (2010) speaks of two faces of human rights, and underlines their contextual character. Social movements build one face of human rights, "which embrace human rights principles to engage in contestation over the unfixed content and boundary of rights" (ibid.: 326). The construction of human rights represents a moral force in order to empower disadvantaged groups against the state. On the other hand, Morris discusses human rights as a practice with which to execute power and control. Here, the discourse of human rights is constructed from above, and political interests play a role in the way human rights are institutionalised.

While there is a huge amount of literature on the militarisation and securitisation of borders, there is far less consideration of the role of human rights in migration regimes, of how human rights 'entered' the debates on international migration management, and of which political rationales emerged in this process. Humanitarian actors and discourses play an increasingly constitutive role in the justification and creation of restrictive border regimes (Mezzadra/Neilson 2013). As a prominent example, Bimal Ghosh (2008), one of the designers of the concept of international migration management, criticises the "missing link" between migration management and the protection of the human rights of migrants. He

argues that a heightened awareness of this link could constitute a proactive policy instrument and operation tool for "both protection of human rights and better management of international migration" (Ghosh 2008: 36). Against this backdrop, Ghosh identifies migrant groups and individuals that are particularly susceptible to human rights abuse and often suffer from serious protection gaps. "These are: migrants in irregular situations and trafficked migrants, temporary and ad hoc refugees and those in refugee-like situations; rejected asylum seekers and those who are subject to forcible return [...]" (ibid.: 38). Ghosh's conceptualisation of migrants as bearers of human rights is based on rationales of vulnerability and of victim-status. Special attention is paid to trafficked persons, who are seen as a sub-category of irregular migrants.

William Walters (2011) describes the emergence of the language of humanitarianism among border-making as the emergence of the "humanitarian border," which "goes hand in hand with the move which has turned state frontiers into privileged symbolic and regulatory instruments within strategies of migration control" (138). In this process, humanitarian and securitarian discourses are simultaneously mobilised to enforce border policing strategies, to govern migration, and to protect the rights of migrants. Casas-Cortes et al. (2015) argue that the entanglement of humanitarian and securitarian agendas has been a hallmark of the EU border regime through the management of tragic events that repeatedly occur in the Mediterranean Sea (20).

3. Mexico and Turkey: From emigration to transit and immigration countries

Mexico and Turkey formerly counted as 'classical' migrant sending countries. During the postwar industrial expansion in Europe and the US, migrant workers from Turkey and Mexico played a vital part in the economic boom, which was an expression of the global division of labour. The US and EU countries drew on labour from their peripheries. Both Mexico and Turkey had a peripheral status in terms of the global political economy, and the political and economic relations with the EU/US were marked by asymmetric power relations.

In 1942, the US and Mexico started a temporary labour arrangement, the so-called 'Bracero Program', which ran until 1964. Since the programme started, Mexican emigration to the US has been characterised by two features: first, its massive scale, and second, the large share of irregular migration. Mexican migrants to the US have historically been highly vulnerable to abuses by US employers, US society and US government policy (Alba/Castillo 2012: 3). Against this backdrop, Mexican government policy has stressed migrants' entitlement to basic rights, regardless of their legal status. Due to the fact that bilateral negotiations with the US government often resulted in ineffective conclusions, Mexico has pursued its agenda in multilateral forums such as the United Nations, where it was a leading proponent in the drafting and adoption of the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Their Families.

In the case of Turkey and the EU, labour shortages in Western European countries led these countries to actively attract Turkish migrant stock through guest-worker programmes that started in the 1960s. Workers were supposed to circulate according to a rotation principle, stay only temporarily, and work under limited economic and social rights. In the wake of the oil crisis in 1973, even as the specific programme of temporary migration ended, there were signs of permanent immigration, leading to a mixed form of temporary and permanent migration in which the differences between labour and family migration began to blur. The association agreement between Turkey and the EU had a positive effect on the Turkish citizens living in countries of the EU. Turkish citizens got preferential treatment as a result of this agreement, and their rights were extended. Although countries of the EU were slow in implementing EU requirements, this agreement increased Turkish citizens' freedom of movement and gave them a high degree of socio-legal equality with EU citizens. Social and political rights were improved after the European Court of Justice and the European Court of Human Rights decided that national governments had to expand the social and political rights of Turkish citizens (Ataç 2014). The Turkish government was actively involved in extending the rights of Turkish citizens living in European countries.

The landscape of migration started to change in Mexico in the 1980s with the inflow of Central Americans seeking refuge from the region's civil

wars. In the 1990s, this movement turned into flows of Central American transit migrants seeking to reach the US or Canada. The majority of these transit migrants originates from Central American neighbouring countries, especially Guatemala, Honduras, El Salvador and Nicaragua. In recent years, there have also been increasing flows of transit migrants from Africa, South America, China and India who enter the American continent legally in Ecuador, Costa Rica, Panama, Belize or Guatemala, and who cross Mexico irregularly in order to reach the US or Canada.

In response to the increasing immigration and transit migration of Central Americans in the early 1990s, the Mexican government created the National Migration Institute (Instituto Nacional de Migración, INM) as an autonomous agency within the Interior Ministry responsible for the development and administration of the country's migration policy. After the terror attacks of September 11, migration policy, not only in the US but also in Mexico, took a securitisation turn, and the INM was incorporated into the Mexican National Security Council in 2005, emulating the Homeland Security model in the United States (Johnson 2008: 16). With US encouragement and financial support, Mexico developed a border policy focusing on the apprehension, detention, and deportation of irregular migrants (Provine et al. 2014). These increasing flows of irregular transit migrants took place within the ongoing drug war in Mexico. Thus, migrants were exposed to widespread human rights abuses, not only by officers of the notorious INM and by municipal officials falsely claiming the authority to enforce immigration law (Inkpen 2012), but also by criminal gangs, migrant smugglers and members of rival drug cartels (Inter-American Commission on Human Rights 2015). The rise of Central American migration, the human rights abuses, and the shocking attacks against migrants in 2010 and 2011 by organised crime groups became an international scandal (Provine et al. 2014). When in April 2010, 72 bodies of transit migrants from Central America were found in a mass grave after being tortured in the northern state of Tamaulipas, close to the US border, a huge public debate started and the situation of migrants was discussed as a 'humanitarian crisis'; diplomatic relations to the Central American neighbouring countries have since then become dense and conflictive, which made immigration reform a top priority in the national Congress (Provine et al. 2014). In response to pressure from humanitarian groups

and international organisations, the Mexican government passed a new migration law to increase protection for transit migrants (Albuja 2014: 129).

Turkey also acts as a country of transit migration, and since the early 2000s has been one of the most important bridge countries for irregular migration to European countries (Danış 2006). Due to its geographical location, migrants and asylum seekers from the Middle East, Asia, and Sub-Saharan and North Africa move through Turkey. Most of them seek to enter the European countries as asylum seekers or irregular migrants. The Turkish-Greek border is one of the key points of entry for crossings into the EU. Furthermore, there is a circular labour migration of migrants from Ex-USSR and Balkan countries, who enter Turkey with tourist visas and work informally in construction, garment industries, domestic services, as sex workers, and in agriculture (Icduygu/Yükseker 2012: 448).

There is an increasing cooperation between the EU and Turkey regarding border management. As a candidate for EU membership, Turkey started to harmonise its migration and asylum policy with the EU acquis and adopted the definition of irregular migration in accordance with the EU (Özcürümez/Senses 2011: 240). As a result, Turkey gets assistance from the EU that focuses mainly on securing the borders and decreasing irregular migration to EU territory. Measures of securitisation and externalisation in the EU, as well as the tightening of border controls, led to increased flows of irregular migration through Turkey (Icduygu/Yükseker 2012: 452). The focus of the EU on heightening border security has led to an increased prioritisation of detention as a solution, including plans for the funding of new detention centers in Turkey by the EU, removal of migrants in Turkey, and the increased monitoring of the Turkish border (Crépeau 2013). The readmission agreement between the EU and Turkey that obliges Turkey to readmit migrants and asylum seekers who have passed through Turkey, was signed in 2013, with the promise of visa liberation for Turkish citizens entering Europe (Kaytaz 2015; Özcürümez/Senses 2011). Still, Turkey has resisted the harmonisation process in border and asylum policies, refusing to become a "dumping ground for Europe's unwanted migrants" (Kirişçi 2008; see also Icduygu/Yükseker 2012).

Turkey signed the 1951 UN Refugee Convention, but opted for the geographical limitation that only persons who become refugees in European countries can legally seek asylum in Turkey. As a reaction to refugee

movements in the mid-1990s, Turkey created its own temporary protection mechanism (Soykan 2012: 39). The regulation was characterised primarily by security concerns and introduced strict regulations regarding access to asylum procedures (Kirisci 2012: 67). In addition to the synchronisation of the regulation of migration with the requirements of the EU accession process, rulings of the European Court of Human Rights (ECtHR) played a major role in creating a climate of urgency in pushing Turkey to reform its asylum policy and prepare the draft law (Aydin/Kirisci 2013: 385; Kirisci 2012: 64; Soykan 2015). In 2009, the ECtHR stated, that the practice of detention in Turkey does not have sufficient legal basis, and the conditions in two detention facilities amounted to inhuman or degrading treatment or punishment in violation of Article 3 of the European Convention of Human Rights (Soykan 2012: 43). This decision became a turning point and was followed by 12 cases, culminating in 10 convictions against Turkey. Turkey was found guilty of the violation of a number of articles of the European Human Rights Convention and was sentenced to pay reparations to complainants, which put pressure on the Turkish government (Aydin/Kirisci 2013: 385).

Moreover, the UNHCR has a long-standing relationship, not only with the Turkish government, but also with Turkish civil society institutions. The UNHCR also played a decisive role in internalising the norms and rules of the international refugee system, stressing the importance of human rights for refugees (Kirisci 2012: 64). Additionally, civil society groups played an important role by offering legal assistance to asylum-seekers and monitoring government practices. Members of civil society formed the Platform for Refugee Rights (Mülteci Hakları Koordinasyonu) in 2010, which functions as a pressure group in the human rights dimension of asylum. Furthermore, Helsinki Yurttaslar Dernegi and Human Rights Watch published critical reports on government policies regarding increases in cases of refoulement and access to asylum procedures (Helsinki Yurttaşlar Derneği 2007; Human Rights Watch 2008).

In a same manner, also in the Mexican case, civil society groups have played an important role in recent decades (González-Murphy 2013). Prior to the 1980s, Mexican civil society had not organised around the issues of migrants' rights, but the wartime inflow of Central American refugees provided an impetus for mobilisation. Mexican civil society groups

started to play a powerful role in advocating for migrants, often providing humanitarian assistance and legal services to detained migrants after the influx of refugees from Central America increased (Alba/Castillo 2012: 7). Moreover, Central American governments have dramatically increased their pressure and activism in defence of their nationals transiting through Mexico. Regional legislatures, namely the Regional Parliamentary Council on Migration (COPAREM), and Central American diplomats in Mexico have also issued statements advocating reform and have expanded their actions in the area of protection of their nationals in transit (ibid.: 14). International actors such as UN organisations, the Inter-American Human Rights Court, and Central American countries have requested Mexico to take concrete measures to tackle the crisis in the country (ibid.). In 2011 the National Human Rights Commission reported more than 20,000 kidnappings and disappearances of transit migrants, as well as more and more harassments of pro-migrant humanitarian activists, for instance of the directors of the church-driven migrants' shelters and other centres of relief for transit migrants. In this context, Mexico had to appear before the UN Commission for the Rights of Migrant Workers in April 2011.

4. Human rights discourse in Mexico

The new migration law (Ley de Migración 2011) was adopted unanimously by the Mexican congress in June 2011 and came into force in November of 2012. It aims to develop a migration policy that includes the category of irregular migrants and respects the human rights of migrants, regardless of their legal status. The first principle which should underpin the migration policy of the Mexican state is formulated in article 2, and prescribes "unrestricted respect for human rights of migrants, nationals and foreigners, whatever their origin, nationality, gender, ethnicity, age and immigration status" (Ley de Migración 2011). The law declares that the Mexican State will protect all migrants, irrespective of their nationality or legal status. Article 66 states: "The immigration status of a migrant does not prevent the exercise of their rights and freedoms as recognized in the Constitution, as well as in international treaties and agreements which the Mexican state is part of" (ibid.). Moreover, article 67 adds: "All migrants in

irregular immigration status are entitled to be treated without discrimination and with due respect for their human rights" (ibid.).

There are several references to the human rights of migrants in the law. According to article 8, access to educational services, as well as to medical care provided by the public and private sectors, are guaranteed to migrants, regardless of their immigration status. They are entitled to any kind of urgent medical care that is necessary to preserve their life, free of charge and without restriction. Additionally, articles 9 and 12 guarantee access to the courts and public administration, regardless of migrants' immigration status, especially when the purpose is to preserve their human rights. The law regularly underlines the need for specific protection of the human rights of certain groups and draws "special attention to vulnerable groups such as children, women, indigenous people, adolescents and older people, as well as victims of crime" (ibid.: Article 2). Furthermore, although the law does not officially recognise abuses by police or custom officers, it does so implicitly by outlining principles of reform and reorganisation of migratory institutions, which include human right awareness-raising courses for officials, as well as control mechanisms for these institutions.

Politicians stress that human rights are a fundamental aspect of the law and that the law aims to decriminalise migrants. During his speech at the signing of the law, President Calderón emphasised how modifications of the previous framework through the law lead to a "process of decriminalizing of migration" (Calderón 2011). Similarly, Senator Humberto Andrade Quezada (2011), in his speech on the day of the adoption of the law, highlighted that the law aims to avoid "any possible criminalization and penalization of migrants, which is based on their migratory status".

The law also protects the rights of human rights defenders. This was the issue of a heated debate on the role of the human rights defenders in the Cámara de Senadores (Senate) in the course of the discussion on the first draft of the law. In order to put pressure on the law making process, Padre Solalinde, a well-known protector of migrant rights, who organised protective housing for migrants on their transit through Mexico, arrived in the Congress accompanied by 40 migrants, and interviewed around 16 politicians. His aim was to raise awareness on the situation at the Southern border of Mexico and highlight the need to have a law that is shaped by the spirit of human rights (Solaldine 2011).

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The interventions of civil society actors led to the modification of some articles that criminalised NGOs and people who take care of migrants. For example, the participation of the Secretaría de Seguridad Pública (Public Security Secretariat) in migration issues was eliminated. Actions of the Federal Police (including controls and detentions) were limited to those initiated through request by the INM. Furthermore, references to national and border security were reduced.

In the law there is a reference to human rights defenders, defined as "any person or organization of civic society who individually or collectively promotes or realizes human rights, fundamental freedoms and individual rights protection at the national or international level" (Ley de migración 2011: 3). The humanitarian activities of persons who work for civil society organisations and provide social services to transit migrants in migrants' shelters and migrants' centres are exempted from criminal prosecution, even if they receive donations and other means for the continuation of their work (Article 159). Instead, politicians recognised the value of their humanitarian work and showed admiration and gratitude for their collaboration in the law-making process. President Felipe Calderón (2011) also started his speech at the signing of the law by acknowledging the presence of representatives of civil society and religious organisations. In his speech on the day of the adoption of the law, Humberto A. Quezada (2011) said: "We are taking care, with special attention, that civil society associations that help and accompany migrants in such a generous and humanitarian way, cannot be persecuted, not even subjected to revisions as has been happening until now".

At the same time, the focus on the human rights of migrants is also linked to an underlying frame regarding security, especially concerning the question of national security, the improvement of border security, and knowledge production on migration. The first article in the presentation of the law names not only human rights, but also national development and security as core principles. It locates the law "within a framework of respect, protection and safeguarding human rights, contribution to national development and preservation of sovereignty and national security." Furthermore, although references to national security are not as frequent as those to human rights, they do appear in several articles of the law (1, 2, 28, 48,

144). Even if security is primarily framed around migrant protection, the law continues to consider migration associated with national security.

Another main frame, which we identified in the presentation of the law by the politicians, is the combination of references to regional issues with references to human rights. President Calderón highlighted the importance of coherence between Mexico's policy toward Central American migrants and its expectations for the treatment of Mexicans in the United States:

"Therefore, the Mexican Government is doing what we have requested for many years, for example from the US: decriminalize migration and answer in a more sensible and sensitive manner to the complex reality that we live in, especially at our borders, where many people arrive in Mexico from the South to continue their way to the North in search of opportunities" (Calderón 2011).

The law and the frame of human rights function as both medium and message to the US. Politicians refer to the fact that Mexican migration legislation has to follow the same principles that Mexico demands from the US. The humanitarian tradition is seen as a source of moral authority in the context of foreign policy and considered as a tool in negotiations to promote legal reforms in other countries. In the approval of the law, President Calderón was even less subtle: "Today, Mexico is doing its part to improve the immigration system in North America. There is no doubt about it. This is an advanced migration law, a bold legislation, a legislation that is matched by very few other examples across the world" (Calderón 2011). The talk of human rights in alliance with Central American neighbours strengthens the Mexican position *vis-à-vis* the US and serves as a strategy to claim more rights for Mexican migrants in the US. Although it is difficult to judge the full range of the law's impact, Alba and Castillo state that it has "already reduced bilateral tensions with Central American governments and has granted Mexico new moral authority when advocating on behalf of migrants' rights in the US" (Alba/Castillo 2012: 2).

5. Human rights discourse in Turkey

The first national law on asylum, the Law on Foreigners and International Protection (LFIP), was adopted by the Parliamentary Affairs Commission in June 2012, approved unanimously by the Parliament in April 2013, and came into full force in April 2014. The LFIP in Turkey regulates both international protection as well as the status and rights of foreigners in the country. As Article 1 states, the main aim of the law is to regulate the entry, exit and stay of foreigners in Turkey and to establish the procedures and guidelines for international protection that are provided to those who seek asylum in Turkey (LFIP 2014). The law set up the legal framework regarding the rights, procedures and obligations of asylum seekers and migrants, and is therefore the first law regulating asylum practices in Turkey. Before this law, refugee protection was mainly regulated by administrative circulars. On the whole, as many experts positively note the law fills legal gaps concerning international protection and the status and rights of foreigners in Turkey (Soykan 2012: 42; Kirisci 2012).

Although the aim of the law was to initiate a human rights-based reform of the international protection mechanisms, it maintained the geographical limitation of the 1951 UN Geneva Convention and the 1967 Protocol. Geographical limitation means that only nationals of the Council of Europe member states can receive refugee status in Turkey, although the majority of asylum seekers in Turkey are from non-European countries. For these groups, Turkey's asylum system offers conditional refugee status, humanitarian residence permit, or temporary protection, which provides protection on a temporary basis (Erçoban 2016: 164). Although some basic human rights, such as access to education and health services, are provided by the new law, some rights and entitlements are lesser to those granted to refugee status holders in European countries.

The term 'human rights' does not appear in the text of the law. The essential contribution of the law in terms of human rights consists in the form of its commitment to the principle of non-refoulement. Article 4 states that no one should be returned to a country where they might be subjected to torture, or inhuman or degrading punishment or treatment (LFIP 2014). Moreover, the law sets out the legal framework for the detention of foreigners and provides safeguards to detainees in compliance with

Article 5 of the European Convention of Human Rights (ECHR) on the "right to liberty and security" (Kaytaz 2015). Additionally, it regulates basic human rights such as the timely processing of the application, the right to object to a rejected asylum application, access to translators and lawyers, and access to primary and secondary education, as well as to health services (LFIP 2014; Bürgin/Asikoglu 2015).

As an important contribution from a human rights perspective, the law extends protection to other groups that are not covered by the 1951 Refugee Convention, such as victims of human trafficking and people who need subsidiary protection and humanitarian leave (Soykan 2012: 44). Special groups, such as victims of trafficking and unaccompanied minors, receive special protection in different paragraphs in the law (Article 55 and 66).

Although the law text does not include explicit references to human rights, these references can be found in accompanying texts and speeches in the law-making process. In their comments to the draft law, the Parliamentary Commission on Human Rights and the Committee on EU Harmonization of the Turkish parliament highlighted that the law is "filling an important gap in human rights" (TMBB 2012: 16) and represents an "important regulation towards a changing perspective on foreigners from a security and economy oriented one towards a 'human-rights-centred' approach" (ibid.: 17), "based on human rights and preserving the delicate balance between freedom and security" (ibid.: 18). There are numerous references that see the law as a "human-rights-oriented" and "human-rights-based-approach" (ibid.: 16ff.). Politicians and members of the Parliamentary Commissions stress that this new regulation is accompanied by a human rights approach for migrants (ibid.).

Securitisation represents the main frame in the presentation of the Turkish law. The general explanation of the law and statements of government officials stress Turkey's gradual shift from being a transit country to a destination country for migrants. For the purpose of this argument, a sharp distinction is made between regular migration, which consists of labour migration and people looking for protection, and irregular migration, which is "directly linked to organized crime such as human trafficking and migrant smuggling." (LFIP 2014: 1) Here we find a connection between the discourses of human rights and security in the reasoning of the law. Phrases such as "fighting with irregular migration while main-

taining the delicate balance between freedom and security" and "combating human trafficking effectively and restructuring of border security issues" (ibid.: 2) build important frames of the securitisation framework. Issues related to international protection are seen as "scattered and outdated, therefore the law will be an improvement, relating human rights and concerning national security and international relations" (ibid.: 2).

Moreover, framings of the law through a migration management perspective are strongly embedded in the law and surrounding discourses. On the one hand, "the need for a public institution" is grounded on the idea that migration requires "co-operation and co-ordination on the national and international level, [which is] an issue of public order and safety" (ibid.: 1). On the other hand, the general explanation states that Turkey's growing economic power and political stability as well the political instability in the region make Turkey an attractive country, not only as a transit country but also as a "destination country" (ibid.: 1).

In the legal text there are references to international institutions such as the EU, and, especially, the European Court of Human Rights: "The Court's (ECtHR) recent decisions against Turkey shows there is a need for the legal arrangements (changes) in the field of migration and asylum. In this context, Turkey is part of international conventions in the field of migration management and migration and asylum legislation. With regards to the EU accession process, Turkey has to create a good infrastructure." (ibid.: 1) The law and the discourse of human rights works as an instrument in the negotiations with the EU, and emerged from the pressure of the EctHR decisions.

6. Comparing the discourses in Mexico and Turkey

In this article, we analysed the emergence of human rights frames in the development and negotiation of new laws in Turkey and Mexico. In Mexico, the law represents an important shift regarding the basic rights for irregular migrants (Alba/Castillo 2012: 17). We can perceive de-criminalisation of irregular migration through the categorical construction of irregular migration and the claimed protection of their basic rights, irrespective of their legal status. In the context of the 'migration crisis', the

rights of the protectors were also strengthened. We find references to human rights in the legal text, as well as in the accompanying discourse, which attests to strong relevance to human rights from below. Moreover, we find civil society organisations, which contest asymmetrical power relations through forms of civic activism, making references to the human rights of irregular migrants who suffer exclusion. In contrast to Mexico, in Turkey the category of irregular migration emerges as a category that must be combatted. In Turkey, the new law criminalises irregular migration by linking it directly to organised crime. Here, the argument is based on the differentiation of regular and irregular migration and on protecting the people who are in need of international protection. Human rights are not directly mentioned in the law, but represent an important point of reference in the context of non-refoulement and the regulation of the asylum procedure process.

In both cases, the new migration laws provide the normative legal framework to reorganise the migration field in the process of 'becoming a migration country'. Central frames in the discourse are not only contested; they are strategically applied by different actors. Although we find that human rights are the main reference point in both countries, we also discern other discursive frames. In the Turkish case we identify security and management of migration as the main frames. Within the context of 'becoming an immigration country', national interests to regulate migration stay in the forefront. The frame of national security plays an important role in the reasoning of the law, with the aim of making migration movements manageable. These frames merge together with international claims on human rights and the more effective control of irregular and transit migration. As irregular migration is seen as a risk and threat to national sovereignty and security, the solution is seen in the categorisation and better management of migration through the construction of the new law and establishing new institutions. In general, human rights used as a control paradigm is strong in the Turkish case. The securitisation aspect also exists in the Mexican case, but not as strongly as in Turkey, and not in discursive alliance with the human rights frame.

Furthermore, the laws are framed, not only in the context of national paradigms, but also in the context of asymmetrical North-South relations as an expression of foreign policy. Another frame we perceived is the refer-

ence to human rights within processes of regionalisation. Discourses of human rights have the complementary function of representing Turkey and Mexico as 'modern' countries that protect human rights, and of overcoming the image of both countries as human rights abusers.

In the Mexican case, the human rights frame acquires a specific meaning in the context of regionalisation, implying a reference to Mexican migrants in the US in order to claim more rights for them. As Alba and Castillo (2012) emphasise, the new Mexican migration law and the references to human rights are an expression of foreign policy. "Mexico's foreign policy has long sought to defend Mexicans in the United States from abuses […] the Ley de Migración represents an attempt by the Mexican government to bring coherence to its own treatment of migrants and its expectations for the treatment of Mexicans abroad" (ibid.: 17). However, in the Mexican case, the discourse does not only work in terms of the relation to the Northern countries, but also in terms of Mexico's relation to the Central American Southern countries: it may thus be understood as a diplomatic concession to these countries and as a response to public outrage and diplomatic pressure, since most of migrants transiting through Mexico come from these countries.

In the Turkish case, the discourse of human rights works as an instrument in the negotiations with the EU. A similarity between the two countries is that, in both countries, the human rights of special groups are highlighted: thus, we found evidence for protecting the rights of children and victims of trafficking. We interpret this as a sign of the influence of the transnational discourse and of the role of the IOM and other global migration agencies, which justify the rights of migrants with reference to their victim-status, rather than to their status as migrants. This is especially strong in the Turkish case.

A further difference between the two countries can be seen in the lawmaking process regarding migration. As the law in Mexico has focussed more on human rights and de-securitisation after the intervention of civil society actors, in the Turkish case the demands of civil society organisations for a stronger focus on human rights have not been realised. Although civil society actors supported initially the intention, critical voices raised the question about the successful implementation of the law.

The differences between these two countries have to be interpreted in the context of different migration flows, but also in the context of the

discursive construction of issues in the political debate (transit migration in Mexico versus refugees in Turkey). In Mexico the violence was visible, and human rights abuses against transit migrants were discussed in the context of failed state arguments. Moreover, civil society organisations were active and could intervene in the legal process and change the legal outcomes. In the Turkish case, human rights abuses, especially deportations, as well as access to the asylum procedure, are the main contextual factors. However, these abuses were not visible enough in the public sphere, and emerged as topics in the context of the new migration law only in response to claims by external powers, especially EU and ECtHR. The role of civil society organisations was not as strong as in the Mexican case, making the framing of human rights from below insufficiently strong.

7. Conclusion

Human rights in the new migration laws in Mexico and Turkey play a crucial role at two interconnected levels of the reorganisation of the migration field: first, the new migration laws in Turkey and Mexico contribute to the reorganisation of the migration field on the national level. Here, they fulfil the function of providing a new normative (legal) framework within the process of the 'making of a migration country'. This new normative and legal framework can be organised around the frame of human rights, as we can see in the Mexican case. However, the framework can also foreground aspects of securitisation and migration management, as we identified in the Turkish migration law. In the latter case, the presentation of the law combines repressive discourses and practices of control/criminalisation with aspects of the protection of human rights and the safety of migrants.

The second important level for the reorganisation of the migration field concerns international relations. Here, human rights play an important role for the strategic (self-)positioning of both countries within processes of regionalisation of migration policies in Europe and North America, respectively. In both Turkey and Mexico, the legal texts serve as channels of communication with the region in the international public sphere, and they function as proof of good governance as well as an instrument of foreign policy. However, we identified a difference between these two

countries. While Turkey uses its migration policy as a symbolic and strategic tool for advancing its national interests towards the EU, the Mexican migration law is an instrument for sending policy signals towards the North – aiming to strengthen the basic rights of Mexican immigrants in the US – as well as to the South – reducing the human rights abuses of citizens of Central American countries.

Overall, our comparison of main frames in legal developments in the migration field of Mexico and Turkey contrasts two fundamentally different approaches to the discursive use of human rights. Building on Morris (2010), we can label these approaches as 'human rights from below' and 'human rights from above'.

In the Mexican migration law, human rights are predominantly framed from below. This is not only visible in the discursive frames of the legal text and the surrounding discourses, but also in the high degree of involvement of civil society in the law making process. In this case, the law aims at strengthening the rights and interests of irregular migrants in Mexico, irrespective of their legal status, but rather based on their status as humans with human rights, as well as those rights of their protectors. In addition, on the international level, the law functions as a communication tool to increase the rights of Mexican migrants in the US, and of migrants in Central American countries. When human rights are framed from below, the effect is to increase the power of the powerless, as well as that of NGOs and social movements which advocate for their rights.

By contrast, the Turkish discourse surrounding migration law is dominated by a framing of human rights from above. Here, human rights are given relevance not through the involvement of civil society actors, but only through pressure from the EU and the ECtHR. The framing of human rights is shaped by the dominant powers, i.e. the government and external political pressure, not by voices from below, i.e. NGOs and social movements. Consequently, the interests represented in the law and the surrounding discourses represent interests of state power, and human rights are relevant only in so far as they underpin the rhetoric of securitisation and migration management. These framings do include a strong focus on protecting the rights of special groups; however, they do not extend these rights to irregular migrants as a whole. When human rights are

framed from above, the effect can be increased protection of particularly vulnerable groups.

The comparative frame analysis of Turkish and Mexican migration laws presented in this article contrasts competing human rights discourses in the field of migration. It does come with one important limitation, however, which consists in the potential gap between legal texts and their surrounding discourses on the one hand, and the actual implementation of laws and of political rhetoric on the other. In the Turkish context, Soykan (2015) identifies an "implementation gap", arguing that the increases of migrants' rights through the law do not in fact lead to better conditions for migrants, but instead worsen the conditions of asylum seekers in Turkey. Despite the high profile of human rights in the Mexican migration law, weak implementation can lead to a lack of improvement of the situation of irregular migrants. Overall, the analysis presented in this article allows us to categorise discursive approaches to migration and derive assumptions concerning the implications of these discourses for power relations and for access to rights in the national and international migration fields. However, it does not offer an analysis of the actual effects of the law on the lives of irregular migrants; instead, these questions represent opportunities for further research.

1 The first draft of this paper was developed and presented together with Dr. Stefanie Kron in two conferences; first in the NeBoCo conference "New Borderlands or Cosmopolitanism from Below?" in 2012 in Oldenburg, and second in the international conference "Borders, Mobility and Diversity" at Koç University in 2014 in Istanbul. Dr. Florencia Rivaud conducted the research for the Mexican case for this version of the paper. Cristina Yurena Zerr translated Spanish texts. Angelika Striedinger read, edited and commented on the paper several times. I would also like to thank Dr. Joachim Becker and two anonymous reviewers for their comments on earlier drafts.
2 I developed the idea and concept for the theoretical part together with Dr. Stefanie Kron.

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ABSTRACT *Die Türkei und Mexiko haben eine Transformation von Emigrations- zu Transit- und Immigrationsländern durchlaufen. Sowohl Mexiko (2012) als auch die Türkei (2014) haben kürzlich neue Migrationsgesetze beschlossen, die von nationalen und internationalen AkteurInnen als völlig neue legislative Konstrukte zur Stärkung von Menschenrechten präsentiert wurden. In diesem Artikel analysiere und vergleiche ich das Auftreten von Menschenrechtsdiskursen in der Formulierung und Verhandlung dieser Gesetze in der Türkei und in Mexiko und stelle diese in Zusammenhang mit Entwicklungen von irregulärer Migration und Flüchtlingsbewegungen sowie in den Kontext der Regionalisierung von Migrationspolitik. Ausgehend von der Unterscheidung zwischen ‚Menschenrechten von oben' und ‚Menschenrechten von unten' diskutiere ich die Türkei und Mexiko hinsichtlich der jeweiligen Rahmungen in rechtlichen Dokumenten und politischen Debatten im Bereich der Migration. Dabei werden zwei grundlegend unterschiedliche diskursive Zugänge zu Menschenrechten deutlich.*

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