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**Mexico's Dual Approach at the Southern
Border: Clash of Realism and
Humanitarianism**

Diplomová práce

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Abstrakt

Ve své diplomové práci se zaměřuji na Mexiko, na zemi, která se pokouší dosáhnout cílů národní bezpečnosti, tj. jednoho z nejcharakterističtějších znaků současné politiky Mexika. Současně Mexiko usiluje o dosažení mezinárodních lidsko-právních závazků pro své občany a cizince pobývající na mexickém území. Od přelomu tisíciletí se Spojené státy americké stále více zaměřovaly na opevňování své hranice s Mexikem. Hlavním důvodem pro tato opatření bylo zabránění vstupu mexických a středoamerických ilegálních přistěhovalců do USA. Nicméně restriktivní pohraniční a imigrační opatření se nestala symbolem pouze pro Spojené státy. Také Mexiko začalo budovat opevnění v pohraničních pásmech, především podél jižní hranice s Belize a Guatemalou. Z čeho pramení motivace Mexika přijímat dvojaký přístup vůči středoamerickým přistěhovalcům v oblasti mexické jižní hranice? Proč Mexiko lavíruje mezi realistickými principy národní bezpečnosti a lidsko-právními závazky, k nimž se přihlásilo podepsáním a ratifikováním mezinárodních úmluv?

Abstract

In my thesis I will show the case of Mexico, a country that is struggling hard to fulfill its principles of national security – one of the most characteristic features of Mexico's policies. Simultaneously, Mexico is making efforts to fulfill human rights' obligations of both its nationals and foreigners. Increasingly especially since the turn of the millennia, the United States has been fortifying its border with Mexico with the aim to prevent the Mexican and other immigrants reaching the United States illegally. Yet, hard-line border controls and migration-related policies have not been adopted solely by the United States, but also Mexico has played a dominant role in fortifying its border areas, especially along the southern border with Belize and Guatemala. My research questions would then focus on what is driving Mexico to adopt dual approach towards Central American migrants along Mexico's southern border, and why is Mexico balancing between realistic principles of national security and human rights' obligations, which has espoused by signing and ratifying international conventions?

Klíčová slova

Realismus, humanitarismus, lidská práva, migrant, mezinárodní norma, Mexiko, jižní hranice

Keywords

Realism, humanitarianism, human rights, migrant, international norm, Mexico, southern border

Prohlášení

1. Prohlašuji, že jsem předkládanou práci zpracoval/a samostatně a použil jen uvedené prameny a literaturu.
2. Souhlasím s tím, aby práce byla zpřístupněna pro studijní a výzkumné účely.

V Praze dne 15. 5. 2015

Petr Vrchota

Poděkování

Na tomto místě bych rád poděkoval vedoucímu práce, panu doktoru Kryštofu Kozákovi za trpělivost a podnětné připomínky a odborné rady při zpracovávání diplomové práce. Současně bych rád poděkoval za magistru Tomáši Brunerovi, který mi udělal cenné rady v průběhu psaní diplomové práce. Zvláštní poděkování také patří doktoru Raúlu Benítezovi Manautovi za několikrát osobní konzultace a rady během mého studijního pobytu v Mexiku.

Institut politologických studií
Teze MAGISTERSKÉ diplomové práce

UNIVERZITA KARLOVA V PRAZE
FAKULTA SOCIÁLNÍCH VĚD
INSTITUT POLITOLOGICKÝCH STUDIÍ

**Nezamýšlené důsledky pohraničních
regulací USA a Mexika v boji proti
organizovanému zločinu**

PROJEKT DIPLOMOVÉ PRÁCE

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Obor a ročník: **Bezpečnostní studia, 1. roč.**

Akademický rok: **2012/2013**

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Souhlasím s vedením diplomové práce:

PhDr. et Mgr. Kryštof Kozák, Ph.D.

Výzkumná otázka

Tento projekt diplomové práce si klade následující výzkumnou otázku: „Jaké jsou nezamýšlené důsledky opatření a regulací státních institucí v boji proti organizovanému zločinu?“ Zhušťování bezpečnostních a celních kontrol a dalších restriktivních opatření na státních hranicích i na vnitřním území státu může vést k zamezování průniku nežádoucích vlivů do daného státu, a tím k posilování národní bezpečnosti a ochrany obyvatel, jejich života, zdraví a majetku. Na druhé straně může docházet k paradoxní situaci, kdy tato opatření mohou ve skutečnosti přispívat k větší funkčnosti a operabilitě organizovaného zločinu. Jeho představitelé budou pod tlakem nuceni přijmout jiný, ve svých důsledcích nebezpečnější, modus operandi, a tím mohou výrazně paralyzovat funkčnost předchozích opatření.

Předchozí výzkum

Přispívám do oboru bezpečnostních studií, neboť zabezpečení státní hranice je jedním z klíčových prvků národní bezpečnosti, přestože v éře globalizace a postvestfálského systému bývá mnohdy zpochybňována jako pozůstatek minulosti nereflektující plně soudobé nastavení mezinárodního systému. Americko-mexická, a koneckonců i schengenská hranice, jsou ale nepochybně stále velmi relevantní. Zároveň nepochybně přispívám do oboru kriminologie, neboť samotná problematika organizovaného zločinu a jeho prevence a potírání vyžaduje koordinaci a souhru všech příslušných složek, které mají na starosti dodržování zákonných norem.

Ve svém výzkumu vycházím z relevantních zdrojů, které se dané problematice věnují a detailně ji rozebírají. Nosnou publikaci pro mne představuje kniha *Organised Crime: Concepts, Cases, Controls*, v níž se autor zabývá vývojem organizovaného zločinu, jeho proměnami v čase a způsoby jeho potírání. Za důležitý zdroj považuji knihu *An Economic History of Organized Crime: National and Transnational Approach*. Kniha *Developing the U.S.-Mexico Border Region for a Prosperous and Secure Relationship: The Impact of Mexican Migration and Border Proximity on Local Communities* rozpracovává zapojení mexických přistěhovalců do jednotlivých sektorů hospodářství, uvádí, jak zabezpečování hranice vedlo k alternativním metodám pašování drog, zbraní i jiných komodit, a v závěru nastiňuje možnosti spolupráce. Významným autorem je Peter Andreas, jehož dílo zahrnuje problematiku zhušťování hranice a nezávislé posouzení úspěchů a selhání vládní americké politiky. K dalším dílům patří kupříkladu:

The United States and Mexico: Forging a Strategic Partnership nebo The United States and Mexico: More Than Neighbors. Vycházím z pravidelných zpráv Kongresu věnovaných boji s organizovaným zločinem a rovněž ze zpráv Organizace OSN pro drogy a zločin (UNODC).

Cíl výzkumu

Hlavním cílem tohoto výzkumu je potvrdit či vyvrátit kauzalitu mezi opatřeními státních institucí k potírání organizovaného zločinu a schopností organizovaného zločinu pracovat funkčně a efektivně ve ztíženém prostředí a navíc potenciálně využít těchto restrikcí k dalšímu rozvoji činnosti. V první části práce se budu zabývat kontextem boje proti organizovanému zločinu obzvláště na evropském a americkém kontinentě. V druhé části se prostřednictvím jednopřípadové studie zaměřím na změnu přístupu organizovaného zločinu poté, co americká i mexická vláda začaly opevňovat společnou hranici a zavádět množství bezpečnostních opatření. V 80. letech 20. století spustily Spojené státy americké kampaň v Karibiku, který fungoval jako významná tranzitní oblast pro pašování drog a jiných komodit z Jižní Ameriky do USA. Na změněný americký přístup reagoval organizovaný zločin tím, že postupně přenášel své aktivity do středoamerického regionu a Mexika. Změna přístupu tehdejšího organizovaného zločinu může být potenciálně vodítkem pro dnešní organizovaný zločin, který může hledat prostor pro svou činnost jinde.

Autor se domnívá, že tematice americko-mexické hranice, a vůbec tematice americko-mexických vztahů a vzájemné spolupráce není v českém akademickém prostředí věnována dostatečná pozornost, a proto považuje za důležité na ni více zaměřit. Přirozeně tato problematika rezonuje nejvíce v samotném Mexiku, stejně jako v příhraničních státech a regionech USA. Zkušenosti z USA jsou navíc relevantní pro diskuse o formě a rizicích schengenské hranice.

Definice pojmů

Trans-nacionální organizovaný zločin

Široký záběr činností trans-nacionálního organizovaného zločinu neumožňuje, jak podotýká loňská zpráva amerického Kongresu, vytvořit jednoznačnou definici. Tato zpráva při konceptualizaci vychází ze tří termínů – transnacionalita, organizace, zločin.

Termín transnacionalita počítá s tím, že členové organizovaného zločinu operují na území více států. Termín organizace znamená, že činnost provádí skupina více osob, definice se ovšem různí v otázce organizační struktury. Zpráva rovněž jmenuje jednotlivé zločiny nebezpečné pro bezpečnost USA – pronikání do státních institucí, korupce, ohrožení ekonomiky, její konkurenceschopnosti a strategických trhů, nexus mezi terorismem, zločinem a povstalectvím (nexus terror-crime-insurgency), pašování drog, obchodování s lidmi a zbraněmi, krádeže duševního vlastnictví, kybernetický zločin a kritická role zprostředkovatelů zločinu.¹

Americko-mexická hranice

Jak jsem již naznačil výše, státní hranice mezi USA a Mexikem představuje symbolické dělítko mezi dvěma odlišnými světy. Spojené státy americké se vpassovaly do role globálního politického, ekonomického a vojenského hegemonu, Spojené státy mexické však lavírují mezi velmi rychle se rozvíjející ekonomikou a pozůstatky někdejšího autoritářského režimu. Paul Rexton Kan tvrdí, že zde navíc existuje lingvistická diskrepance ve vnímání hranice: „*zatímco v angličtině hranice (border) značí předěl, který může sloužit jako bariéra vůči vnějšku, ve španělštině slovo hranice (frontera) může znamenat začátek nového území.*“ - *podobné jako anglické frontier.*² V minulosti bývala hranice relativně prostupná a tvořila přirozenou cestu mezi severem a jihem. Prosazování národní bezpečnosti na státní hranici tudíž může být důsledkem řady vnějších příčin. Akutní příčinou z pohledu je zvláště otázka imigrace a organizovaného zločinu.

Metoda a metodologie

Jako nejvhodnější metoda pro tento výzkum se jeví jednopřípadová studie³, na jejímž základě bude autor pomocí zprostředkujících proměnných dokládat korelaci mezi restriktivními bezpečnostními opatřeními na státní hranici a jejich dopady na další

¹ Bjelopera, Jerome P; Finklea, Kristin M: 2012. An Evolving Challenge for U. S. Law Enforcement. Congressional Research Service, January 2012.

² Kan, Paul Rexton: 2010. *Mexico's 'Narco-Refugees': The Looming Challenge for U. S. National Security.* U. S. War College, Strategic Studies Institute, s. 1.

³ Drulák, Petr a kol.: 2008. Jak zkoumat politiku. Portál, s. 28.

ilegální aktivity trans-nacionálního organizovaného zločinu, zejména obchodování s drogami, zbraněmi, lidmi a pronikání do sfér veřejné správy.

Operacionalizace

V tomto výzkumu se za *nezávislou proměnou* považují zabezpečení státní hranice mezi USA a Mexikem. Konkrétně se tím mají na mysli pohraniční kontroly jednotlivců, osobních automobilů i nákladních vozů, zkoumání biometrických pasových dokumentů a řádného vízového povolení v rámci platné legislativy USA. Značnou kontroverzi vzbuzuje případná dostavba plotu podél celé hranice, fyzické bariéry na hranicích a kontroly mimo vyznačené hraniční přechody.⁴

Jednou z nejdůležitějších *zprostředkujících proměnných* je bezesporu přistěhovalectví do Spojených států amerických, které je stimulováno především ekonomickými důvody. Počet legálních a ilegálních imigrantů se od počátku devadesátých let 20. století ztrojnásobil⁵, nicméně statistické bilance posledních let (i vzhledem k lepší ekonomické kondici Mexika a horším příležitostem v USA) ukazují, že tento fenomén je přeceněný a mnoho přistěhovalců se vrací zpátky do své země původu. Imigranti z Mexika a Střední Ameriky se při vidině lepších pracovních příležitostí stávají stále častěji oběťmi sofistikovaných sítí organizovaného zločinu, který má svůj původ ve zmíněných latinskoamerických zemích, ale často též rozsáhlými kriminálními klany z Ruské federace nebo Číny.

Zkoumáme-li vliv zabezpečování státní hranice USA a Mexika na další činnost transnacionálního organizovaného zločinu, existuje zde také řada faktorů, které sice přímo nedeterminují tuto kauzalitu, ovšem mají na ni určitý podíl. Hovoříme o tzv. *kontrolní proměnné*. V tomto případě se jedná o aktuální ekonomickou situaci obou zemí, institucionální nastavení ozbrojených složek a výkonnost justice, bilaterální postup USA a Mexika v otázce imigrace a vzájemného obchodu. V neposlední řadě se má na mysli politický, ekonomický či jiný zásah třetí strany, ať už se jedná o působení mezinárodních organizací, dalších států i nestátních aktérů.

⁴ Jenks, Rosemary: 2002. The Enhanced Border Security and Visa Entry Reform Act of 2002. Center for Immigration Studies. See <http://www.cis.org/articles/2002/back502.pdf>, December 22nd 2012.

⁵ Office of the U.S. Trade Representative. U. S. – Mexico Trade Facts. See <http://www.ustr.gov/countries-regions/americas/mexico>, January 10th 2013.

Závislá proměnná se týká konkrétních metod, kterých užívá trans-nacionální organizovaný zločin, prováděný zejména mexickými kartely a jejich spřízněnými skupinami na území USA, k vykonávání svých činností při zabezpečování hranice. Činnostmi se myslí obzvláště obchodování s drogami, zbraněmi, lidmi, praní špinavých peněz, pronikání ilegálních živelů do státních institucí, ohrožení ekonomických zájmů apod. Je třeba podotknout, že se vyskytuje nejasná dělící linie mezi vykonavateli těchto činností a mnohdy se aktivity drogových kartelů, skupin organizovaného zločinu, povstaleckých uskupení překrývají.

Na závěr je tak třeba položit si otázku, zdali existují nějaké žádoucí důsledky, jež vyplývají z reality, v níž organizovaný zločin citlivě reaguje na vládní politiky. Zde je nutno bedlivě uvážit, jaká měřítko žádoucnosti či nežádoucnosti si stanovíme coby kvalitativní a kvantitativní faktory.

Zdroje dat

Hlavními zdroji, z nichž tento projekt vychází, budou obzvláště materiály amerických a mexických univerzit, think-tanků a specializovaných institutů, např. již výše uvedený Trans-Border Institute na Univerzitě v San Diegu či think-tank Woodrow Wilson International Center for Scholars.

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Table of Contents

INTRODUCTION.....	1
1 CLASH BETWEEN REALPOLITIK AND HUMAN SECURITY.....	6
1.1 REALISM.....	6
1.1.1 <i>Origins of Realism in the ancient state</i>	6
1.1.2 <i>Formation of Realpolitik after 1648</i>	7
1.1.3 <i>Old-school traditions of realism</i>	8
1.1.4 <i>Heyday of neo-realism and defensive structural realism</i>	10
1.2 HUMANITARIANISM.....	11
1.2.1 <i>Development of human rights instruments</i>	11
1.2.2 MORE HUMANE CONCEPT IN IR.....	13
1.2.3 <i>Human Development Report 1994</i>	14
1.2.4 <i>Challenges and limitations of human security</i>	16
2 NEXUS BETWEEN MIGRATION AND HUMAN RIGHTS.....	19
2.1 PHILOSOPHICAL PREMISES ON THE RIGHTS OF THE MIGRANT.....	20
2.1.1 <i>Francisco de Vitoria – natural rights</i>	20
2.1.2 <i>Immanuel Kant – cosmopolitan logic of humanity</i>	20
2.1.3 <i>Hannah Arendt – critical reflection of human rights</i>	21
2.2 NORMATIVE APPROACHES TOWARDS MIGRATION.....	23
2.2.1 <i>Libertarianism – open borders</i>	23
2.2.2 <i>Liberalism – relatively open borders</i>	23
2.2.3 <i>Communitarian approach – cultural identity</i>	24
2.2.4 <i>Realistic/ pragmatic approach</i>	25
2.3 CATEGORIES OF MIGRATION.....	25
2.3.1 <i>Contradiction between emigration and immigration</i>	27
2.3.2 <i>Terminology of migration</i>	29
2.3.3 <i>Irregular migration</i>	30
2.4 MIGRATION AS A SECURITY ISSUE.....	32
2.4.1 <i>Migration threatening state sovereignty, stability and security</i>	33
2.4.2 <i>Prejudices and distorted perceptions of migration</i>	35
2.4.3 <i>Who makes perception of migration?</i>	36
2.5 STATE – ULTIMATE GUARANTOR OF HUMAN RIGHTS.....	37
2.5.1 <i>Unintended consequences of border controls</i>	38
2.5.2 <i>Responsibility to protect human rights of the migrants</i>	40

3 CASE-STUDY: MEXICO – CLASH BETWEEN HARD-LINE PRACTICES AND HUMAN RIGHTS RHETORIC AT THE MEXICO’S SOUTHERN BORDER 42

- 3.1 REALISM IN MEXICO’S POLICY 44
 - 3.1.1 *Development of Mexico’s national security*..... 44
 - 3.1.2 *Defining Mexico’s national security*..... 45
 - 3.1.3 *National or public security?* 47
 - 3.1.4 *Program for National Security 2014 – 2018* 48
- 3.2 HUMANITARIANISM IN MEXICO’S POLICY 50
 - 3.2.1 *What do human rights stand for in the context of Mexico?*..... 50
 - 3.2.2 *Role of international community* 52
 - 3.2.3 *Reform of Mexico’s human rights agenda*..... 54
- 3.3 NATIONAL SECURITY VERSUS HUMANITARIANISM AT THE SOUTHERN BORDER OF MEXICO 56
 - 3.3.1 *Migration-related policies in Mexico* 57
 - 3.3.2 *Context of U.S. – Mexico migration* 60
 - 3.3.3 *Compliance with the United States*..... 61
 - 3.3.4 *Southern border of Mexico* 63
 - 3.3.5 *Militarization, Plan Sur and Human Rights Rhetoric* 65

CONCLUSION..... 68

BIBLIOGRAPHY 73

- BOOKS AND PUBLICATIONS 73
- INTERNET SOURCES 79

Introduction

A phenomenon of population movements is as old as humanity itself. Even today stories of migrants and asylum-seekers from all around the world appear on front pages of media channels, and experts predict this issue will be increasingly challenging for states and international organizations in the years to come. Many authors have written piles of books on migration, politicians have talked both in favor and opposed to migration, plenty of pressure and interest groups have lobbied once for migration, else against migration, people on the move have often been a subject of discussion between both intellectuals and general population, migrants have once been welcomed and needed in the receiving country, another time they have been repudiated by the receiving country and its citizens.

Population movements have contributed to greater diversity, plurality, and heterogeneity and have brought positive elements to the host country in the form of better employment, higher economic growth, bringing new energy and innovation, fostering development, enriching cultural diversity, and facilitating better understanding of the world itself. Migrants, though, attempt to enhance life prospects of theirs and their families by bringing home savings, skills, and international contacts. Nonetheless, migration has equally been associated with negative connotations in the host country, such as with depression of wages, increased unemployment in case of many low-wage workers, obstacles with integration and possible friction with local people, exploitation of the migrants by employers, smugglers, and traffickers, involvement of organized crime, and intensified security measures and border policies. Societies in the countries of origin get disadvantaged due to a lack of highly-qualified people and young workers who go abroad, as well as due to collapse of traditional families which is, again, caused by exodus of family members (Mármora, 1999); (Massey, 1998); (Štica, 2010).

Each case has specific scenarios and includes plenty of individual stories that altogether constitute an overwhelming issue. Notwithstanding its positive or negative contours, migration has always meant a radical transformation in hitherto living of people. Throughout the centuries there have been numerous massive flows of population movements when entire nations and ethnic groups moved from one place to settle down in another place. Similarly, people have circulated across the planet for the sake of hunger, misery, political persecution, better working conditions and economic

opportunities, education, health, family re-unification, environmental plight, and other reasons – in many cases these migrants have returned to their countries of origin once the critical situation ceased, while others have stayed in the receiving country.

Since at least a creation of the Westphalian international system characterized by the reign of sovereign nation-states, migration-related policies and border controls were exclusively in possession of the state, as part of a monopoly to legitimate use of violence. Subsequently, this reality drew from the theory of realism that became dominant and persisted throughout the following centuries. The end of 19th century and especially 20th century introduced utterly new concept of humanitarianism that was based on the premise that every person should live in accordance with his/ her human dignity. A memento of two tragic world wars triggered a wave of humanitarianism that was symbolized mainly by the Universal Declaration of Human Rights and other binding documents of international law. In the wake of the Cold War humanitarianism recorded another unprecedented inflow of premises built on approaches of human rights and human security. The states, which committed themselves to guarantee human rights protection by signing and ratifying international conventions, could be under fire of international organizations for not fulfilling their pledges. Suddenly, the states found themselves tackling basic dilemma between principles of national security on one hand, and values of human rights protection on the other.

In my thesis I will show the case of Mexico, a country that is struggling hard to fulfill its principles of national security – one of the most characteristic features of Mexico's policies. Simultaneously, Mexico is making efforts to fulfill human rights obligations for both its nationals and foreigners. Increasingly especially since the turn of the millennia, the United States has been fortifying its border with Mexico with the aim to prevent the Mexican and other immigrants reaching the United States illegally. Hard-line border controls and migration-related policies, though, have not been adopted solely by the United States, but also Mexico has played a dominant role in fortifying its border areas, especially along the southern border with Belize and Guatemala. Central American migrants, attempting to cross the borders to Mexico, are exposed to a variety of abuses from gangs, bandits as well as the authorities, including murders, kidnapping, rapes or theft, putting the migrants' situation at the southern border "*atop the list of the Western Hemisphere's worst humanitarian emergencies*" (Isacson, et al, 2014).

My research questions would focus on *what is driving Mexico to adopt dual approach towards Central American migrants along Mexico's southern border, and why is Mexico balancing between realistic principles of national security and human rights obligations, which has espoused by signing and ratifying international conventions?*

For understanding the paradoxical role of Mexico's dual approach in the sphere of human rights, one should comprehend two opposite concepts of realism and humanitarianism. On the one hand, Mexico attempts to build up an image of a country where human rights are fully respected, assured and protected and where both nationals and foreigners may enjoy the same amount of human rights guarantees. The concept of humanitarianism resonates in the official discourse of the Mexican federal government, just as within state and local governments, legislative branches and remains very much visible in the primary sources. On the other hand, Mexico stresses its strong power projection practices that have been intensified in recent years with regard to a military campaign against drug traffickers and organized crime representatives. As a result, Mexico makes achievements in defeating some drug trafficking organizations by dismantling their complex structures, by detaining or killing their members and by disrupting their financial revenue. Yet, these "firm hand" (in Spanish: *mano dura*) operations contribute to general escalation of violence throughout the territory, leaving hundreds of thousands of people killed, injured, internally displaced and otherwise affected. Notwithstanding, evidence shows that corrupt authorities, law enforcement bodies and members of the armed forces are often complicit with crime, which further reduces the possibility for the people to seek shelter at the official level.

I contribute to the field of international relations and security studies that represent the main research area of my thesis; by citing essential documents of international law and international organizations I also touch upon basic norms of law; my conclusions also draw from philosophical and normative approaches. Overall, I provide explanations deriving from a set of various social sciences.

In my thesis I proceed from the primary sources, such as official documents, public reports, policy papers and other publications of the United Nations, International Organization for Migration, UN High Commissioner for Refugees, European Union, Organization of American States, Amnesty and Human Rights Watch, and mostly from

primary sources of Mexican executive and legislative branches that have the upper hand in formulation of migration-related policies. Secondary sources of my thesis consist of two camps. First of all, I proceed from normative background of theorists who lay foundations of realism and humanitarianism, such as Niccoló Machiavelli, Francisco de Vitoria, Jean Bodin, Edmund Burke, Immanuel Kant, Hans Morgenthau, Edward Carr, Hannah Arendt, Kenneth Waltz, Stephen Walt, Alexander Wendt, and others. For the purposes of the thesis I consider crucial the books *“Migration and State Sovereignty”* written by Petr Štica, *“The Formation of National States in Western Europe”* by Charles Tilly, works and articles by respected sociologist of migration Douglas Massey. My argumentation also draws from thoughts of Roland Paris, Nik Hynek, Martin Heisler, Khalid Koser, Antoine Pécoud, Paul de Guchteneire, Bertrand Ramcharan, Ann Dummet, and many others. The second camp includes reports, articles and policy recommendations issued by think-tanks, institutions and non-governmental organizations from Mexico, United States, and elsewhere. My sources usually come from Mexico’s National Human Rights Commission, Colectivo de Análisis de la Seguridad con Democracia A.C., Migration Policy Institute, Trans-Border Institute at the University of San Diego, Washington Office on Latin America, Woodrow Wilson International Center for Scholars etc.

My thesis is divided into three major chapters. The first chapter illustrates elementary recourses leading to explanation why states hesitate to choose between national security and human rights. Basic realistic arguments with their variants are showed, and development of human rights discourse in international politics is demonstrated. The second chapter elaborates upon the nexus between migration and human rights. I analyze philosophical premises and normative approaches to migration, introduce specific categories relating to migration, raise the question if migration can pose a security threat, and what are human rights obligations of the state. The third chapter introduces a nature of the conflict between hard-line practices and human rights rhetoric of the Mexican officials that are clashing at the southern border of Mexico in a situation of increasing flows of Central American migrants. Hereby, Mexico’s migration-related policies are put in the regional context, in which states, NGOs and international organizations play an important role.

This topic is very much analyzed and discussed in the regional context of Mexico and Central America, as I have experience from my study exchange program at

the National Autonomous University of Mexico. Although this topic is not covered much in the European continent due to obvious reasons, I believe it is equally relevant because increasingly every state balances between national security and human rights obligations. A complicated story of massive refugee flows from Africa through the Mediterranean Sea sheds the light on the motivation of particular European Union member-states. The case of Central American migrants may either show an example to be followed or avoided.

1 Clash between Realpolitik and Human Security

1.1 Realism

1.1.1 Origins of Realism in the ancient state

Since the ages of the Ancient Greece and Ancient Rome distinguished philosophers like Plato, Aristotle and others laid groundwork for state-centrist theories and discussed the role of the state who serves as a crucial driving force of all-encompassing social processes. It is worth mentioning that despite obvious similarities (an administrative system of *res publica*, a principle of citizenship, some contours of participatory democracy), one cannot speak about the state *per se*. The Greek state resembled a conglomerate of independent or quasi-independent city-states and other territorial units that were bound together mainly by commerce, while lacking delimitation of common borders and any kind of common sovereignty. The Roman Empire was hardly a sovereign state because the vastness of its territory did not facilitate the center to control all its parts and project there long-term centrally-directed power. Thus, more distinguishable attributes of the state were formed later since the 12th century in the period of the centralized feudal communities. As the earlier system of feudal vassals was disrupted, power of church was gradually waning, and a medieval sovereign accumulated the state power in his hands while imposing centralization of tax-system to all tributaries, an emerging form of the state was brought up to light. The succeeding period of Renaissance that was characterized by rejuvenation of ancient cultures and thoughts gave birth to mounting theories about the state and its sovereignty. This was mostly illustrated by the essential book *Il Principe* written by Niccoló Machiavelli, *Six Books of the Commonwealth* by Jean Bodin and by numerous international law writings of Hugo Grotius. (Štica, 2010, p. 28-29). As Charles Tilly notes, the state should exist based on four underlying attributes – a) domination and control over some territory, b) relatively centralized and hierarchized structure, c) organization that is strictly differential and defining against other forms of organizations in the same territory, d) tendency to monopolize possession of coercive means in the territory (Tilly, 1975).

1.1.2 Formation of Realpolitik after 1648

These attributes of the state were materialized in the wake of the Thirty-Years War (1618 – 1648) that marks a historical watershed between the Middle Ages and the modern times. The Peace of Westphalia ending the war atrocities entails a breakthrough in the study of international relations and in the study of the state. A modern state was formed based on the nationalist principle, therefore ever since the history describes a post-Westphalian nation-state. The main characteristic feature of the nation-state introduces a principle of sovereignty as a basic rule of the newly-established European order. This means that all these nation-states have the sovereign and unlimited right to control their domestic territories, furthermore it guarantees them autonomy in the conduct of their foreign policies towards other sovereign nation-states. This creates a multipolar system in which sovereign states derive their existence from the principles of decentralization and practically equal rights. *“Perhaps this Peace of Westphalia showed us for the first time that Europe may be divided into diverse and sovereign states, whose borders are delimited in the form of international agreement. Ever since and for over 300 years Europeans and their descendents will successfully project this system of nation-states to the entire world”* (Tilly, 1975, p. 45). Nonetheless, this projection of the European nation-state system to other regions of the planet was not accompanied by truly altruistic motives of their exporters, instead it was driven by their vital interests. Thus, equal footing of all-involved actors of the international system was not met with success at first, as Charles Tilly argues above, though, it was developed throughout sequential centuries.

The Peace of Westphalia gave birth to further formulation of realism that was immediately applied to the post-war European order. This system drew from the logic of *raison d'état* that is originally attributed to Niccolò Machiavelli and later articulated by the French Chief Minister Cardinal Richelieu. The Machiavellian theory of realism lies in the focus on national interests of the state (in particular military, political, economic interests) that transcends other goals and aspects in the relationship with other states. The state is considered to be a center of realistic theories (Drulák, 2003).

The philosophical background of the post-Westphalian state was laid by an English thinker Thomas Hobbes and his renowned publication called *Leviathan*. He describes a theory of state as a product of the social contract, concluded between the people and the

sovereign, which should result in the protection of human beings. Nevertheless, he argues that the social contract will always be accompanied by egoistic self-interests of the state that is centered at maximizing gains and minimizing losses. The Hobbesian pragmatic view of the world order provides legitimization of newly-consolidated absolutist-nationalist monarchies and their offensive deeds (Štica, 2010, p. 31).

1.1.3 Old-school traditions of realism

Main characteristic feature of realism is defined by the concept of power, its accumulation and attainment which means that states will enter into relations with other states only in exchange for not lessening their current position. This realistic premise is named a *zero-sum game*, in which debilitation of one state implies automatic empowerment of other state. Such an ambition of the states to gain power and to overplay their rivals leads to constant struggles and wars, where power is unceasingly redistributed into hands of the present hegemon. Hans Morgenthau, a distinctive protagonist of realism, purports that this theoretical approach stems from the “world of antagonistic interests”. He illustrates six leading principles and rules of realism that are central for a behavior of states. First, politics is dominated by objective laws rooted in the human nature, where these laws are invariable and timeless. Second, the states determine power on the basis of their rational choices. Third, national interest is an objective and universally valid category. Fourth, survival lies in the absolute interest of the state. Fifth, moral laws are irrelevant because the most important are moral interests of the state. Sixth, politics constitutes up an autonomous sphere of reality with their own rules. Morgenthau understands the power as control over thinking and deeds of other subjects. He believes power of the state should primarily draw from the military strength and military readiness along with other aspects such as geographic location, natural resources, industrial capability, population etc (Morgenthau, 1985).

Edward Hallett Carr, who is also respected as a father of realism, puts this theoretical approach into a sharp contrast with an idealistic approach which he labels utopian. He claims that realism just reflects a real nature of international system based on previous knowledge and experience. He strongly disagrees with arguments of the German philosopher Immanuel Kant who framed an idea of perpetual peace, whose goals are accomplished by the means of respecting universally valid laws and

cosmopolitan ethics. Carr rejects any existence of these transcending rules and regards Kantian ethics solely as an outcome of political decision. He is unable to accept that the states can maintain persistently functioning relations among themselves. Instead, he argues that ignoring such a reality of power-ridden international system would, at the end of the day, mean much worse consequences and also potentially more damages to the states and the people. He warns that unintended consequences of idealism could exacerbate greater tensions among states and eventually threaten international stability (Carr, 1939/1946).

Scholars like Frederick Shuman, Harold Nicolson, Reinhold Niebuhr, Georg Schwarzenberger, Martin Wight, George F. Kennan and Herbert Butterfield also belong to a tradition of twentieth-century classical realism (Elman, 2008).

The aforementioned theoretical dichotomy between realist and idealist perspectives were projected into the practical conduct of international politics, as well. Since 1648 the European continent was swept by numerous conflicts between dominant sovereign states such as France, the United Kingdom, Prussia, the Austrian Empire and Russia; alongside there were minor conflicts between less powerful states. The ideas of the Enlightenment were the cause of epochal movements in the second half of 18th century that disrupted significantly the existing world system of absolutist monarchies. The War for American Independence and the subsequent French Revolution divided the international system into two camps based on different ideas of the state – 1) a revolutionary-democratic conception (United States, France) where the sovereign people constitute up the state, and 2) nationalist conception (Austria, Prussia, and later Germany) where the state is derived from the *status quo* of its territory (Štica, 2010, p. 35-36). The 19th century brings a monumental technological revolution that also introduces new trends in the transformation of politics and society, such as modernization of the state, political and social equalization, huge economic development, intensification of social communication and interaction, education, population boom and development of natural sciences (Štica, 2010, p. 38).

1.1.4 Heyday of neo-realism and defensive structural realism

Despite these positive changes, a character of the international system still remains divided into major European powers that was coined the history books as the concert of powers. A founding father of neo-realism school, Kenneth Waltz, looks at the international system from the perspective of one entity. He argues that a structure of international system *per se* directly affects behavior of the states, thus, it enables a survival of the strongest actors in accordance with a theory of social Darwinism. In his argumentation, Waltz proceeds from three relevant assumptions. First, he explains the international system as an exclusively anarchical structure, because there exists no central authority that would globally project its will and dominate over other actors. In contrast with the hierarchized structure of domestic politics, international system is decentralized and every actor relies on its self-help. This leads up to a situation known as *balance of power* where increasing power of one state would result in some form of alliance of other states to stop it. Neo-realists call this situation a *security dilemma*. Second, Waltz claims that all units of international system are homogenous and therefore derive all their activities from self-help. This fact disables them to specialize themselves in some areas, as contrasted to domestic institutions, enterprises, associations etc. Third, distribution of power is determined by a number of dominant players in the system. He distinguishes between a bipolar system, in which two dominant and mutually competing players are in existence, and a multipolar system, in which several players are in existence. Waltz does not envisage existence of unipolar system because that would mean a disruption of power balancing (Waltz, 1979).

Theoretical framework of Waltz and other representatives of neo-realism was directly compatible with activities of states at the practical level. Despite some episodes of relative peace in international relations, where liberalistic premise of nonviolent use was gaining the upper hand, experience of two cataclysmic world conflicts as well as heinous crimes perpetrated by states on one hand, and organized groups and individuals on the other hand legitimized these theoretical assumptions. In the aftermath, a bipolar fragmentation of the world between the United States and the Soviet Union and the associated *proxy conflicts* during the Cold War provided a breeding ground for neo-realist premises.

Another upgrade version of realism is a defensive structural realism that shares with neo-realism the assumptions about state motivations. However, defensive structural realism may be differentiated from neo-realism in the following three aspects. First, unlike neo-realism that accepts a multitude of phenomena to explain state behavior, defensive structural realism lay its foundations solely on rational choice. Second, defensive structural realism determines offense–defence balance as a variable in the research, where this relationship favors defence. Third, a combination of the two previous assumptions implies that states should support the status quo (Elman, 2008, p. 20-21).

The main protagonist of defensive structural realism is undoubtedly Stephen Walt. He articulated a theory of *balance of threat*, literally, an antitheses of neo-realist theory of balance of power. By balancing threats he means that “*in anarchy, states form alliances to protect themselves. Their conduct is determined by the threats they perceive and the power of others is merely one element in their calculations*” (Walt, 2000). He proceeds from the premise that state estimates threats posed by other states by their relative power, proximity, intentions and the offense–defence balance (Elman, 2008, p. 21).⁶

1.2 Humanitarianism

1.2.1 Development of human rights instruments

Although a concept of rational-choice calculations and constant competition among states based on their political, military and economic greatness was predominant throughout the 19th and 20th centuries and continues to be relevant even today, opposite approaches were developed with the objective to treat groups and individuals in more humane and civilized way. This gave an incentive for a creation of human rights concept and later for the birth of international humanitarian law and international human rights law. Human rights approach draws essential ideas from the era of Enlightenment and more specifically from American and French revolutionary movements that burst

⁶ As noted above in the text, realism has many variations such as neo-realism, defensive structural realism, offensive structural realism, neoclassical realism etc. Not all of them are necessarily useful for purposes of this thesis.

out at the end of 18th century. It stems from fundamental documents of Anglo-Saxon common-law system and French continental law system, dating back to Magna Carta Libertatum, Bill of Rights, Habeas Corpus Act, Declaration of the Rights of the Men and the Citizen and other writs that served as the basis for codification of later constitutions and other legal instruments worldwide (Spencer, et al., 2007). For instance, the International Committee of the Red Cross and both Hague Conventions were set up in order to alleviate human suffering by determining rules of play in the armed conflict. These facts, altogether, influenced subsequent formation of normative human rights approach.

Bad experience with two worst wars in human history and not effective system of international security personalized by the League of Nations led to conclusion of states to establish a global institution that would pioneer in the field of peace and security. Albeit the Charter of the United Nations represented an underlying document for the post-WWII world, the idea of human rights was emphasized in the Universal Declaration of Human Rights (1948). Adoption of this document entailed a landmark achievement in the area of human rights and became a commitment for all member states to adhere to principles of human rights; although some member states failed to comply with their human rights obligations (Ondřej, 2011). For the first time, *“the international community set down formal standards of human rights and freedoms that should be enjoyed by everyone, everywhere”* (Ramcharan, 2004). The document puts emphasis on a simple rationale that *“human rights and fundamental freedoms must be respected, assured and protected if the individual human being is to be secure, to develop to the fullness of his or her potential and to breathe the air of liberty”* (Universal Declaration of Human Rights, 1948). It proceeds from the mutually intertwined relationship between national/ international security and individual security that cannot co-exist without respect for human rights and fundamental freedoms.

The Universal Declaration of Human Rights highlights a distinction between two levels of human rights discourse; civil and political rights were of primary importance, social, economic and cultural rights were of secondary importance. The distinction was later reflected in adoption and implementation of other human rights instruments like the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Spencer, et al., 2007). The clash between the two levels of human rights discourse has often been disputed by

lawyers and other human rights experts, and it continues to be controversial even today. Nevertheless, a period of the Cold War had an essential impact on the future of respecting human rights due to the spread of human rights mechanisms that took roots in various regions of the world.

Loyal to the *prima facie*, subsequent post-WWII human rights instruments stressed the importance of individual and collective rights that were, according to the law-givers, in accordance with the interests of states. They articulated a set of specific human rights that all member states must respect, assure and protect. Among these are: right to life, prohibition of torture and inhuman/ degrading treatment, prohibition of slavery and forced labor, right to liberty and security of the person, right to a fair trial, right to privacy, right to marriage, right to property, political and religious rights, right to freedom of expression, right to freedom of assembly and association, right to education and right of non-discrimination (Spencer, et al., 2007).

1.2.2 More humane concept in IR

Gradual disintegration of the Soviet Union and breakdown of its communist satellites in Central and Eastern Europe that resulted in the end of the Cold War brought a new light into the formation of international relations. Many IR theorists and decision-makers were shocked by these sudden events and embarked upon explaining why such dismantlement of the bipolar world took place. Some were convinced that running events were part of the new cycle that is fully compatible with theories of realism and neo-realism. Others rather attempted to view security from different angles that would not only stress security of the state, but that would also focus on security of individuals. As a consequence, a decade of 1990s was defined as an important normative change in the study of international relations, in which segments of human welfare and survival would co-exist side by side with traditional physical security.

As Nik Hynek indicates, such normative change would be impossible without the following impacting waves. First, presence of legal norms, principles and precedents established in the wake of the WWII helped to achieve transformation of security within the international law regime. Second, a widespread growth of democracy in the aftermath of the Cold War hinged upon protection of human rights. Third, the post-Cold

War era was strongly influenced by tireless work and activities of non-governmental organizations in the field of human rights. Fourth, one might not forget an impact of CNN effect where 24-hour news broadcasting coalesced with spread of Internet and together contributed to increased attention of human rights violations. Fifth, emerging middle powers that benefited from the breakdown of bipolar system espoused the concept of human security and human rights. Sixth, regardless of their true intentions, forces of economic globalization had implications for states and individuals in the area of human security and human rights. Seventh, nature and dynamics of international conflict underwent several crucial changes (Hynek, 2012).

The state is still viewed as one of the principal actors in the subject of respect, assurance and protection of human rights and human security. However, human security accentuates safety of individuals, thus, it means not only when the individuals feel threatened because of physical violence, but similarly for severe limitations of their living in dignity. These preconditions are usually applied in the practical conduct of human security. Firstly, security is directly connected with development of political, economic and structural circumstances that expects accessibility for the many. Secondly, security implies presence of two dimensions, a quantitative dimension (material needs, food, health, property, education etc.) and a qualitative dimension (human dignity, autonomy, active participation, freedom of expression etc.). Lastly, security facilitates integration of local, state and global characteristics, so that equal rights regardless of gender, age, race, ethnicity, religion, social class and language may be fully respected and enjoyed by a family, a group, a state, as well as by international community (Armijo Canto, 2011).

1.2.3 Human Development Report 1994

In 1994 the United Nations Development Program published the famous Human Development Report where the concept of human security was first introduced. *“The concept of security has for too long been interpreted narrowly: as security of territory from external aggression, or as protection of national interests in foreign policy or as global security from the threat of a nuclear holocaust...(however) security symbolized protection from the threat of disease, hunger, unemployment, crime, social conflict,*

political repression and environmental hazards,” is written in the original text (United Nations Development Program, 1994).

Human security draws from two basic aspects that *de facto* coincide with the aforementioned two-level system of human rights discourse. The first aspect is devoted to *freedom from fear* which may be characterized as safety from such chronic threats as hunger, disease and repression. The second aspect of human security relates to *freedom from want*, thus protection from sudden and hurtful disruptions of daily life (Ondřej, 2011). As mentioned in the text, “*human security is not a concern with weapons – it is a concern with human life and dignity*” (United Nations Development Program, 1994, p. 23). There are certain traits in the human security discourse that must be taken into consideration – a) human security is a universal concern that affects all people regardless of their status, property, religion, gender, race, ethnicity etc.; b) characteristics of human security are interdependent and go beyond national borders; c) threats and risks for human security are more easily avoided through early prevention; d) human security is people-centered. The authors of this document claim, though, that the clear objective of human security is not to remove responsibility and opportunity of the people for mastering their lives. On the contrary, they should take advantage of opportunities to meet their most essential needs and to earn their own living. Therefore, human security accounts for a pool of guarantees where these needs and desires can be met more easily and without suffering (United Nations Development Program, 1994, p. 22-23).

The concept of human security is mostly divided into seven main categories – economic security, food security, health security, environmental security, personal security, community security, political security (Paris, 2001). First, economic security stresses a need of basic decent income for everyone in order to reduce poverty and inequality, fight homelessness, enhance working conditions in the formal sector and eliminate unemployment in the informal sector. These challenges severely affect both rich and poor countries. Whereas developing countries often lack any form of social security, developed countries tackle their budgetary problems that disrupt previously generous nets of welfare-states. Second, food security component seeks that all people have ready access to food, but at the same time it requires that they avoid hunger, undernourishment, obesity and many other food diseases. This challenge might be overcome with better distribution of food, increased purchasing power of the consumers

as well as eating habits. Third, a principal problem with health security comes from poor nutrition and bad medicine conditions (problematic mostly in the developing countries) and unsafe environment (problematic in both developing and developed countries). Fourth, next environmental security is closely linked with the previous health security component because it affects lives of millions of people. Latest environmental disasters like floods, extreme heights and droughts, tornadoes, volcano eruptions, snow calamities, deforestation and desertification together with water and air pollution, water and energy scarcity and numerous other effects of climate change and global warming show us the urgency to adopt effective counter-measures. Fifth, magnitude of actors threatens personal security of the people that can take many forms: threats from the state, threats from other states, threats from other groups of people, threats directed against women and children, threats to self. Sixth, community security comes from a membership of the people in a group, a family, a community, an organization, a racial or ethnic group that share the same identity. Seventh, political security requires that all individuals and groups live in concert with their human rights standards and fundamental freedoms (United Nations Development Program, 1994, p. 24-33).

At the global level, the concept of human security extends its outreach towards both prosperity and poverty because both terms, as mentioned in the text, can become globalized. The most pressing threats for global human security, according to the authors, include: unchecked population growth, disparities in economic opportunities, excessive international migration, environmental degradation, drug production and trafficking, international terrorism and many others (United Nations Development Program, 1994, p. 34).

1.2.4 Challenges and limitations of human security

Human security approach has experienced an overwhelming boom and has been praised by many researchers and policy-makers since its introduction in the wake of the Cold War. Despite its positive effects that resulted in extension of the concept of security, these vantage points have simultaneously been echoed by many as a major challenge. Opponents argue that human security lacks a precise definition that would clarify, which aspects do belong to this concept and which do not. Moreover, it tends to

emphasize extraordinary expansiveness and vagueness. Roland Paris affirms that coming up with more precise and less vague definition is a difficult task “*not only because of the broad sweep and definitional elasticity of most formulations of human security, but also – and perhaps even more problematically – because the proponents of human security are typically reluctant to prioritize the jumble of goals and principles that make up the concept*” (Paris, 2001, p. 92). There exists a certain danger that if human security may mean almost anything, then it effectively may mean nothing.

There have been numerous attempts to rethink the concept of human security as a whole. By narrowing the concept researchers like King and Murray summarized five key indicators of well-being – poverty, health, education, political freedom and democracy (King, et al., 2001). Another scholar Kanti Bajpai insisted on establishing concrete measures “*of direct and indirect threats to individual bodily safety and freedom*”, just as measures of different societies “*capacity to deal with these threats, namely the fostering of norms, institutions, and...representatives in decision-making structures*” (Bajpai, 2000). Nonetheless, aforementioned propositions would inevitably have direct or, at least, indirect effects on the future of human security discourse. Firstly, identifying certain values as more important than others would have no justification. Secondly, narrowing the concept of human security would be relevant only if the people were willing to fight over the specific matters. Lastly, excluding indicators of violence from human security discourse would not be logical and desirable because it would ruin the very notion of security (Paris, 2001, p. 94-95).

Since a collapse of the bipolar world and a publication of the Human Development Report 1994, the concept of security has been fluctuating between the perspective of broadening (focus on non-military security threats, such as spread of disease, environmental scarcity and degradation, overpopulation, mass refugee movements, terrorism, nationalism and nuclear disasters) and the perspective of deepening (focus on security of individuals and groups, rather than narrowly on external threats to states) (Paris, 2001, p. 97). Eventually, despite obvious deficiencies in the form of excessive vagueness and expansiveness, the overall expansion of security gave birth to tolerance and better understanding of human needs, as codified in the human rights instruments. Furthermore, it provided more comprehensive and multi-faceted set

of measures, so that the states, non-governmental organizations as well as international community can react rapidly and more effectively to emerging crises in the future.⁷

⁷ Constructivism is another theoretical approach in the study of international relations and security studies which could provide explanations of previous two concepts of realism and humanitarianism. Since 1980s constructivism developed itself to be an opponent voice to traditional theories of IR and security. Representatives of constructivism claim that world is formed socially through inter-subjective interaction between agents and structures where ideational factors such as norms, identity and ideas play an important role in the formation of world politics (McDonald, 2008). The principal constructivist premise derives from the fact that security is a much broader term that as explained previously in realistic terms and that security is a social construction. Karin Fierke provides clarifications of security by saying that *“to construct something is an act which brings into being a subject or object that otherwise would not exist”* (Fierke, 2007). This argument illustrates constructivists are resistant to make some universal and analytical definitions of security. Constructivists have spent a great amount of time to explore “how international norms evolve and come to provide limits to acceptable state behavior in general (Finnemore, 1996). One of the most prominent representatives of constructivism Alexander Wendt argues it is necessary to draw from methodological and epistemological frameworks of traditional theories of international relations. *“The need for a theory of the state in international relations is mirrored by the need for theories of the system structures which constitute the state. In general terms, these theories would have at least two main elements: 1) a synchronic model of the organizing principles, logic, and reproduction requirements of the structure in question, and 2) an historical account of the genesis and reproduction of the structure”* (Wendt, 1987). Furthermore, the so-called Copenhagen School represented mainly by Barry Buzan, Ole Waever and Jaap de Wilde champions in the theory of constructivism. They define security in the form of “speech acts” where particular issues and actors of security are perceived as threats (Buzan, et al., 1998).

2 Nexus between migration and human rights

A phenomenon of migration and population movements is as old as humanity itself, and has had its determining force in lives of human beings over the centuries until today. Gradually, it has become an integral part of the international agenda, as migration has turned into being more internationalized and later globalized. Presently, migration-related issues affect directly or indirectly lives of millions of people that dwell in different continents at one moment. The increase of international population movements is shaped by several factors, as Sita Bali explains. *“First, the ubiquitous of state control makes any international movement a matter of concern to at least two and sometimes more states. Second, there is the rapid increase in the world’s population, which is still growing. Third, globalization has brought about a revolution in communications and transportation that has made people aware of vastly differing conditions and opportunities in other parts of the world, as well as making travel to those areas easier. Finally, the world is turbulent and unstable place, an turmoil and uncertainty play a role in motivating people to move, to escape and/ or to search for a better life”* (Bali, 2008).

Over the history international population movements have gone through severe turbulences and have brought about positive, just as negative consequences both to migrating persons and to domestic populations. Migration has been linked with principles of humanitarianism in at least two last centuries and this linkage has boomed since the end of the World War II and then again in last decade of 20th century. Although the process of globalization has generally weakened the dominant role of states and non-state actors has increasingly operated beyond the national borders, a phenomenon of migration remains very much in the competence of nation-states. There is a broad spectrum of international human rights entities that keep an eye on respecting, assuring and protecting human rights of individuals and groups, however, it is always the state who is the principal guarantor of universal human rights.

2.1 Philosophical premises on the rights of the migrant

2.1.1 Francisco de Vitoria – natural rights

If we analyze the first traces of studies of population movements, we must go back in history to early 16th century. By then ethical reflection of migration was formulated by a Spanish Dominican scholar Francisco de Vitoria, who is also considered to be a founder of international law. From the historical perspective he first formulated a systematic concept of migration law and social-ethical approach towards migration based on rational argumentation, not just theological assumptions. According to Vitoria each person is endowed by God with natural rights (*ex iure naturali*), among these life, liberty and right to property (*dominium rerum*). He argues that *“all humanity constitutes up some natural society (naturalis societas) that is understood as one single world (totus orbis), forming a part of world republic (quodammodo una res publica)”* (Štica, 2010, p. 255). By this assumption he brings in the principles of equality of all people and nations, which will be crucial for future development of migration, as well as for purposes of this thesis.

Vitoria draws from these principles and applies them to a subcategory of fundamental human rights, which are *ius gentium* (law between nations, a pre-condition for international law) and *ius peregrinandi* (right for movement and migration). He makes a definition of *ius peregrinandi* by saying that *“no-one can prevent a person to move and settle down in a country that is different from a country of his origin; the only reason to limit this movement is in case of any harm to original or domestic population”* (Štica, 2010, p. 257).

2.1.2 Immanuel Kant – cosmopolitan logic of humanity

Another essential premise for theory of migration derives from political-philosophical thoughts of Immanuel Kant, mainly from his theories of perpetual peace, that far outreach the logic of warfare advocated by many his contemporaries. Inspired by the French Revolution and the emerging idea of national sovereignty, he called for creation of world-wide legal system, in which universality of human rights will be respected and protected. He does not propose a creation of one global state, rather he

pleads for peaceful co-existence of federative units where law is enforced and cosmopolitan ethics is exerted.

Kant formulates an idea of cosmopolitanism that is characterized by conditions of general hospitality. It is an order where a foreigner has the right not to be treated as an enemy at the territory of someone else. The native has the right to deny the foreigner unless the foreigner is left intact both physically and mentally. The foreigner does not exert his *right of a guest* (here some form of contract would be necessary), but the *right of the visitor* in order to seek voluntarily for a company of the native (Kant, 1999). Kant elaborates on three aspects of the right of the foreigner. First, the foreigner is simultaneously a member of one mankind. Second, the state has a duty to admit the incoming person in case his life is endangered. Third, people live all together within one open and transparent community (Štica, 2010, p. 106-107).

The aforementioned Kantean assumptions were constantly disputed by the British lawyer and thinker Edmund Burke, a staunch follower of the *ancien régime*, who criticized repercussions of the French Revolution. Burke was opposed to the concept of universality of human rights for the sake of its abstractness. He believed that natural rights cannot exist elsewhere than in the specific society where it was generated together with customary rules, traditional morale and established societal institutions. He denied the fact that natural rights are anterior to specific historical, social, political and cultural context (Burke, 1790) (Štica, 2010, p. 110).

2.1.3 Hannah Arendt – critical reflection of human rights

In the wake of the Second World War an idea of universal human rights was restored with new intensity and portrayed in a number of international human rights documents, especially the Universal Declaration of Human Rights. Hannah Arendt, one of most esteemed political philosophers of 20th century, welcomed an upswing of human rights discourse following the war atrocities, though, simultaneously she pointed out that human rights can be enforced merely inside certain political community, inside the state. According to her opinion, every person must form a part of some community so that his/ her rights could be acknowledged and guaranteed; if a person loses his/ her national rights conveyed by the state, then he/ she automatically loses protection of

human rights (Štica, 2010, p. 112-113). *“The calamity of the rightless is not that they are deprived of life, liberty and the pursuit of happiness, or of equality before the law and freedom of opinion – formulas which were designed to solve problems within given communities – but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them”* (Arendt, 1949).

The critical reflection of human rights can be well illustrated on the migrants – the persons on the move who desperately flee their homes and families due to various reasons. The migrants lose not just their shelter, but also political protection, civil liberties and political and legal status. Even though non-one touches human dignity of the migrant, in fact, he/ she loses protection of human rights conveyed neither by the home state from which they are running away – and also providing that they flee just because the home state did not protect their rights – nor the receiving state due to a cluster of immigration and asylum restrictions. The migrants are put on the difficult track without being responsible or even guilty for these bad conditions; they could have just been born into a different family, social class or ethnic group, or they could have just expressed different political opinion or religion (Štica, 2010, p. 112-113).

Arendt illustrates that there is a deep, inescapable link between the state and the rights. To confront a failure of human rights protection, she believes that *“there should be one universal right, which should be enjoyed by all, and which is not dependent on race, nation or any other criteria, save for the criterion of being human. This right is the ‘right to have rights’”* (Matt, 2013). The right to have rights means a right to belong to a community. Arendt proceeds from a premise if the state fails to guarantee human rights of its people, then these people have right to seek help in order to fulfill their human rights claims in a different political community (Arendt, 1949, p. 30).

Adherents and successors of Hannah Arendt’s human rights critical reflection purport that it is the state who remains the principal actor responsible for human rights protection despite an existence and relevance of multiple non-state actors in today’s globalized world. They are convinced that the state should conduct human rights protection at three different levels – a) respecting human rights (the state must not violate human rights); b) protecting human rights (the state must defend human rights from violating them by a third party); c) fulfilling human rights (the state must use both

short-term and long-term effective measures to guarantee human rights) (Štica, 2010, p. 118).

2.2 Normative approaches towards migration

The last subchapter dealt with philosophical premises of people's fundamental rights that are equally attributed to the migrants, thus to the people who have a variety of reasons to move from one place to settle down in another place. This subchapter will analyze normative background of contemporary political approaches towards migration and towards accepting foreigners in the domestic society. These four normative approaches will have an impact on later formulation of immigration and integration policies, as well as on general public opinion of the domestic population.

2.2.1 Libertarianism – open borders

The first normative approach is libertarianism that takes principal ideas from philosophical thoughts of Thomas Hobbes, John Locke and David Hume. Its main principles build upon a very limited form of government or any state authority; existence of government is acceptable only by virtue of protection of life, liberty and private property. Followers of libertarianism say that migration should not be obstructed by any limits because people have their rights to move freely and interact with other subjects all around the planet. They talk about the open world without border controls and other regulations, in which freedom of movement is the highest value of all. The state should not set into motion immigration restrictions, the only possibility for the state to act is in case of any threat to people's security and property rights, and possible decline of economic activity (Steiner, 1992).

2.2.2 Liberalism – relatively open borders

The second normative approach is modern liberalism that has been a dominant political-philosophical course of the Western civilization since the mid-20th century until today. Liberalism draws from the theory of justice advocated by John Rawls, who

made efforts to define universal principles of justice, securing justice and distribution of justice. Rawls believed that the state must guarantee protection of human rights both to its citizens and to all people who are situated within the state's jurisdiction (Rawls, 1971). This issue is again connected with the Arendt's premise on the question of membership, in which some political community guarantees fundamental rights of the people. Liberalism, in this sense, has it that human rights may be endangered both by political migrants and by economic migrants. The state should regulate immigration only in accordance with protection of human rights. Immigrants form a part of one equal humanity, therefore, the state should treat them accordingly.

2.2.3 Communitarian approach – cultural identity

The communitarian approach also proceeds from the Rawls' theory of justice and elaborates more on the question of membership in some political community. Representatives of this concept raise the fundamental question in the field of accepting and integrating foreigners in the domestic society – what are the relevant criteria to approve membership in some political community? This kind of question will be difficult to ask and will be always confronted with some subjective evaluation and scientific inaccuracy. Michael Walzer makes an argument that the foreigner must show a respect to values, culture, laws and shared aspirations of the political community in order to be approved and later integrated into this political community. He openly welcomes a value of diversity that must be always cherished. Nevertheless, he advocates some limits and restrictions because the world without borders would automatically cause an existence of the global state which would very likely fail to control the entire political community and to guarantee human rights protection of its people. He suggests that *“there must be at the certain level of political organization some form of sovereign state that enforces its authority to claim a right to conduct its own policies, controls and sometimes also restrictions against the immigrants. This right to control immigration, though, makes no implications to the right of controlling emigration”* (Walzer, 1983).

2.2.4 Realistic/ pragmatic approach

The last normative approach could bear a variety of names – pragmatism, utilitarianism, gain-loss calculations, political-realism, realism, and radically Hobbesian approach. These versions vary according to their nature ranging from a radical perspective (closed political community that barely interacts with other subjects of the world) to moderate perspective (political community is bound to cooperation with other subjects or to international cooperation). Protection of the borders and protection of self-interests lie at the core of state's exclusive competences. Representatives of this normative approach build their arguments on an old tradition of *raison d'état*, in which the state prioritizes security, welfare and integrity. The fundamental premise of the state is not to cause any harm to itself and to its people, which provides legitimacy for adopting restrictive immigration policies. The primary motive of the realists is maximizing gains for the state and domestic population, otherwise possibility to approve and integrate the foreigners in the domestic society can be hardly taken into account. As Walter Lesch mentions, "*migration should contribute to positive overall outcome for the individual and the society: to balance demographic deficits, to gain high-qualified workforce for emerging industries, to invigorate, not to burden the labor market*" (Lesch, 2002).

2.3 Categories of migration

There is not a single and coherent definition of migration, instead there is a fragmented set of theories, concepts and assumptions. "*At present there is no single theory widely accepted by social scientists to account for the emergence and perpetuation of international migration throughout the world, only a fragmented set of theories...developed largely in isolation from one another*", explains Douglas Massey (Massey, 1998, p. 17).

The ambiguous, but basic division of migration is made between involuntary or forced migration (often attributed refugee movements) and voluntary or free migration (often called economic migration), which draws from the motivation of the migrants. Involuntary or forced population movements are linked essentially with flows of refugees and are characteristic for the people who find themselves in dire situations, as a

result they are forced to flee their homes (Bali, 2008, p. 471). The International Organization for Migration makes a definition of forced migration as “*a migratory movement in which an element of coercion exists, including threats to life and livelihood, whether arising from natural or man-made causes (e.g. movements of refugees and internally displaced persons as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects)*“ (International Organization for Migration, 2011).

Conversely, voluntary or free migration consists of many subcategories and variations. The first subcategory refers to so-called legal permanent settler migration which was characteristic during the colonization era when new territories were discovered and later populated; nowadays this subcategory became rather anachronistic. The second subcategory is legal temporary migration which is linked with movement of people who leave one country to reach another country for the purpose of education, business, tourism and employment. These persons are legally authorized to stay in the receiving country for a limited period of time. The third subcategory is irregular migration which is often marked by a plethora of denominations depending on the concrete actors, however, this term is generally accepted by most of international organizations (Bali, 2008, p. 471). Further details regarding categorization of migration will follow.

Some authors criticize a categorization between involuntary and voluntary reasons to migrate, and instead point out that a decision to leave the country of origin consists of a decision of every person, which is even named as a voluntary decision to certain extent. Nonetheless, such a decision of every person might be severely hampered by profound structural problems that eliminate any chances of people to make their free decisions beyond the value of personal and family survival (Gzesh, 2008). Furthermore, there are other authors who perceive this categorization insufficient and simultaneously call for greater debate on redefinition or broadening the concept of forced migration. They attempt to bridge a gap between two concepts that are seen completely contradictory in public discourses, between forced migration and economic migration by saying that “*...to understand that forced migration is not a consequence of a series of incoherent emergencies, rather takes an integral part of North-South relations, it is necessary to make a theory of forced migration and associate it with economic migration. These forms are widely associated with (...) an expression of global*

inequalities and social crises that increased its volume and importance after the end of the bipolar world order” (Castles, 2003). It is no doubt that there is a short line between involuntary and voluntary migration because people on the move make their decisions based on a variety of reasons. Therefore, no clear distinction exists here between these two categories.

There is also another paradox in understanding a dichotomy between forced migration and economic migration. Regardless of its coined and often respected term, a category of forced migration is not defined in any international legislation that would condition rights and duties of the refugees and guarantee protection of their fundamental rights under the umbrella of the international community. Despite this fact, as Susan Gzesh mentions, refugees or forced migrants may paradoxically indulge in better situation than economic migrants in terms of human rights protection because they belong to the so-called first-generation of human rights (civil and political rights) under the international conventions. Meanwhile those migrants who belong to the second-generation of human rights (economic, social, cultural and labor rights) and also to the third-generation of human rights (environmental, collective rights) are void of any option to demand international protection of human rights once their situation becomes precarious (Gzesh, 2007, p. 234-238).

2.3.1 Contradiction between emigration and immigration

The Universal Declaration of Human Rights in Article 13 defines that *“everyone has the right to freedom of movement and residence within the borders of each state”* and *“everyone has the right to leave any country, including his own, and return to his country”* (Universal Declaration of Human Rights, 1948). The International Organization for Migration (IOM) defines migration as *“the movement of persons who leave their country of origin or the country of habitual residence, to establish themselves either permanently or temporarily in another country”* (International Organization for Migration, 2005). However, if the right to emigrate is acknowledged, hereby the right to immigrate is not defined in any international document and is often left for speculations. Although Article 14 of the Universal Declaration of Human Rights defines that *“everyone has the right to seek and to enjoy in other countries asylum from persecution”* (Universal Declaration of Human Rights, 1948), this right is generally

acknowledged and guaranteed, however is left exclusively in the jurisdiction of each state.

Here lies a contradiction between two interlinked concepts of emigration and immigration. Some argue that “*immigration and emigration are morally asymmetrical*” (Walzer, 1983, 40), which means that “*the right to emigration gives people the fundamental exit option in their relation to governments, this does not imply that other states must unlimitedly welcome foreigners*” (Pécoud, et al., 2006). Others say that “*having the right to leave one’s country is meaningless as long as one cannot enter another country*” (Dummet, 1992). In this atmosphere certain types of mobility are authorized while others are discouraged, forbidden or even criminalized. Both opinions draw their conclusions from two contradictory perspectives – a nationalist approach which expects national cohesion and homogeneity on one hand; a globalist approach which considers weakening of national borders on the other hand. This background provides a partial understanding of why the Universal Declaration of Human Rights acceded to right to emigration, but somehow avoided to acknowledge the right to immigration (Pécoud & de Guchteneire, 2006, 75).

Many experts doubt and oppose to the right of states to treat migrants in such differentiated manners and simultaneously call for acknowledging the right to mobility at the international level. Martin O. Heisler raises the question of a double standard in the nexus between migration and security. There are different expectations regarding treatment of emigrants and immigrants by the state, which springs from purely subjective perceptions associated with particular interests of each actor (Heisler, 2007).

There is a paradoxical situation showing that liberal democratic states advocate respect for fundamental rights and role of the market, however, at the same time they adopt restrictive immigration policies. According to Antoine Pécoud and Paul de Guchteneire, “*while skilled workers circulate quite easily, those who do not belong to this elite have little access to migration opportunities, at least within a legal framework. In the meantime, globalization has increased the mobility of capital, information, goods and even services, thus making the non-liberalization of human mobility the exception rather than the rule*” (Pécoud & de Guchteneire, 2006, 75).

2.3.2 Terminology of migration

All international population movements and migrations can be divided into several categories, as many different discourses and professionals evaluate and analyze this phenomenon. Apart from the basic distinction between emigration and immigration, as illustrated above, the phenomenon of migration is assigned with multifarious denominations.

Some specific migration-related terms are widely used by some migration experts, policy makers, representatives of non-governmental organizations, decision makers and other professionals, whereas other terms are regarded as incorrect. Likewise some cultures, regions and discourses make use of some migration-related terms, whereas other cultures, regions and discourses are used to discarding them, while instead using other terms. Hereby, there is a list of different terms attributed to migration of the people who do not go through standard legal procedure to obtain permission in order to stay in some country.

- **Irregular migration** – this term is considered problematic, however, it is judged as appropriate and preferable to other terms that are mentioned below. It is preferred by most of respected organizations with a competence in migration, including the Council of Europe, International Labor Organization (ILO), International Organization for Migration (IOM), Global Commission on International Migration (GCIM), Organization for Security and Cooperation in Europe (OSCE) and United Nations High Commissioner on Refugees (UNHCR). The term will be later analyzed in a greater detail (Koser, 2005).

- **Illegal migration** – this term is linked with some status of illegality. It is widely named, for instance, in the criminal law literature and law enforcement documents. Due to its nature, it can be criticized in at least three ways. First, it takes pride on negative connotation with criminality, which is misleading enough because most irregular migrants are not criminals.⁸ Second, labeling irregular migrants as ‘illegal’ can be perceived as denying their humanity and eventually as challenging their claims to fundamental rights whatever their status. Third, defining irregular migrants as ‘illegal’

⁸ “Immigrants...even those who are in a country illegally and whose claims are not considered valid by the authorities, should not be treated as criminals” (E/CN. 4/Sub. 2/2003/23)

is harmful, because it can jeopardize the rights of the migrant to seek asylum claims, says UN High Commissioner on Refugees. This term is widely used by the European Union who remains the only significant international actor to do so (Koser, 2005, p. 5).

- **Illegal alien** – this term is commonly used in the U. S. legal system as an alternative to the politically incorrect term ‘illegal migrant’. It refers to someone who is not a U. S. citizen or U. S. national and “...*who has entered the United States illegally and is deportable if apprehended, or an alien who entered the United States legally but who has fallen ‘out of status’ and is deportable*” (Internal Revenue Service, 2014).

- **Undocumented/ unauthorized migration** – these two terms are alternatively used in the literature. They indicate that the migrants have not been documented (or recorded), and sometimes that the migrants have been revealed without documents (passports, visas etc.). Neither undocumented nor unauthorized migrants are used correctly for the sake of generalization and misperception of these persons on the move (Koser, 2005, p. 5).

2.3.3 Irregular migration

As noted above, there is no clear and universally valid definition of irregular migration. “*From the perspective of destination countries it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country*“, states the International Organization for Migration (International Organization for Migration, 2011).

If we attempt to analyze the term ‘irregular migration’ or ‘irregular migrant’, we will figure out that specific complexities are embedded into this term. Khalid Koser demonstrate that there are at least five complex and diverse features. First, he highlights distinction between flows and stocks. “*Irregular flows pose challenges of control and management, as well as concern for the safety and dignity of migrants on the move. In*

contrast, the political responses to irregular stocks tend to focus either on channels for their regularization on their removals” (Koser, 2005, p. 6).

Second, irregular migrants include various groups of people with different background, such as people who enter a country without the proper authority; people who stay in a country in contravention of their authority; people who are transported by migrant smugglers or human trafficking; and people who deliberately break or circumvent the asylum system.

Third, irregular migration should be separated from asylum because asylum seekers and refugees do not lose their protection needs and entitlements just because they belong to the same mixed flow. As Koser mentions, *“asylum seekers and refugees may resort to migrant smugglers, and they may undertake irregular secondary moves. At the same time, people not in need of international protection may resort to asylum channels in the hope of gaining temporary or permanent stay abroad”* (Koser, 2005, p. 6).

Fourth, there is sharp distinction between migrant smuggling and human trafficking, which makes some a lot of confusion in debates about migration. The smuggling of migrants is as *“the procurement, in order to obtain, directly or indirectly a financial or other material benefit, or the illegal entry of a person into a state Party of which the person is not a national or a permanent resident“* (United Nations Office of the High Commissioner for Human Rights , 2000). Meanwhile trafficking of human beings is defined as *“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat, or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”* (United Nations Office on Drugs and Crime, 2000). Finally, one needs to take into account that the migrants’ status is not rigid, quite on the contrary, it can vary and change rapidly over time.⁹

⁹ *“A migrant can enter a country in an irregular fashion, but then regularise their status, for example by applying for asylum or entering regularisation programmes. Conversely, a migrant can enter regularly then become irregular when they work without a work permit or overstay a visa. Asylum seekers can become irregular migrants when their application is rejected and they stay in the country of application without authority. And migrant smuggling can transform into human trafficking”* (Koser, 2000).

2.4 Migration as a security issue

Migration is often viewed as a security problem or even as a threat. Security of the state and its people has been central to decision-making process and has favored national sovereignty and territorial integrity throughout the centuries. In accordance with this notion, migration has been regulated by the decisions of the sovereign who was in charge of allowing persons into and out of their national boundaries. The Global Commission on International Migration stressed the fact that *“controlling who enters and remains on their territory is an integral part of the sovereignty of states”* (Global Commission on International Migration, 2005, p. 66). Borders have always been a determining factor in defining territories and the notion of territorially has remained at the center in the formation of nation-state. Such a reality has been loosened by the age of globalization, where total dominance of states has been weakened in favor of numerous non-state actors and where mobility of people, capital, information, goods and services has gradually mounted across all continents. Nevertheless, evidence from recent years show that many states have invested heavily into border security through the construction of barriers and border fences, the deployment of immigration officers and frontier guards, the interdiction of migrants in transit, and large-scale removals and detention. These restrictive immigration measures confirm the fact that it is still the state who wields the resolute power regarding the right of the migrants to cross the borders and enter another state. Francesca Vietti and Todd Schribner make remarks that *“irregular migration is perceived as an attack on state sovereignty that brings into question the state’s ability to exercise control over its spatial and territorial domain”* (Vietti, et al., 2013). On the contrary, fortification of restrictive measures at the border and beyond may also sign that the states attempt to catch up and strengthen its position vis-à-vis rising dynamics of international system and globalization.

Figure: A typology of state policy instruments to address irregular migration (Koser, 2005, p. 14)

Pre-frontier measures

- Visa requirements
- Pre-boarding documentation checks in countries of origin and transit
- Information campaigns
- Carrier sanctions
- Liaison officers
- Interdiction and interception
- Regional processing
- Punitive measures against human smugglers

Measures relating to border management

- Strengthened physical borders (fences, electronic surveillance)
- Strengthened border controls and inspections
- Documentation with enhanced security features
- Biometric data
- Training border guards

Post-entry measures

- Detention
- Workplace inspections
- Internal ID inspections
- Accelerated procedures
- Employer sanctions
- Dispersal and restrictions on mobility
- Restrictions on the right to work, access to housing, legal advice and social welfare benefits

2.4.1 Migration threatening state sovereignty, stability and security

The nexus between migration and security is often emphasized in the official documents of governments, legislative bodies as well as in the norms of international organizations. Hereby, authorities see migration as a great concern that may undermine security and stability of the state and its citizens.

Myron Weiner makes his argumentation that migrants and refugees can pose a threat for national security of state based on five different rationales. First, state can be threatened by the influx of newcomers in a situation when migrants and refugees are opposed to the regime of their home country – this could give rise to hostility between states or even become a source of international conflict. Second, migrants and refugees can be perceived as a political risk to the host country. Third, migrants and refugees can be viewed as violators and disrupters of the norms governing in the host society.

Articulation of these norms is often bound with the law of citizenship, meaning who by virtue of birth is entitled as a matter of right to be a citizen and who is permitted to become a naturalized citizen – consanguinity (concepts of *ius soli* and *ius sanguinis*) plays an important role in distinguishing and recognizing these rights. Fourth, migrants and refugees are challenged that they represent a social and economic burden for the host country, which brings about a general perception that they are delinquents and criminals who abuse generous welfare system of the state. Fifth, migrants and refugees can become a threat when the host country uses them as an instrument of threat and international bargaining against the country of origin (Weiner, 1990).

This is also reflected by Sita Bali who states that *“migration can pose a threat to the people and governments of both sending and receiving states, and to relations between these two countries. It can turn civil wars into international conflicts and it can cause the spread of ethnic conflict and civil unrest from one country to another. It can lead to some form of conflict, including full-scale war between countries. Migration can also play a role in facilitating terrorism. Population movements can become the cause of economic hardship and the increase in competition for scarce resources of various kinds from jobs to social housing, and can weaken existing power structures and institutions within countries, as well as threatening cultural identities and social cohesion”* (Bali, 2008, p. 471).

Other authors claim that the self-evident nexus between migration and security is met in three areas. The first argument says *“migration may challenge an actor’s national security by overwhelming state capacity and autonomy to maintain sovereignty across a number of areas”* (Erdogan, 2009). This argument stems from the logic that influx of uncontrolled migration would cause competition between citizens and newly migrated populations over scarce resources such as jobs, houses, public services, and social security. Migrants would be labeled as those who stir uncertainty, instability and unrest in the host society. It also brings into question a capacity of the state (strong and effective institutions and porosity of borders) to prevent a spectrum of activities perpetrated by various criminal networks who are involved in migration practices through human trafficking and human smuggling. The second argument, cited by Ibrahim Erdogan, states that *“migration by changing the demographics of the receiving country may challenge national identity thus societal security”* (Erdogan, 2009). By this he suggests that migration waves may significantly change the demographic structure of

the host society, which eventually may result in transformed national identity or even threatened societal security. The third argument, “*migration may influence and serve the goals of national foreign policies*” (Erdogan, 2009) plays into hands of the receiving country which can use the migrants as an important asset in maneuvering against the sending country.

The issue of migration becomes increasingly a subject of securitization also in relevant norms and documents of many international organizations. Although migration is recognized as an element that contributes to diversity, heterogeneity and plurality, it is simultaneously narrated as a threat to security of states, non-state actors, groups and individuals. For example, the European Union stressed very much the notion of the impregnable ‘fortress Europe’ that stands resistant against all forms of undesirable external influences. The similar logic is followed both by the member-states of the European Union and by other countries, such as the United States, Australia, Turkey, Republic of South Africa, China, Mexico etc.

2.4.2 Prejudices and distorted perceptions of migration

It seems obvious and few examples show it that states regard migrants and refugees as a source of threat or danger that may result in undermining state sovereignty, territorial integrity and security of its citizens. There are rational explanations, as noted above, that population movements can threaten economic stability – by increasing employment competition and pursuing for scarce resources, jobs, goods and services – paralyze social stability by stirring up increased level of xenophobia and intolerance, facing challenges associated with religious, cultural and ethnic heterogeneity, bringing about health risks and confronting potential criminal activities associated with the migrants. Nevertheless, these rational and sometimes true challenges associated with the migrants and refugees can easily be transformed into huge misperceptions and generalizations that serve the interests of populists and extremists. These people often spot the light on migration-related issues in order to conceal real problems and challenges, and because they seek to achieve easily political goals and other particular interests.

Migrants are often perceived by the host country as those who 'steal' their jobs, abuse generous social welfare system, threaten national values and disrupt national identities failing to integrate into the host society. Khalid Koser explains that there are two main misinformation and misperceptions associated with migration, specifically with irregular migration. First, people usually think irregular migration threatens state sovereignty in the perception that *"states are, or risk, being 'flooded' or overwhelmed by enormous numbers of irregular migrants. In reality...the political significance of irregular migration generally outweighs its numerical significance"* (Koser, 2005, p. 10). Second, people view irregular migrants as those who are involved in illegal criminal activities and as those who transmit infectious diseases, especially HIV/ AIDS. Although some irregular migrants participate in criminal activities and may have some infectious diseases, such a perception is a huge generalization and serves to demonize the incoming migrants (Koser, 2005, p. 11).

2.4.3 Who makes perception of migration?

Although the state is an actor who wields the resolute power in formulation of migration-related policies, there is a broad spectrum of different actors who contribute to formulation of these policies, and their voices should not be restrained from discussion. Generally, perceptions of migration and formulation of migration-related policies occur at the three different levels of analysis – social actors, public opinion, and political and cultural context.

Social actors play a crucial role in formulating migration-related policies, among those are the state, various pressure groups and public opinion. First, the state has the upper hand in definition, demarcation and application of migration-related policies. There is a mixture of different factors (economic, demographic, security, labor, social, health, education etc.), which the state and its executive, legislative and judicial segments of power should bear in mind (Mármora, 1998, p. 55-58). There are usually three big concerns articulated by the states:

- Confusion between asylum-seekers and economic migrants that eventually leads to a new asylum paradigm when states prompt refugees to stay elsewhere
- Challenges of trafficking and human smuggling – border controls encourage smuggling that, in turn, leads to calls for more control
- Human cost of migrants which is associated with vulnerability, abuses and exploitation of irregular migrants (Pécoud & de Guchteneire, 2006, p. 72-73).

Second, pressure groups are deeply involved in the phenomenon of migration. Labor unions, entrepreneurs, specific segments of industry, relevant institutions, political parties and other players project their interests and observations in formulation of migration-related policies and programs. Third, public opinion and socio-cultural context are vastly formed by the traditional and digital media, as well as by other mechanisms that influence decision-making process (Mármora, 1998, p. 58-63).

2.5 State – ultimate guarantor of human rights

The situation, in which the state attempts to keep up with rising dynamics of international system and where its role is weakened by power of both internal and external actors, seems to be a vicious cycle. Zygmunt Bauman reminds us that it was the globalization which has made mobility “*the most powerful and most coveted stratifying factor*” (Bauman, 1998). Nowadays, the state increasingly loses its ability to make a quick and effective response to global turbulent circumstances such as ethnic conflicts, insurgencies, terrorism, transnational organized crime, drug business, political persecution, demographic boom, poverty and rising inequality, unemployment, social crises, environmental degradation and many others. Therefore, it is propelled to steel oneself against all these challenges and lock itself within its own territory filled with growing fear and intolerance. As a consequence, the state reacts with building barriers, tightening controls and adopting restrictive measures that are often accompanied with killings, human rights abuses and ill-treatment. This logic goes completely against the democratic right to move freely for better conditions and against overarching free-trade principles that are characteristic in today’s world. Furthermore, these restrictive measures do not stop the people from moving from one place to another, rather they incite them to go underground and opt for more dangerous pathways; this, again, increases vulnerability of the migrants (Pécoud & de Guchteneire, 2006).

According to the UN High Commissioner for Refugees, limitations on people's moves generate inflow of more irregular migrants, and increase likelihood of human smuggling and human trafficking, that, again, prompts calls for more controls (United Nations High Commissioner for Refugees, 2011). Moreover, these limitations on the migrants' freedom to circulate result in a higher rate of permanent settlement and less likelihood that migrants would return to their home country. In accordance with neo-Marxist theory, Pécoud and de Guchteneire also argue that there is a clear wedge between the prosperous West and poor developing world that logically discourages the rich states to open up their borders and enjoy their benefits with others. *“Restrictive policies generate suspicion toward outsiders and internal boundaries within societies as they are informed by the idea that Western societies, threatened by the rest of the world, should close and protect themselves”* (Pécoud & de Guchteneire, 2006, p. 82).

2.5.1 Unintended consequences of border controls

Border policies and border security represent the chief element of state mechanisms for regulation of migration flows. These measures generally comply with two essential goals of border policies, as illustrated by the Migration Policy Institute. *“First, they want to ensure that movement beneficial (e.g., of legal goods, most tourists, some categories of students, business people, and certain categories of migrants) is unimpeded; while unwanted movement (of drugs, other unauthorized goods, and unauthorized migrants) is blocked...Second, states want to give the impression that all people within their borders – whether citizens, legal residents, or unauthorized migrants – are receiving fair and equal treatment”* (Hansen, et al., 2014). Borders of both democratic and non-democratic countries suffer from their shortcomings because they are more or less porous and they share identical migration-related challenges.

The upsurge of irregular migrants poses a similar threat to border management like practices of terrorism and organized crime – in some cases there is a relevant concern of linkage between criminal activities and migrants, while in other cases not. Migrants are more vulnerable to become victims of human trafficking and human smuggling, to entangle in drug business, money laundering, smuggling of guns and contraband, and to commit criminal activities. In this atmosphere, the state faces a basic dilemma – adoption of restrictive migration-related policies have *“perverse, regrettable*

and often unintended consequences and feedbacks...States increase the number of border guards, spend more money on technology designed to protect the border and detect false documents, cooperate with like-minded states to prevent the travel of likely terrorists and unwanted migrants, use interdiction at sea and at international airports, and apply a wide variety of deterrence measures such as visas and carrier sanctions to prevent illegal migration. Yet by making irregular migration more difficult, these measures indirectly push unauthorized migrants into the hands of smugglers and traffickers” (Hansen, et al., 2014). Eventually, endless conflict spiral is being made, which seems to be too difficult to leave this concept and come up with a new *modus operandi*.

Nevertheless, many experts warn that reinforcement of border policies and restrictive migration-related measures alone cannot prevent irregular migration (Koser, 2005). There are at least three causes confirming the fact that these policies have constantly failed to succeed. First, negative externalities of globalization, numerous conflicts and widening economic disparities between different parts of the world represent a conundrum that is complicated to decipher solely at the state level (Zetter, et al., 2003). Second, in many places migration has become an established part of industry and business, which may be divided into both a legitimate aspect (travel agents, recruitment agents, lawyers, NGOs), and an illegitimate aspect (migrant smugglers and human traffickers) (Salt, et al., 1998). That is why, this system is truly difficult to disrupt because it succumbs to multiple pressure groups. Third, unintended consequences are deeply embedded in these policies, as mentioned in the above text (Koser, 2000).

Hansen and Papademetriou make an argument that “*weak states cannot have strong borders, and states will not get border policy right unless they get their institutions right*” (Hansen & Papademetriou, 2014, p. 10). They propose a set of following policy recommendations in order to ameliorate human rights situation of the migrants, and simultaneously to protect the borders and state territory – a) focus on development, not just borders, b) work both bilaterally and regionally, c) continue to expand border controls in high-traffic areas, d) expand “remote-control” immigration (Hansen & Papademetriou, 2014, p. 10-12).

2.5.2 Responsibility to protect human rights of the migrants

Nowadays, the state is balancing between two concepts – between protecting its territorial integrity, stability and security on one hand, and protecting all people who are situated within its territory. Besides it is the state who committed itself to human rights protection by signing and ratifying various documents of international law. Khalid Koser points out that there are many challenges for states “*to limit access to their territories without undermining the rights to seek and enjoy protection*” (Koser, 2005, p. 4). Based on Hannah Arendt’s premise, as mentioned above in the text, security of individual is always protected by the state – in other words, the right of individual to seek protection from fear and want cannot be recognized without existence of the state. The state has the initial responsibility and is obligated to take the necessary “*efforts to ensure accountability and good governance, protect human rights, promote social and economic development and ensure a fair distribution of resources*” (International Commission on Intervention and State Security, 2001).

Migrants and refugees become increasingly vulnerable to ill-treatment, abuses and exploitation and reinforcement of border controls and other migration-related measures often leave often in a legal loophole. Pécoud and de Guchteneire claim that there are at least four major ethical challenges for the state. First, the state confronts with a huge tension between national security and human rights. The state usually combines instruments of both national and human security, therefore, protection of fundamental human rights is somehow recognized and guaranteed. Nevertheless, national security is still a dominant and determining factor in decision-making process, which is often to the detriment of the well-being of people, particularly non-nationals.¹⁰ Second, human trafficking has been identified as a human rights’ violation and has become central for many governments. Adoption of the 2000 UN Convention against Transnational Organised Crime, particularly of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons has meant a milestone for the international system *per se*, because human trafficking was denied by the international law. In comparison with human trafficking, deaths of asylum-seekers at the borders tend to still be largely

¹⁰ “States’ reluctance to address migration from a rights-based perspective is obvious in their attitude toward the UN Convention on Migrant Workers’ Rights: this comprehensive treaty, adopted in 1990, provides a wide set of human-rights answers to the challenges of migration, but fewer than forty states have ratified it and no Western immigration country has done so at this date.” (Pécoud, et al., 2004).

ignored by the state.¹¹ Third, bonds between border controls, migration-related policies and human rights get more complicated because they are burdened by a moral complexity. There is a thin line between the right of the people to leave the country of origin, and discouraging or even forbidding people to enter the receiving country. Finally, migration-related policies tend to be threatening not only to the migrants and refugees themselves, but it can also pose a threat to human rights and democratic principles, which is especially alarming in the Western societies that adhere to values of democracy and human rights (Pécoud, et al., 2006).¹²

¹¹ *“Even when human rights violations are acknowledged (such as in case of trafficking), they are understood as a problem per se and not related to the broader picture of border and migration policies. At most there is a call for barely defined “humane” border policies, which regret the consequences of migration controls but accept their necessity and legitimacy.”* (Pécoud, et al., 2006) (Nevins, 2002).

¹² *“Tougher border control measures may not be compatible with the harmonious functioning of democracies. The values that guide societies cannot stop at their borders; they must also inspire attitudes toward outsiders. The way in which a society handles the fate of foreigners ultimately reflects the values upon which it is based, and the evolution of migration controls toward greater harshness may eventually backfire and threaten the principles and freedoms that lie at the core of democratic societies.”* (Pécoud, et al., 2006).

3 Case-study: Mexico – Clash between hard-line practices and human rights rhetoric at the Mexico's southern border

Mexico is a country which is perceived quite ambiguously in the public discourse worldwide. For many people it is a country that symbolizes a successful transition from the authoritarian regime towards democracy. Ever since 1990s Mexico has embarked upon a path towards liberal democratic regime by passing crucial electoral reforms, by permitting opposition parties to participate in decision-making process, by adopting an imperfect, yet functional system of checks and balances, by becoming member of respected international organizations and by implementing many international treaties and documents. After signing the North American Free Trade Agreement (NAFTA) in 1994 Mexico committed itself to liberalize its economy, to reduce tariffs on products traded with the United States and Canada and to increase significantly trade, investment and travel among these three countries in order to boost economic growth. Mexico has succeeded in having increased GDP growth, relatively low level of unemployment, growing tourism sector, attractive financial market for foreign investors, lively commerce with the United States, European Union, other Latin American countries, which altogether combines the fact that Mexico falls into a category of G20 biggest world economies. Nonetheless, Mexico is also a country of barred opportunities and abuse of power. Rampant crime and insecurity, drug-related violence, corrupt political figures and law enforcement officers, water and air pollution, poverty and inequality, flourishing informal economy, safety of food, health care, poor quality of schools – these issues rank among the most severe problems viewed both by Mexican citizens and international observers.

In 2006 the federal government of Mexico delved into a turf war, when then President Felipe Calderon launched a massive military campaign against drug trafficking organizations all around the Mexican federal territory. These efforts were supported by the bilateral partnership called Mérida Initiative, signed in 2007 between Mexico and United States, which represented an action plan to combat organized crime and drug-related violence. The counternarcotics package of \$ 1, 4 billion was centered to assist Mexico and to lesser extent also to Central America in order to strengthen border security, counternarcotics and counterterrorism operations, to strengthen public security and law enforcement, and to foster institution building and rule of law (Brands, 2009). The Mérida Initiative expanded in size and made a focus on building strong and

resilient communities through social and economic reforms, and on making modernization of the U.S. – Mexico border area, as well (Abu-Hamdeh, 2011).

At first, Mexico was confronting several dominant drug trafficking organizations¹³ (or sometimes called cartels) that were struggling among themselves over the “lucrative turf”, over drug corridors leading northwards to the United States and elsewhere, which further contributed to escalation of violence. David Shirk argues there were at least three factors that fomented escalation of violence – a) fractionalization of organized crime, b) changing structures of political-bureaucratic corruption, c) recent government efforts to crack down on organized crime (through military deployments and the disruption of drug trafficking organizations’ leadership structures) (Shirk, 2010). Recently, the governments of Mexico have made remarkable success in targeting top leadership structures of various drug trafficking organizations and organized crime groups by capturing and killing criminal bosses (Reed, 2015). Nonetheless, this hard-line approach has also brought negative effects. Ever since Mexico initiated the war on drugs, violence has mounted to an unprecedented level; no other country in the Western hemisphere has evidenced such a large increase in the homicide rate over the last decade.¹⁴ The violent conflict has stirred crimes such as homicide, assault, robbery, rape, disappearances, torture, extrajudicial killings, kidnappings and many other crimes that altogether have left hundreds of thousands people killed, injured, internally displaced and otherwise affected or damaged.

Mexico is a country that is becoming increasingly insecure, which ranks it among one of the most dangerous countries in the world. There is a self-evident clash

¹³ Drug War terminology differs according to how theoreticians and policymakers view it. “Drug cartel” stands for an organized crime syndicate involved in the production, distribution and sale of psychotropic substances. In their remarks Molzahn, Ríos and Shirk purport that interpretation of “cartel” is much broader including “formal, informal or even implicit agreement among business associations, or firms, to control production, fix prices, limit competition, and/ or segment markets by product, clientele, or territory”. “Drug trafficking organization” term is widely used but often avoided by the U. S. government for not reflecting all kinds of trafficking goods. “Trans-National Criminal Organization” term accepted by the U. S. government but often denied by observers because organized crime groups do not have to necessarily operate in trans-national waters. The most simplified term “organized crime groups” symbolizes a more generic expression (Molzahn, et al., 2011).

¹⁴ However, over the last few years, Mexico’s rate climbed sharply: increasing threefold from 8.1 homicides per 100,000 in 2007 to 23.7 per 100,000 in 2011 according to figures from Mexico’s National Institute of Statistics, Geography, and Information, INEGI. Moreover, because Mexico had an estimated population of over 110 million people in 2013 the third largest population among countries in the Americas – even a modest increase in the homicide rate translates into the loss of thousands of lives (Heinle, et al., 2014).

between two different concepts of realism and humanitarianism projected into both foreign and domestic policies of Mexico. Despite this fact, many experts point out the greatest tragedy for today's Mexico lies in both lack of security and lack of human rights, thus this clash of two theoretical concepts lacks a correlation with available empirical data. For instance, Hector Aguilar Camín expresses his concerns with regard to security situation by mentioning that *“there is growing evidence, so far indirect and isolated, yet substantial, that during these years of combating organized crime the public force including both police and armed forces have been involved in extrajudicial practices that violate human rights”* (Camín, 2011). For further understanding the question why Mexico adopts such a dual approach that stems from a balance between realistic principles of national security and human rights' obligations, it is necessary to introduce theoretical framework of both concepts in the context of Mexico.

3.1 Realism in Mexico's policy

Hereby, the hard-line approach – that Mexico uses for maintaining law and order within its own territory – draws from the logic of neoclassical realism which was analyzed in the first chapter. The hard-line approach derives from directly from the Constitution of Mexico, subsequent legal norms, official documents of the Mexican government, as well as other institutions that operate within the jurisdiction of the National Security System, as it will be explained thereafter.

3.1.1 Development of Mexico's national security

The concept of national security is considered quite new in the context of Mexico in terms of using it and relating it to traditional principles of realism. For over decades national security was synonymous to security of the regime, in which every threat against the governing authoritarian Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI) was perceived as a threat against the state.

The bipolar division of the world during the Cold War did not pose much threat for Mexico – except for couple of minor crises – because the regime maintained diplomatic relations with both the United States and the Soviet Union. This quite

privileged position did not paralyze Mexico's to act relatively independently on the United States, and simultaneously to foment trade with the Eastern bloc. As a consequence, all but non-existence of external threats meant that Mexico perceived greatest threats among domestic social movements who were labeled as "internal enemies" and usually repressed by brute force.

The perception of national security has changed dramatically in the wake of Mexico's democratization since 1980s when civil society was becoming more organized, active and resistant against regular attacks of the state. The main objective of the transitioning state corresponded very much with a growth of human security discourse in international relations, as presented in the Human Development Report 1994. This change of discourse focused on elimination of negative factors that altogether contribute to an increased spiral of insecurity, such as poverty, inequality, unemployment, lack of education, poor health care, social security, housing, food safety etc. The new discourse was stressed by the President Vicente Fox Quesada (in office 2000 – 2006) who expressed in the National Plan for Development that "*there are real threats for institutions and national security, such as inequality, poverty, vulnerability of population against natural and environmental disasters, organized crime and drug trafficking*" (Quesada, 2001). In the aftermath of 9/11 attacks Mexico has opted for fostering national sovereignty by adopting a set of national security measures after the fashion of its northern neighbor, terrorism, organized crime and drug-trafficking becoming a part of national security agenda (Rosas, 2010).

3.1.2 Defining Mexico's national security

The idea of national security derives from the Constitution of Mexico which was enacted in 1917. The period of post-Revolution Mexico was characteristic for setting out basic social rights, such as right to vote, freedom of association, freedom of speech, freedom of religious beliefs and other rights, however, it also put an emphasis on a dominance of Mexican people and land over foreign elements in the country. To strengthen its national sovereignty Mexico has historically appealed to the Article 27, stating that "*ownership of the lands and within the boundaries of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting private property*" (Organization of

American States, 1968), and even until today this article strongly resonates in the articulation of national security interests.

The National Security Law (Ley de Seguridad Nacional) defines “*the actions destined immediately and directly to maintain integrity, stability and permanence of the Mexican State in order to – a) protect the country against the risks and threats, b) preserve sovereignty, independence, territory and the unity of the federation, c) maintain the constitutional order and strengthen the democratic institutions of the government, d) defend the country from other States or subjects of international law, e) preserve the democratic regime founded on social, economic and political development*” (Secretaría de Gobernación, 2014). The National Security Act enumerates specific activities that are understood as threats to Mexico’s national security:

- “*espionage, sabotage, terrorism (including financing activities), rebellion, treason, genocide, illegal trafficking in nuclear materials, chemical, biological and conventional weapons of mass destruction, and acts against the safety of aviation and shipping*
- *acts tending to obstruct or neutralize intelligence or counterintelligence activities*
- *destruction or disabling of strategic infrastructure necessary for the provision of public goods or services character*
- *foreign interference in national affairs that could result in impairment of the Mexican State and acts that attempt against the diplomatic staff*
- *acts to prevent the authorities to act against organized crime, including obstruction of military or naval operations against it*
- *actions to undermine the unity of the integral parts of the Federation*” (Secretaría de Gobernación, 2014).

Unlike threats, risks are not specifically enumerated in the National Security Act, though, there is a variety of political, economic and social actors, as well as many human- and nature-based factors that can pose a risk to Mexico.

Furthermore, Leonardo Curzio highlights at least six principles of the contemporary national security doctrine of Mexico that are projected into both foreign and domestic policies– 1) no intervention, 2) respect to self-determination of nations, 3)

peaceful solution of controversies, 4) proscription of threats and use of force, 5) juridical equality among states, 6) cooperation for development (Curzio, 2014).

3.1.3 National or public security?

Mexico has heavily relied on another term associated with protection of national sovereignty and territorial integrity – public security. Historically, the concept of public security has appeared more often in the Mexican discourse than the concept of national security which is much more modern phenomenon. Public security is much more associated with security of the interior and expects *“an idea of public tranquility and peace, though, it should not be confused with an intervention of the armed forces on police issues, since the armed forces have different objectives, functions, skills, training and skills than the police...”* (González Ruiz, et al., 2004).

The Constitution of Mexico defines the concept of public security in the following articles of 21, 32, 73, 115, and 122. The most explicit definition of public security is included in the Article 21, stating that: *“public security is a function provided by the Federation, the Federal District, the states and municipalities, including prevention of crime; the investigation and prosecution of administrative offenses, under the terms of the law, in their respective powers stipulated by this Constitution. The actions of public security institutions shall be governed by the principles of legality, objectivity, efficiency, professionalism, honesty and respect for human rights recognized in this Constitution”* (Organization of American States, 1968). This constitutional norm is followed by the Article 30 of the General Act on National Public Security System, defining that: *“public security is the function provided by the State which has as ends safeguard the integrity and rights of persons and preserve freedom, order and public peace”* (Cámara de Diputados del H. Congreso de la Unión , 2013). The General Act on National Public Security System facilitates a creation of the National Public Security System (Sistema Nacional de Seguridad Pública, SNSP) that operates within three levels of government and includes institutions that are in charge of education, health, social development, including civil society itself (González Fernández, 2002).

It seems self-evident that public security is much broader concept than the relatively narrow concept of national security. Public security is closely associated with well-being of individuals and the entire society, freedom, order and public peace, which refers to protection of fundamental human rights – humanitarianism in Mexico’s policies will be analyzed in the following chapters. María Cristina Rosas argues that there are some extraordinary circumstances, in which national security can intervene in actions of public security, in particular, for the sake of protection of human rights guarantees (Rosas, 2010).

Difference between National Security and Public Security		
Theme	National Security	Public Security
Objective	It aims to maintain the integrity, stability and permanence of the Mexican State.	Safeguard the integrity and rights of individuals, and to preserve freedom, order and public peace.
Instruments	They are operating out intelligence and counterintelligence to propose measures for prevention, deterrence, containment or neutralization of risks or threats.	The prevention, prosecution, punishment of offenses as well as the social reintegration of criminals and offenders and or offenders.
Responsible authorities	It is a federal matter. The Government of the Republic establishes mechanisms for cooperation with state and municipal authorities.	It is a concurrent subject in which the three levels of government share responsibility for the same in their areas of competence.

(Secretaría de Gobernación, 2014)

3.1.4 Program for National Security 2014 – 2018

The National Security System is the supreme executive body that deals with national security issues within the scope of Mexico. It is headed by the President of the Republic and it consists of several agencies, units of the Public Federal Administration, state instances and municipal authorities that altogether form the part of the National Security Council (Consejo de Seguridad Nacional, CSN) (Secretaría de Gobernación, 2014). The National Security System uses the National Risk Agenda (Agenda Nacional de Riesgos, ANR) as a principal instrument in formulating national security policies. It is written on the website that National Risk Agenda identifies *“risks and threats to National Security, the probability of it happening, the vulnerabilities of the State against diverse phenomena and their possible manifestations. As well, it allows orienting the intelligence activities, as well as the actions, the mechanisms of*

coordination and the politics in National Security issues leading to provide continuity to the project of the nation in a short, medium and long term” (Secretaría de Gobernación, 2014). The Mexican President makes an approval of the National Risk Agenda on the annual basis within the National Security Council. The National Risk Agenda identifies the risks and threats based on the guidelines provided especially by the National Development Plan and the Program for National Security (Secretaría de Gobernación, 2014).

The current Program for National Security 2014 – 2018 serves best for the purposes of this thesis. This program articulates top priorities and vision of the Mexican government and the President of the Republic in the field of national security. From the strategic level, it derives from two grand strategic objectives:

- *“consolidate the National Security System to ensure comprehensive care of the vulnerabilities, risks and threats to national security,*
- *ensure that the national security policy of the Mexican State adopts a multidimensional perspective to support the achievement of national goals and interests”* (Secretaría de Gobernación, 2014).

The Program for National Security 2014 – 2018 elaborates upon the principles that derive from the Constitution of Mexico and the subsequent legal norms. Among these principles are:

- *“protection of the Mexican Nation against threats and risks across our country,*
- *preservation of national sovereignty and independence and territorial defense,*
- *maintenance of constitutional order and strengthening democratic institutions of government,*
- *maintaining the unity of the integral parts of the Federation mentioned in Article 43 of the Constitution of the United Mexican States*
- *legitimate defense of the Mexican State regarding other States or subjects of international law, and*
- *preservation of democracy, founded on economic, social and political development of the country and its people”* (Secretaría de Gobernación, 2014).

The Program for National Security 2014 – 2018 in its sixth chapter identifies overall five most pressing risks and threats to the National Security System, which translates

into risks and threats for the state and its citizens – 1) natural disasters and pandemic diseases, 2) transnational organized crime, 3) cyber security, 4) borders, seas and flows of irregular migration, 5) terrorism and weapons of mass destruction (Secretaría de Gobernación, 2014).

3.2 Humanitarianism in Mexico's policy

After elaborating on the hard-line approach it seems that Mexico is also fiercely driven by the approach of humanitarianism which is, based on the arguments from the first chapter, in a sharp contrast with the realistic approach of national security. Since 1990s Mexico has openly espoused main objectives of the Human Development Report 1994 that identified the most pressing challenges humanity will face in the following years and decades. Gradually, Mexico has become a member of various international human rights groups and organizations, as well as it has signed numerous international human rights norms.¹⁵ Nevertheless, this compliance with international human rights agenda is rather superlative because Mexico is still lagging behind in the field of human rights protection of their nationals and non-nationals – for which it has been constantly criticized by the authorities of international community.

3.2.1 What do human rights stand for in the context of Mexico?

In recent years, human rights approach has resonated very much in the public discourse and has appeared high on the agenda of Mexico's executive, legislative and judicial branches. Yet, human rights have increasingly become a subject of heavy

¹⁵ Mexico signed various international human rights norms, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), including the both Optional Protocols to ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR), including the Optional Protocol to ICESCR, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC), Convention on the Rights of Persons with Disabilities (CRPD). Mexico is also a member-state of the Organization of American States, by which it belongs to the jurisdiction of the Inter-American Human Rights Commission and the Inter-American Court of Human Rights, whose rulings and recommendations should Mexico respect, obey and fulfill (United Nations Office of the High Commissioner for Human Rights, 2007).

criticism coming from domestic institutions and NGOs, just as from respected international organizations.

Since 1917, when the Constitution of Mexico was enacted, human rights have formed an integral part of Mexico's legal framework. The constitution itself enumerates various provisions that aim to respect, assure and protect human rights guarantees. The Article 1 defines that *“every person in the United Mexican States shall enjoy the guarantees granted by this Constitution, which cannot be restricted or suspended except in such cases and under such conditions as are herein provided”* (Organization of American States, 1968). The Mexican legal norms derive from constitutional principles which coincide with the principles of the Universal Declaration of Human Rights, as enumerated in the first chapter based on the writings of Maureen Spencer. Among these human rights principles are: right to life, equality before the law, equality of all persons, right to liberty and security of the person, right to freedom to work profession, industry or trade, right to freedom of expression, right to freedom of the press, right to freedom of assembly and association, right to freedom of movement and residence, political and religious rights, right to bear and carry arms, right to information, retroactivity of laws, right to nationality, prohibition of torture and inhuman/ degrading treatment, prohibition of slavery and forced labor, right of non-discrimination, right to a fair trial, right to privacy, right to marriage, right to property, rights of indigenous peoples, right to education, children's rights, right to health protection, right to an adequate environment, right to housing etc (Comisión Nacional de Derechos Humanos, 2014).

The National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH)¹⁶ defines that *“human rights are a set of prerogatives inherent in the nature of the person, whose effective realization is essential to the integral development of the individual living in a legally organized society. These rights, enshrined in the Constitution and laws, shall be recognized and guaranteed by the state”* (Comisión Nacional de Derechos Humanos, 2014). From the constitutional and legal viewpoint,

¹⁶ Mexico's National Human Rights Commission (CNDH) is an agency that was created in 1990 after the increased pressure of non-governmental organizations that criticized dire human rights situation in the country. Its objective was to monitor human rights practices of government institutions and promote increased respect for fundamental rights in Mexico. In 1999 CNDH became an autonomous agency not dependent on the executive branch due to a constitutional reform. Nowadays, the CNDH president and council members are appointed by the Mexican Senate after having been consulted with civil society organizations (Human Rights Watch, 2008).

Mexico recognizes international division of human rights into three generations – first-generation (civil and political rights), second-generation (economic, social, cultural and labor rights), and third-generation (environmental and collective rights) (Comisión Nacional de Derechos Humanos, 2014).

3.2.2 Role of international community

There have been previous critical voices by the international community that has raised concerns about dire security situation and state of human rights in Mexico in the second half of 1990s.¹⁷ In case of Mexico, many international human rights bodies and organs including the United Nations, the Organization of American States as well as distinguished non-governmental organizations such the Amnesty International, Human Rights Watch and others started to closely monitor the situation, publish reports and memos, to make public statements, and to adopt resolutions due to gross violations of human rights in the country. The international human rights bodies and some democratic governments made public criticism of Mexico's military participation in law enforcement activities, tracking a terrible record of its authoritarian remnants (Anaya Munoz, 2013).

Nonetheless, main public outcry, echoed by various international human rights organizations as well as by some democratic countries, was linked with the government of Felipe Calderon Hinojosa (in office between 2006 – 2012) who took the struggle against drug cartels to the top of the national agenda. Once again, Mexico has been targeted by representatives of multiple international organizations for neglecting and

¹⁷ This related mostly to two trends stemming both from Mexican and international realities. First, democratization process of Mexico was accompanied by the fact that previous state control over the means of violence, executed predominantly by the Institutional Revolutionary Party (PRI), was taken over to non-state actors, which in many cases resulted in an uncontrolled spiral of violence across the territory of the federal republic. This phenomenon provided a breeding ground for subsequent violent “turf wars” among drug cartels and also members of organized crime groups attempting to conquer their spheres of influence and strategic routes in order to smuggle contraband in exchange for vast financial profits. Second, it reflected a global shift to assess security not only in non-military aspects after the end of the Cold War when protection of people has been stressed as a principal concern for both states and other actors of international arena. The state has been considered as a threat for human beings, their fundamental rights and well-being because of its failure to protect its people; in many cases the state has posed the threat itself while sometimes resorting to inadequate use of violence against its own population. This period was driven by the concept of universality of human beings and characterized by an upsurge of human rights agenda.

even contributing to gross violations of human rights committed on their citizens and also on foreigners, mostly migrants travelling from Central America through the Mexican territory further northwards to the border with the United States. However, this time Mexico has witnessed much more comprehensive and intense critique based on elaborate publications and policy memos at the level of human rights organizations, think-tanks, academic institutions and local non-governmental organizations. Furthermore, Mexico has gone under the scrutiny of international organizations such the United Nations or the Organization of American States that they have designed binding rules, resolutions and recommendations. Preoccupation of international bodies and organs with the unsatisfactory military strategy of the Calderon administration has been shown in the numbers, too. Whereas in the period of 1998 – 2006 Mexico received only 19 recommendations, between 2007 – 2011 the number rose to 35 (Anaya Munoz, 2013).

Ever since the massive criticism of Mexico in the sphere of human rights violations has remained a heated issue from the part of international human rights organizations. This stance was very much visible in both recent rounds of the Universal Periodic Review – which is a binding mechanism under the auspices of the United Nations Human Rights Council that “*provides the opportunity for each State to declare what actions they have taken to improve human rights situation in their countries and to fulfill their human rights obligations*” (United Nations Office of the High Commissioner for Human Rights, 2015).

In the first round of 2009, the United Nations Human Rights Council heavily criticized the Calderon administration for its repressive military strategy against the drug cartels which on one hand led to capture or killing of several drug bosses, but on the other hand left thousands of people deprived of life, home, family and basic human needs. In the final document of the Universal Periodic Review of 2009 Mexico was given 91 recommendations.¹⁸

¹⁸ Those recommendations mirrored the necessity to eliminate violence and discrimination against women, to protect journalists and human rights defenders, to reduce impunity of drug-related crimes. There were also recommendations to ameliorate human suffering and treatment with indigenous groups, migrants and marginalized populations, just as to combat all forms of sexual exploitations, violence against children and politically-motivated violence against representatives of some social movements. Mexico was recommended to deal with investigation and prosecution of enforced disappearances, which has long been an issue for the international community. An essential part of the review was dedicated to

The second round of the Universal Periodic Review of 2013 also kept an eye on Mexico which was again one of the most criticized countries during the sessions. Once the new President Enrique Peña Nieto was less than a year in office, the UN Human Rights Council came up with the set of concerns, in which other countries doubled their recommendations to 176 in contrast with 91 in 2009.¹⁹

3.2.3 Reform of Mexico's human rights agenda

In 2011 Mexico answered to critique and recommendations of international human rights organizations and made several modifications of the 1917 Political Constitution of the United Mexican States. The constitutional amendments were primarily important in the sphere of compliance with international treaties and conventions; moreover international treaties and conventions gained the upper hand in the Mexican domestic law. This reform is well reflected in the modified Article 1 defining that *“every person in the United Mexican States shall enjoy the guarantees granted by this Constitution and international treaties to which Mexico is a party, as well as guarantees for their protection, which cannot be restricted or suspended except in such cases and under such conditions as are herein provided”* and continuing that *“the rules relating to human rights will be interpreted in accordance with this Constitution and treaties promoting international commodity at all times to people the*

the domestic legislation that was recommended to be overhauled in harmony with international human rights obligations. It targeted the justice system when contemporary military jurisdiction was legally able to prosecute civilians, who were often victims of serious crimes perpetrated by the armed forces (International Service for Human Rights, 2009).

¹⁹ Main criticism was centered on the still existing provision of “arraigo” (arbitrary detention) in the criminal justice system, under which an investigated person can remain in custody for longer period of time due to interference of Federal Ministry of Justice that disrupts a principle of separation of powers within the due process. Again, Mexico was alerted by still non-existent reform of the Military Justice Code that would remove military tribunals in cases of human rights abuses. The review drew attention to unsettling discrimination and violence against women, children, migrants, indigenous communities, minorities of African descent, social movements, marginalized groups and journalists. Mexico heard heavy criticism for its lax stance towards numerous cases of torture, rape, kidnappings, extrajudicial killings and enforced disappearances. The review suggested an establishment of special registry that would evaluate and track all cases and stories of enforced disappearances across the territory. Mexico should also resort to signing and ratifying some documents of international law, namely the Optional Protocol of the International Covenant on Economic, Social and Cultural Rights and the Rome Statute (United Nations Office of the High Commissioner for Human Rights, 2013).

broadest protection” (Organization of American States, 1968). Albeit this article of the Constitution has more or less a declaratory character, it represents a crucial milestone in the recognition of international human rights standards within the Mexican domestic law.

This argument is accompanied by the opinion of human rights experts, Natalia Saltalamacchia Zuccardi and Ana Covarrubias Velasco, who wrote that “*up to the early 1990s human rights formed part of Mexico’s foreign policy agenda, primarily anchored in the country’s participation in specialized international human rights organizations. The Mexican government only very rarely tackled the subject as a bilateral relations issue with other countries and interacted little with international non-state actors concerned with human rights*” (Saltalamacchia Zuccardi, et al., 2011).

The articles under Title 1 emphasize the responsibility of the State to prevent, investigate, penalize and redress violations of human rights, which further expects the promotion of human rights in public education; the respect for human rights in the prison system; a person’s right to seek refuge or political asylum; the restriction of certain rights to be prohibited in the event of a suspension of rights enacted by the competent authority, pending further legislation, foreigners granted the opportunity to challenge deportation; the normative principle of foreign policy introduced with a view to ensuring respect for and protection and promotion of human rights; public employees to justify any refusal to accept the recommendations of the National Human Rights Commission; the CNDH given powers to investigate serious human rights violations and to pursue legal proceedings through actions of unconstitutionality (Cerdeña Dueñas, 2014).

Although the constitutional reform as a whole is considered a breakthrough in terms of human rights observation in Mexico, there are still some remaining human rights issues that Mexico must address and resolve, unless it aims to disregard itself in the eyes of international community. These unresolved issues include, in particular, compensation for violations of human rights, protracted legislative process of the Law of Asylum, suspension or restriction on the exercise of rights and guarantees etc (Cerdeña Dueñas, 2014). Despite these positive achievements, one must expect that incorporation of human rights norms and standards into the constitutional framework of Mexico will take some time before law enforcement bodies and courts start to investigate and

prosecute human rights crimes. Meanwhile it is quite likely that – in the context of contemporary war on drugs – human rights abuses against both nationals and non-nationals will turn up and will go unpunished. In addition, Humberto Francisco Guerrero Rosales also points out that “*the system for incorporating international human rights norms and standards is especially weak because only those treaties are recognized as a source of the same (human rights), while neglecting other international law sources such as customs, general principles of law or the rulings of international legal bodies*” (Guerrero Rosales, 2008).

3.3 National security versus humanitarianism at the southern border of Mexico

One of the most eloquent clashes between national security and humanitarianism takes place along the Mexican southern border with the neighboring countries of Belize and Guatemala. There, Mexico conducts its hard-line security measures and border controls, whereas it struggles to comply with international human rights norms and standards. The Mexican southern border has long been overshadowed in the media and public discourse because main area of concern has been centered on the Mexican northern border with the United States due to unprecedented streams of illicit goods, as well as flows of irregular migrants coming both from Mexico and other countries. Nonetheless, despite the limited attention, severe human rights violations, comparable and arguably exceeding those committed at the northern border occur at the southern border of Mexico with Belize and Guatemala.

Central American migrants who origin mostly in Guatemala, Honduras and El Salvador in majority of cases escape poverty, frequent natural hazards and conflict-inflicted violence (Isacson, et al., 2014). Majority of the migrants proceed through Mexico to the United States. According to the WOLA’s report, despite the high numbers of Mexicans crossings to the U.S., in 2014 for the first time “*Mexican citizens made up less than half of the migrants whom U.S. Border Patrol apprehended*” (Isacson, 2014). Many of the migrants are travelling to adjoin their family members already established in the United States. The unaccompanied children crossing Mexico are sometimes as young as 9 years old (Johnson, 2008).

Crossing the border unofficially is extremely dangerous. Over a thousand kilometers of borderline, out of which eighty per cent bordering Guatemala, provides only eight official crossing sites. Although heavily policed, according to the University of Chiapas, there are over one thousand permeable blind spots, about forty of which are accessible by vehicle (Inkpen, 2014). The border, often badly marked, passes through thick rainforest, vast grass fields and along rivers. The migrants cross in inner tube boats, on foot, or on freight trains, named “la Bestia” for the dangers associated with hopping on the train while in motion.

Variety of fraud groups takes advantage of the migrants. Reports based on field research and personal interviews cite banditry, murder, sexual violence or human trafficking, subjecting men, women and children to forced labor or sex trafficking; Mexico serving both as transit and as final destination (Johnson, 2008). Kidnapping is particularly widespread and shocking in frequency; according to Mexico’s National Human Rights Commission’s report, 11 333 migrants were kidnapped between April and September 2010 (Comisión Nacional de Derechos Humanos, 2011), almost two thousand persons monthly on average. Held in brutal conditions, kidnapped persons are sold for ransoms or subjected to forced labor. Assurances of a safe journey are extremely expensive and the migrants are forced to pay multiple times to diverse groups dominating various segments of the journey through Mexico. Generally, the most vulnerable are the migrants who cannot afford to hire a smuggler, services of whom often exceed 8000 U.S. dollars (Isacson, et al., 2014).

Mexican authorities provide no assurance of safety. Discrimination, excessive use of force and abuse of authority are common. Corruption is high, badly paid frontline officials and private security companies accept bribes and sexual favors in exchange for not detaining the migrants. Migrants rarely report the abuses, fearing fines and imprisonment. As a result, most crimes and human rights violations remain uninvestigated and unpunished.

3.3.1 Migration-related policies in Mexico

For over decades, Mexico has cultivated an image of a country that has provided haven for political refugees and represented a society of tolerance (García, 2006). This

image has been traditionally accompanied by three characteristic factors that have determined the formulation of Mexico's migration-related policies at the highest level of decision-making. First, Mexico has prompted its own citizens to migrate abroad, in particular, to the United States. Second, it has received constant flows of immigrants mostly from Central America who wished to stay there. Third, it has tackled issues of trans-migrants, as Central American individuals cross the transit country of Mexico to reach the United States (Urbano Reyes, 2008).

The migration-related policies of Mexico are enshrined in the Constitution of Mexico, for which fundamental constitutional arguments can be found in the following articles of 1, 11, 30 and 33 (Organization of American States, 1968). Furthermore, the 1974 General Law of Population lays out the rules how to govern migration, immigration, emigration and repatriation and includes corresponding sanctions when violations are committed (Vargas, 1998). Its aim is *“to regulate phenomena affecting the population, regarding its volume, structure, dynamics, and distribution in the national territory, in order to achieve its just and equitable participation in the benefits of the social and economic development”* (González-Murphy, et al., 2011). The General Law of Population brought about a categorization of non-immigrants and immigrants, as well as it set out the rules under which foreigners are authorized to participate in the public life (González-Murphy, et al., 2011).

Nowadays, Mexico draws from three fundamental pillars in formulating its migration-related policies, as mentioned by Margarita Sánchez Meneses:

- *“the congruence so that the Mexican State guarantees the enforcement of the rights it claims for its citizens abroad, on admission, entry, stay, transit, deportation and assisted return of foreigners in its territory, as well as full respect for the human rights of migrants, nationals and foreigners, regardless of their immigration status, with special attention to vulnerable groups such as children, women, indigenous people, adolescents and elderly people, in all stages of the migration process and to victims of crime*
- *the complementarity of the labor markets in the countries of the region, as the basis for proper management of labor migration in line with national needs*

- *equality between nationals and foreigners, as indicated by the Constitution of the United Mexican States, especially with regard to the full observance of individual rights, both for nationals and foreigners” (Sánchez Meneses, 2013).*

Based on these three pillars the foreigners must enjoy the same amount of fundamental rights like the nationals, having equal access to education and health care, to administration and enforcement of justice, to a family unity, to right to information, without even mentioning the migratory status. Moreover, vulnerable groups such as children, women, indigenous people, adolescents and elderly people are privileged in the law enforcement and court proceedings (Sánchez Meneses, 2013).

Even though migration-related policies usually belong to exclusive competences of the federal government, since 1990s Mexico has increasingly transferred migration issues into the jurisdiction of sub-national levels (states and municipalities), where new agencies, programs, offices and task-forces are formed. This shift in migration-related mechanisms, especially those that have been designed to promote and protect human rights of the migrants, may be explained by the following reasons:

- increased numbers of Mexican emigrants to the U.S. who left as a result of lack of job opportunities at home
- dramatic increase of remittances that has positively transformed some Mexican states and brought development to the region
- militarization of the U.S. – Mexico border area and U.S. adoption of restrictive migration measures
- incapacity of the Mexican government to provide help and assistance to Mexican nationals living abroad
- increased interest of Mexican state and municipal authorities to keep close relations with immigrants
- democratization of Mexico has facilitated greater decentralization and independence in the political-economic matters, including migration (Velázquez, et al., 2010).

3.3.2 Context of U.S. – Mexico migration

The United Mexican States is a country that has been undoubtedly formed due to flows of diverse population movements. Throughout the centuries Mexico has welcomed immigrants from different countries all around the world. The 20th century was characteristic for repeated emigration waves of Mexican nationals mostly to the United States and elsewhere; main motivation of Mexican emigrants at that time was to find better working opportunities for them and their families, to escape poverty, and to reach better education and health care. There were several work programs, especially in times of armed conflicts and crises, run by the U.S. governments that attracted hundreds of thousands of less-educated workers from abroad who occupied physically demanding jobs for low wages; most of them came from Mexico and Central America. Since 1960s the United States has experienced an unprecedented wave of both regular and irregular immigrants who fled their countries of origin for the sake of inadequate economic opportunities, rapid population growth, and, in some areas, violence and public insecurity (Papademetriou, et al., 2013). Nowadays, the Hispanic/ Latino immigration wave has symbolized the largest representation of non-nationals coming from one country, or being of one ethnicity in this case, in the U.S. history. According to 2011 statistics published by the Pew Hispanic Center more than 51.9 million of people who trace their origin to more 20 Spanish-speaking countries worldwide live in the United States; among them nearly two-thirds (64.6 %), or 33.5 million of Hispanics come from Mexico (Lopez, et al., 2013). Furthermore, there is an estimated number of 11 million irregular individuals living in the United States, of which approximately 73 percent constitute immigrants from four Latin American countries (11.7 million Mexicans, 1.3 million Salvadorans, 851,000 Guatemalans, and 491,000 Hondurans) (Papademetriou, et al., 2013).

Despite these numbers, it must be taken into consideration that dynamics of immigration to the United States have gone through severe turbulences in the recent years. The economic recession of 2008, strengthened border controls and interior enforcement within the U.S., as well as slower population growth, declining numbers of youth, improved living standards and education levels in Mexico – all these factors have caused that Mexican immigration to the U.S. diminished significantly in recent years. Papademetriou, Meissner and Sohnnen explain that *“the numbers of emigrants from Mexico have, as a result, fallen by more than two-thirds since the mid-2000s. In sharp*

contrast to the period from 1995 to 2006, when the unauthorized population from Mexico grew by around 4.3 million, net illegal migration from Mexico has been at or near zero since 2007, as has net total immigration from Mexico since 2010 – and most observers expect these changes to persist” (Papademetriou, et al., 2013).

The changing dynamics of Mexican immigration to the United States do not, though, relate to the case of Central America’s Northern Triangle of Guatemala, El Salvador and Honduras; quite on the contrary. In the past years these countries have been central for the upsurge of transnational organized crime, drug trafficking, gang violence, as well as rising poverty and inequality, lack of opportunities and weak state institutions. This spiral of insecurity and uncertainty has exacerbated Guatemalans, Salvadorans and Hondurans, now mostly unaccompanied children, to leave their homes and families in order to find better life abroad, especially in the United States. As a consequence, Mexico has transformed itself from a sending country into a transit country – sometimes Mexico is a final destination for the migrants – because Central American migrants must inevitably cross the vast territory of Mexico on their way to reach “El Norte”. This new reality urges Mexico to adopt a comprehensive set of measures that would be compatible not only with national security objectives, but also with international human rights agenda.

3.3.3 Compliance with the United States

Mexico has been struggling between application of hard-line policies and soft-line human rights rhetoric vis-à-vis migrants due to bilateral treaties and obligations to the United States, as well. In the wake of 9/11 attacks the U.S. government has strengthened its capacity to fight global terrorism at all costs, which has also caused militarization of U.S. – Mexico border and expansion of national security bodies and agencies. An issue of migration has become heavily securitized and has appeared on top of national security agenda. Leonardo Curzio mentions that irregular migrants from Mexico and Central America were often associated with a potential threat of terrorism; and despite the fact there was very few evidence that migrants were planning terrorist activities, this distorted image of the migrants has persisted and influenced public opinion and decision-making in the United States (Curzio, 2010). Moreover, Luis Herrera-Lasso and Juan B. Artola show that all crimes associated with irregular

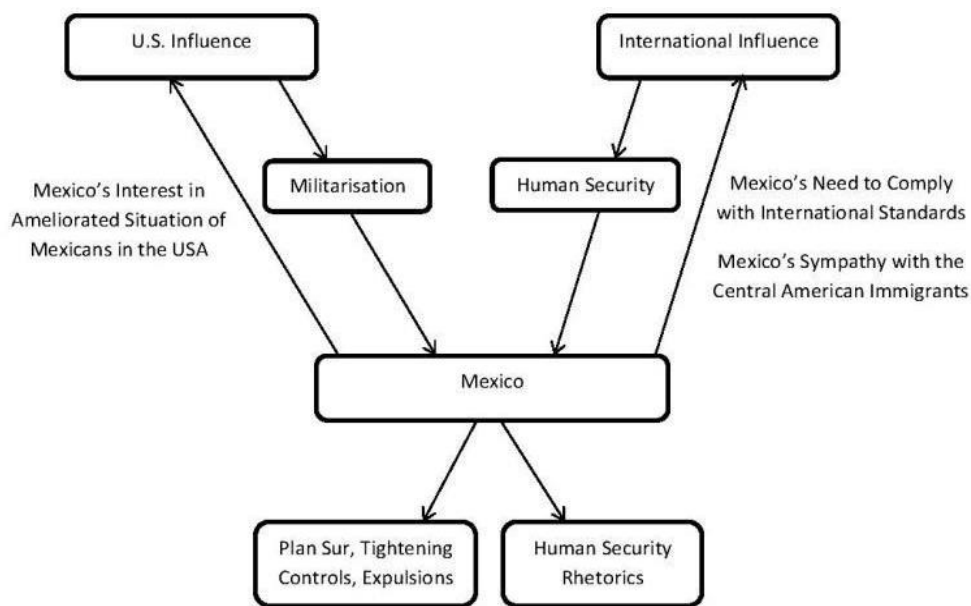
migrants both at the northern and southern border of Mexico are to be prosecuted as a matter of public security, having no evidence of their terrorist character (Herrera-Lasso, et al., 2011).

The governments of Mexico have espoused the U.S. national security model and made heavy investments into new technology, surveillance, screenings, biometric passports, new detention facilities and strengthened border patrol agents mostly at the northern border with the United States, whereas the southern border was still less controlled (Benítez Manaut, 2011). As part of the signed Mérida Initiative in 2007 Mexico and Central America received \$1.6 billion for the three-year period (the budget was later expanded) to combat drug traffickers, organized crime groups and potential terrorists (Council on Foreign Relations, 2009). Militarization of Mexico that coincided with the declared war on drugs has affected formulation of migration-related policies and border controls; since 2010 these hard-line measures were intensified at the southern border of Mexico.

The United States has been interested in Mexican responses to irregular migration and to its policies adopted to decrease, or at least control the number of Central American migrants passing through Mexico heading to the U.S. Currently, Mexico is one of the world's leading countries of transit migration. (González-Murphy, 2013). There are several serious issues, which are naturally connected to irregular migration, such as drug trafficking and organized crime. These issues logically tend to spill over to the U.S. together with the irregular migrant flows. This represents a security risk for the U.S. On top of these negative facts, the problems connected with migrants seem to be even deeper considering recent discussion of under-aged persons and unaccompanied children, who often travel alone and who are extremely vulnerable (Global Detention Project, 2013). All these facts represent the reasons why the U.S. considers Mexican migration politics as key factor for successful resolution of its own immigration issues (Isacson, et al., 2014). The U.S. focus has shifted from U.S. – Mexico border to the southern border of Mexico, which is the last point where the migrant flow can be controlled before passing through the country to the U.S. As the Assistant Secretary of Policy from Department of Homeland Security has said: *“the Guatemalan border with Chiapas is now our southern border”* (Ogren, 2007). The United States aims to find the solution of its own immigration issues through cooperation with Mexico, which enables the U.S. to influence policies on the “outside”

of the U.S. political sphere. Through influencing policies introduced in Mexico, the U.S. is dealing with problem of its own immigration issues without paying the real cost of the solution, because the negative externalities of the policies stay in Mexico.

Nonetheless, there is also the other part of the coin, which explains why Mexico is adopting such hard-line practices towards Central American migrants. The Mexico's interest is to cooperate with the U.S. to keep its bargain power vis-à-vis this stronger and dominant partner. Mexico also desires to use its bargain power to negotiate better conditions for their migrants in the U.S. On the other hand, Mexico makes attempts to guarantee human rights protection of Central American migrants in order to show a model for treatment of Mexican nationals in the U.S. (Heisler, 2007). In this case, Mexico shows a clear example of its ambivalent position towards migrants.



Graph 1: Mexico's motivations to dual policy at the southern border

3.3.4 Southern border of Mexico

Since the beginning of 20th century Mexico permitted entry of workers, mostly without documents, from Guatemalan Altiplano who regularly migrated to the Mexican state of Chiapas in order to occupy seasonal jobs on plantations. There were also numbers of trans-migrant workers who commuted daily from Guatemala to Chiapas and

vice versa. Since both citizens of Chiapas and Guatemalans were of the same Mayan ethnicity, it was difficult for the authorities to distinguish them, thus, they tolerated them in most cases (Canales, 2011).

The image of a good neighbor was demonstrated mostly during 1980s when thousands of Central Americans were escaping their countries of origin, because Guatemala, El Salvador, Honduras and Nicaragua were torn by brutal civil wars and state violent operations to repress poor and indigenous people. These desperate migrants were often successful in seeking shelter in Mexico due to a combination of three factors – a) they “*were responding to Mexico’s often expressed commitment to offer refuge to those in need, b) they hoped to enter an area congenial culturally and linguistically, and c) they had few options, since the United States refused to grant asylum to those fleeing the right-wing military regime it supported*” (Heisler, 2007). After signing peace accords during 1990s the northern part of Guatemala became a launching pad for all migrants from Central America that wanted to reach both Mexico and the United States.

In the aftermath, the southern border of Mexico has transformed into a buffer zone between poor, unstable and violent Central America and Mexico that has tackled its own challenges with drug trafficking, organized crime and violence. Two types of entities operate alongside the border area – local criminals and so-called “*coyotes*” specializing in human smuggling in areas of entry points and beyond, as well as police, border patrol agents and military personnel who are often complicit with organized crime groups or even commit human rights abuses by themselves. Martin Heisler points out that Central American migrants are living in precarious living conditions of extreme poverty, lack of jobs, persecution and discrimination against indigenous people in their home countries, and afterwards they must resort to overcome dangerous border crossings (Heisler, 2007). Notwithstanding, their next dangerous journey over the whole territory of Mexico and then crossing U.S. – Mexico border is awaiting them.

Facing the flows of irregular migrants at the southern border, Mexico has adopted number of hard-line measures to improve its capacities at the border, resulting in overall militarization of the border. Border security has been transferred to national security and a new, 5000-men strong police-military force called Gendarmerie with both military and police training, was deployed (Meyer, et al., 2014), the presence of police forces was increased, introducing canine teams, marine patrols as well as new

equipment including arms and vehicles (Isacson, et al., 2014). Intensification of checkpoints, raids and crackdowns on migrants resulted in higher number of deportations (Washington Office on Latin America, 2014). The United States, final destination of most of the migrants, has cooperated with Mexico on the southern border since the early days of the Bush administration and increasingly so after the 9/11 (Ogren, 2007).

3.3.5 Militarization, Plan Sur and Human Rights Rhetoric

Hard-line approach and militarization is not a completely new issue. The President Vicente Fox presented his Southern Plan (Plan Sur) already in 2001. Actions taken under this plan included large-scale deportations and increased police presence in the area. Reports from this period already point out that military carried out the tasks of monitoring, searches, interrogations and identity checks traditionally performed by the police (Grayson, 2002). Moreover, the operations were not limited only to the territory of Mexico but inspections were extended to Guatemala, Honduras and El Salvador (Velia, 2001). Human rights abuses began to be reported in this period as well.

Hard-line approach was formalized in 2005 when the National Migration Institute (Instituto Nacional de Migración, INM) which is the principal agency responsible for enforcing migration law and protecting migrants was incorporated into the National Security Council. Migration was thus elevated to a national security problem. The Mérida Initiative of 2008 also encompassed the southern border even though it was not originally its main focus. The United States committed itself to providing financial, technological and material assistance to Mexico as well as training.

Further steps were undertaken by the new President Enrique Peña Nieto who in March 2014 announced a plan of the so called Belts of Control. The anti-immigration controls focus not only on the immediate border area but also on important transit points in fixed distance from the border through which the migrants are expected to pass on their way to the United States. Furthermore, sophisticated technology such as scanning and screening equipment is applied in these new control areas. Travelers are interviewed and searched by various government agencies. The increased importance of

the southern border for the time is being culminated in the adoption of the Southern Border Plan (Programa Frontera Sur) in the summer of 2014.

According to the Mexican officials and Enrique Peña Nieto himself, this plan has two main objectives. These are “*to protect migrants who enter Mexico*” and “*to manage the ports of entry in a way that promotes the security and prosperity of the region*” (Secretaría de Gobernación, 2014). Up to date, the plan has not been published in its full version and the available information comes only from speeches of the official representatives of the government and from the website of the president. The plan has five key elements. Firstly, it is supposed to ensure regular and ordered migration. This should be achieved through the issuance of temporary work and visit permits. This new practice goes hand in hand with the interests of the United States that does not necessarily want Mexico to stop migration completely but has always wanted Mexico to keep better track of who is crossing the border (Washington Office on Latin America, 2014). Secondly, border infrastructure is to be improved and modernized which translates into the use of advanced technology such as biometric registry system. Thirdly, migrants should receive more protection and medical attention. Fourthly, the problem of migration should not be considered a national problem but should be addressed by regional cooperation and shared responsibility. Fifthly, the importance of interagency coordination was highlighted. To this end, a new agency under the Ministry of the Interior was created. This new agency called Coordinating Mechanism for Comprehensive Attention to Migration at the Southern Border (Coordinación para la Atención Integral de la Migración en la Frontera Sur) is supposed to serve as a central point to deal with the problem of the southern border as the issue used to be divided among various governmental bodies. Moreover, this agency is also responsible for implementing the newly announced strategy (Wilson, et al., 2014). In total more than 400 million dollars are to be spent on issues proposed by this new plan (Washington Office on Latin America, 2014).

The Southern Border Plan has faced severe criticism since its inception. As its full version has not been published, human rights organizations as well as civil society have criticized it for vagueness and lack of transparency (Knippen, 2014). Besides that it has never been explained how the five key objectives are to be achieved in practice. Furthermore, the principal structural problems such as corruption or development in the border zone have not been addressed at all.

Human security also appears as one of the key characteristics of Mexico's migration policy for the upcoming years both in the National Development Plan 2013-2018 (Plan Nacional de Desarrollo 2013-2018) and in the Special Migration Program 2014-2018 (Programa Especial de Migración 2014-2018). According to both of these two official documents, the phenomenon of migration should be addressed from a human security perspective and thus should be centered on the individual. However, more details besides the declaratory statement, and how this shall be translated into practice, are not provided. The migration program highlights particular areas that traditionally are considered to be a part of human security agenda. Among other goals Mexico wants to establish a legal and political culture in which individual rights could be exercised and focus on the development of communities and well-being of the individual (Secretaría de Gobernación, 2014).

Conclusion

For over two decades Mexico has made many promising steps on its way from the authoritarian past towards transforming itself into a modern liberal democracy. Nonetheless, this positive image is severely hurt both by the remnants of the long-term governing of the Institutional Revolutionary Party and also by the most pressing contemporary challenges – among these are poverty and inequality, rampant crime and rising insecurity, drug-related violence, corruption and fraud, flourishing informal economy, insufficient and inaccessible system of social security, safety of food, limited access to education and health care, water and air pollution etc. These issues hamper the middle-class to become a vocal and respected player in formulation of policies that still remain in the exclusive competence of the state which is often resistant to demands of groups and individuals. In this light, such regime is challenged by a difficult task either to persist in following its democratic vision or to be driven by anti-systemic and non-democratic forces.

Historically, the state has maintained its position to preserve the principles of national security that stressed dominance and control of the state over its territory, relatively centralized and hierarchized structure, differentiation against other forms of organizations, and monopolization of coercive means in the territory (Tilly, 1975). This realist premise supported by numerous philosophers and theorists was dominant in the post-Westphalian system of international relations. Tragic circumstances of two world conflicts in 20th century have influenced future study of international relations and led to reformulation of realistic theories that championed against the idealist notion of non-violent use and peaceful solution of disputes and conflicts in the anarchical international system.

In parallel to realism, an opposite approach of humanitarianism has become relevant since mid-19th century when first international human rights norms were adopted in order to humanize the brutal armed conflicts. In the aftermath of the World War II international community agreed to set up the United Nations that would seek to prevent future conflicts, and to guarantee promotion and protection of human rights for all persons. Subsequently, the Universal Declaration of Human Rights was signed and ratified by most of states and other human rights conventions and norms followed, whereas the world was fragmented into two poles during the Cold War. The golden age

of humanitarianism arose in the 1990s with the issuance of the UNDP Human Development Program 1994 when the concept of security became interpreted more broadly than before. Since this moment many experts have talked about human security that emphasizes not only external aggression to national security interests from other states, but also other threats to individuals such as “...*disease, hunger, unemployment, crime, social conflict, political repression and environmental hazards*” (United Nations Development Program, 1994). Some states have espoused this human security approach and implemented it as part of their foreign policy instruments, while other states still hesitate to fulfill their human rights obligations.

Mexico is one of the countries that have been struggling hard to balance between principles of national security and human rights. Both approaches have represented an integral part of Mexico’s both domestic and foreign policies for many years. National security has been incorporated in the Constitution of Mexico and subsequent legal norms. The main objectives of the national security agenda consisted of actions to promote and preserve sovereignty, territorial integrity, independence, stability and the unity of the Mexican federation, as well as to preserve democracy and freedom against other states and subjects of international law. Mexico preferred the term of public security to national security in 20th century. Public security entailed much broader understanding of what vital interests of the state are and what kind of risks and threats the state should beware of. These priorities of public security include not only external risks and threats to the Mexican state, but also equally important aspects of well-being of the entire society, preserving integrity and rights of individuals, freedom, order, education, health and public peace.

In the wake of 9/11 terrorist attacks these pillars of public security were severely disrupted and overshadowed by mass-scale counter-terrorism operations designed by the United States. Mexico, in collaboration with the U.S., heavily invested new technology, surveillance, screenings, biometric passports, new detention facilities, strengthened border patrol agents and increased competence of national security bodies. Since 2006 these hard-line practices were further exacerbated by the declared military and police operations against the drug trafficking organizations across the Mexican federation. Ever since, governments of Mexico have made achievements in dismantling complex structures of criminal networks, and in capturing or killing their bosses and

representatives. Nevertheless, these achievements were marginalized by large-scale atrocities affecting lives and human dignity. Homicide, assault, robbery, rape, disappearances, torture, extrajudicial killings, kidnappings and many other crimes have become synonymous for daily life of millions of people, many often them killed, injured, internally displaced and otherwise affected. Some regions of Mexico have been extremely exposed to activities of drug trafficking and organized crime networks, by which they approximated themselves to indicators of failed regions. There, local vulnerable groups form their own paramilitary forces that operate in a parallel to state and make efforts to combat the criminals with their own means. Eventually, the Mexican state loses its ability to maintain its dominance and control over its own territory, which is one of the most characteristic features of national security.

Furthermore, by not prosecuting these crimes and even being complicit in human rights violations Mexico increasingly fails to fulfill human rights obligations that derive both from domestic constitutional and legal norms and also from implemented international human rights documents. In fact, Mexico is using a double-speak because on one hand it publicly advocates human rights protection of their nationals and non-nationals, while on the other hand it do not prosecute human rights abuses perpetrated by criminal groups and individuals; many times perpetrated by the state itself. This dichotomy contributes to an overall compromise of Mexico at the international scene. In the end, again this leads to an increased pressure and criticism from the side of international organizations and NGOs. The critique may be well reflected in the recommendations published in the Universal Periodic Review – a document that assesses the situation of human rights protection in the country – which doubled in 2013 compared to previous cycle in 2009.

Comparably to dire human rights situation of Mexican nationals, Mexico also tracks a terrible record vis-à-vis migrants from Central America who travel across the Mexican territory on their way to the United States – some of them opt for staying and settling down in Mexico. These Guatemalan, Salvadoran and Honduran migrants leave their countries of origin due to poverty, insecurity and lack of opportunities and later they undergo a difficult and dangerous pathway through the porous southern border of Mexico over few entry points in the rainforest and along the Suchiate River. They are exposed to multiple fraud groups, smugglers as well as Mexican officials and border

patrol agents who overlap their competences and contribute to exploitation of the migrants. Human rights abuses of the migrants have mounted in the post-9/11 era when counter-terrorism and counter-drug operations were launched, the Southern Plan (Plan Sur) was adopted and the southern border was massively militarized.

These hard-line practices connected with militarization of the border control practices are subject of critique from NGOs and other organizations which are helping migrants or which are monitoring the situation of the migrants in Mexico. The critique is based on the claim that militarization of the southern border and other hard-line practices are not targeting core of the problem and instead lead to the deterioration of the situation of migrants. The first point of the critique addresses the institutions, which are responsible for the border control and which became stronger thanks to the U.S. support. These institutions are uncoordinated and the responsibilities of individual bodies are not clearly defined. This leads to the overlap of the individual competences and to chaotic management of the activities of the border control. The border security forces are also characterized by corruption, violent behavior and abuses of their competences. Due to these negative attributes of Mexican public institutions, the individuals responsible for the abuses of their competences can rely on high level of impunity, which is another serious problem of the system. The United States is criticized for providing new, sophisticated equipment and training to these non-functional institutions, because it gives more means and strengthens these problematic bodies without addressing core issues, which would lead to long-term and sustainable solution of the immigration problem. (Johnson, 2008). Due to strengthening of the Mexican bodies and militarization policies, the security of migrants remains unprotected and stronger control mechanisms (mainly “Belts of Control”) force irregular migrants to use even more dangerous routes than before (routes through deep forests or cargo trains). It makes them more vulnerable to violence of gangs and abusive security forces, which are now stronger than before (Isacson, et al., 2014). In accordance with Hannah Arendt’s premise that human rights must exist within one entity that assures guarantees of these rights, I argue that Central American migrants, in most cases, do not have right to have rights and Mexico is, thus, the principal responsible actor for this bad condition.

In the introduction I raised two research questions of *what is driving Mexico to adopt dual approach towards Central American migrants along Mexico’s southern*

border, and why is Mexico balancing between realistic principles of national security and human rights obligations, which has espoused by signing and ratifying international conventions? Based on my research I claim that Mexico's paradoxical approach to migration and southern border is caused by its desire to keep the bargaining power with the United States due to a powerful Mexican diaspora in the U.S. and simultaneously to comply with international human rights norms and thus to avoid criticism by international organizations and NGOs. Nonetheless, Mexico strives to combine the approaches of militarization and human security as crucial factors to solve structural problems of migration. Moreover, corruption and often abusive and uncoordinated institutions are empowered and not put under control. And human security discourse does not translate into more respect for migrants and their human rights. As evidenced in the thesis, Mexico does not succeed in preserving sovereignty, territorial integrity and unity of the federation, thus it fails to fulfill fundamental principles of national security. And despite some positive reforms in the past years Mexico also fails to comply with international human rights norms and makes little progress in the matter of human rights agenda. In the end, this dual failure drives Mexico to compromise itself both at home and abroad.

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