Regional Responses to Transnational Migration in North and Central America[1]

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Abstract: *This paper analyses the manifestations of and contestations to the migration management paradigm in North and Central America. I pay special attention to the understudied Central American Isthmus countries. I argue that migration management is not only an important response to increasing transnational migration but it also shapes the institutional arrangements of a new regional mobility regime. This regime is characterised by multilateralisation and tends to establish new forms of social control on mobile populations. Informed by studies of neoliberal governmentality and international government, recent research has criticised the concept of migration management as marked by a depoliticising language that tends to 'teach' technocratic western standards of migration governance to the countries and former 'imperial subjects' of the global South. Somewhat neglected in this recent wave of critical research, however, has been the interest expressed by the countries of the global South in adopting this migration management paradigm. I argue that Costa Rica is an appropriate case to demonstrate such interests. A second omission in recent research is a failure to reveal contestations to migration management discourses and practices. I claim that it is predominantly the strategies of 'escape' of migrants and local border societies that challenge migration management and force its actors to adopt flexible strategies of control. I draw on the multi-level and multi-actor framework of ethnographic regime analysis in order to analyse both the institutional arrangements of migration management and the actors, practices and strategies of what I call the 'power of migration'. In doing so I focus empirically on the Regional Conference on Migration in North and Central America (RCM), the new migration law in Costa Rica as well as the dynamics at the Costa Rican northern border region. I show that migration management can be analysed as part of broader social and state transformation processes of the Central American countries and is therefore a contested field.*

Introduction

Over the past two decades cross-border migration has become an increasingly important field of political intervention. This not only counts for the metropolitan states like the United States and the countries of the European Union but also for the countries of the global South. Furthermore, policy responses to transnational migration are becoming more and more regionalised and multilateral in character thus converting intergovernmental agencies such as the International Organization for Migration (IOM) into important new actors. Within this context, the idea of international migration management constitutes an increasingly dominant framework of discourses and practices claiming to 'optimise' the impact of international migration by creating a new global regime of rules and norms for the governance of cross-border mobility. These claims are linked to a paradigm shift in the notion of migration and border control: from stopping or coercing people and closing borders, to 'ordering' migration movements, steering people, and governing the permeability of borders (see also Geiger and Pécoud 2010).

One of the first regional and multilateral migration management initiatives that emerged was the Regional Conference on Migration in North and Central America (RCM) founded in 1996 in Mexico. Coordinated by the IOM, all governments from Canada to Panama have since joined the RCM. The Conference aims to deal comprehensively with increasing cross-border migration throughout the North and Central American region, including movements heading from or through the Central American Isthmus to the north as well as those circulating within the Isthmus sub-region (Klekowski von Koppenfels 2001, Hansen 2010).[2]

Compared to Europe, however, very little independent academic attention has been focused on migration as a field of transnational political intervention.[3] Most research on current migration policies and border control in North and Central America maintains a "methodological nationalism" (Schiller and Wimmer 2003), tending to

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[2] The term North America includes Canada, the U.S., and Mexico; and Central America refers to the Hispanic Central American Isthmus countries: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

[3] With regard to critical research on the regionalisation and multilaterialisation of migration and border policies in Europe see e.g. Düvell (2003), Geiger and Pécoud (2010), Hess and Kasparek (2010), Papadopoulos et al. (2008), Transit Migration Forschungsgruppe (2007).

limit analysis to national or bi-national actors and policies within the economic-political space of the North American Free Trade Agreement (NAFTA).[4]

Central America, in contrast, can be considered a blind spot regarding research on regionalisation and multilateralisation of migration policies. Indeed, authors like Juan Manuel Sandoval (2005) have had to overcome nationally defined conceptions of mobility control in order to portray the U.S. as attempting to integrate Mexico into its migration policy as a 'borderland' (*país frontera*). In doing so, according to Sandoval, the U.S. seek to externalise immigration and border control to the countries south of Rio Bravo (see also Castillo 2003). However, the concept of externalisation of border control rarely encompasses Central American countries within methodological reflections or empirical research on U.S. migration policy.

Furthermore, North American research on migration policies and border control stresses the image of 'Fortress America', constructing the U.S. as a kind of neo-imperial regional ruler that resists immigration, especially its irregular forms, with harsh anti-immigration laws, border militarisation and coercive measures. According to Andrijasevic and Walters (2010: 984) the U.S. uses a "combination of economic, political, financial, and even military inducement to win the active participation of countries like […] Mexico in their migration control strategies".

I argue that in order to understand the modes and logics of international migration management and its regional as well as national and local manifestations, intergovernmental organisations and the Central American countries need to be more systematically included into a real transnational framework of analysis. With regard to regional fora such as the RCM, I claim that the Central American countries are not only objects of coercion or inducement, but also actors who stress national interests. Furthermore, since border control constitutes the major concern of migration management initiatives, the extremely permeable Central American borders provide an important area for empirical research (see Kron 2010).

Within this context special attention should be paid to Costa Rica, which holds an ambiguous position in the region: in contrast to the other Central American countries

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[4] See e.g. Andreas and Biersteker (2003), Bakker (2010), Cunningham (2001), Dunn (1996), Sandoval (2005).

Costa Rica exhibits a solid economy and a strong welfare state tradition. It is therefore the most powerful national actor in Central America. However, the country currently suffers from rising social conflicts and inequalities caused by the cutback of domestic public welfare policies, as well as by the economic and political crisis in the impoverished neighboring country of Nicaragua. This has resulted in an increasing number of Nicaraguan immigrants in Costa Rica. In addition, Costa Rica exhibits quite significant movements of emigration and transit migration to North America (Caamaño 2010, Jiménez 2009, Morales 2007, Rocha 2004, and Sandoval 2007).

Another claim of this paper concerns the place of control in migration management. While knowledge production on migration management has long been part of the research carried out on behalf of intergovernmental organisations, only recently has a more critical approach been pursued. This research route is informed by studies of neoliberal governmentality (Foucault 2007 and 2008) and international government (Dean 2007 and Duffield 2001).[5]

Scholars exploring this avenue draw on the conceptualisation of power, control and government provided by Michel Foucault's definition of neoliberal governmentality. They do so in order to cover analytically the fact that migration management is less about stopping migration and closing borders and more about governing spaces, movements and bodies. According to Foucault, the term governmentality denotes an idea of government that is not limited to state politics alone, but includes a wide range of control techniques. It is applied to a wide variety of objects, from one's control of the self to the biopolitical control of populations. Furthermore, the concept of governmentality defines power not only in terms of the hierarchical, top-down power of the state, but also includes forms of social control through disciplinary institutions and forms of knowledge. The term neoliberal governmentality in turn names a type of governmentality that characterises advanced liberal democracies. Here, the notion of governmentality refers to societies where power is de-centered, with citizens playing an active role in their own self-government (Burchell et al. 1991). Migration management thus emerges as a kind of social control for mobile populations (see also Geiger and Pécoud 2010: 17).

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[5] See e.g. Andrijasevic and Walters (2010), Bigo and Guild (2005), Boucher (2008), Geiger and Pécoud (2010), Taylor (2005), Walters and Haahr (2005).

Furthermore, critical scholars question migration management as marked by a technical and depoliticising language, thus hiding the social and political conflicts that characterise the migration field as well as the power asymmetries between and within countries that participate in migration management programmes. Andrijasevic and Walters, for instance, point out that migration management is dominated by intergovernmental organisations like the IOM that aim to 'teach' technocratic Western standards to the countries and subjects of the global South . According to these authors the main goal of migration management is the alignment of migration policies in regions such as West Africa or Latin America "with the migration control norms and aspirations of the global North. In shaping the migration control strategies of these 'third countries' and regions, IOM concerns itself with the difficult task of sorting mobile populations into streams of useful and useless" (Andrijasevic and Walters 2010: 982). However Andrijasevic and Walters do not analyse this encounter in the "global borderlands" (Duffield 2001) as neo imperialism or "classical imperialism" (Düvell 2003), but rather as a sort of post imperial international government that "takes the form of a regulated choice not an imposition" while it is "patterned as a situation in which IOM methods and norms are not imposed but 'learnt'" by the states of the global South. Hence, the latter appear as 'active' but 'learning' partners (Andrijasevic and Walters 2010: 984).

I agree that for the case of North and Central America studies on governmentality and international government provide an appropriate framework for a multi-level and multi-actor analysis of migration management as a neoliberal and post-imperial mode of mobility control. Nevertheless, contestations to the supposed predominance of migration management discourses and practices have been somewhat neglected in this recent wave of critical research. I argue that the dynamics of local border societies and mobile populations' own strategies of 'escape' from control form the main challenge to the power technologies of migration and border management. However, since governmentality studies limit their analysis to structures and institutions, they cannot effectively capture these escape dynamics and strategies. Thus, their limitations can be found in the fact that "subjectivities are not formed by hegemonic invocation alone", but "also emerge within the practices of escape from hegemonialised modes of subjectification" (Hess and Tsianos 2010: 248f).

Based on these conceptual considerations, I claim that the migration field in North and Central America is constituted and constantly renegotiated by the dynamics between migration movements and institutionalised attempts to fix, steer, and govern them. Drawing on a dynamic regime concept (Sciortino 2004), I conceptualise this field of conflict and renegotiation as 'migration regime'. Borders are a particular important and conflictual site of migration regimes. Thus, border regimes form proper regimes within migration regimes or what in a broader sense can be called mobility regimes. In order to cover these negotiating practices, a group of European scholars conceived of an "ethnographic analysis of border regimes" (Hess et al. 2009). Ethnographic regime analysis focuses on the institutional arrangements of a given regime as well as on the actors and practices that contest them. Drawing from the literature on Italian and French post-operaism, migrants' "lived forms of dissidence and the practices of rupture" with "neoliberal governmental rationalities, power technologies, and modes of subjectification" (Hess and Tsianos 2010: 248) are conceptualised as autonomy of migration. Thus, this literature defines migration as a political and social movement "that […] follows its own rules, and collectively organises its own praxis" (Moulier-Boutang 2007, cited in Hess et al 2009: 3). According to Yann Moulier-Boutang (2004: 1) autonomy of migration "stands for a priority of movement of the people *vis-à-vis* movements of capital, regulation of the States, and static or structural points of view".[6]

Even though I agree with attempts to reconceptualise migration as an important societal power and not as a societal exception, the concept of autonomy of migration also implies a normative claim I do not share: that is the equation of migration with resistance to capitalism and state regulation, which naturalises migrants' subjectivities as dissident ones. I argue, in contrast, that migrants and mobile populations are not *a priori* political subjects, but rather their practices of escape in order to realise the migration project or to maintain cross-border mobility constitute a societal power that produces ungoverned places, movements and bodies within a migration regime, thus challenging the regime's institutional arrangements to adopt flexible strategies of control.

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[6] Regarding ethnographic analysis of border regimes and autonomy of migration, see also Bojadjijev and Karakayali 2010, Mezzadra (2006), and Papadopoulos et al. (2008).

Replacing 'autonomy of migration' with 'power of migration' I use the methodological framework of ethnographic regime analysis to explore the dynamics between migration management activities and the power of migration in North and Central America, with particular attention to the understudied Central American countries. I ask the following questions: How does the global migration management paradigm materialise on the regional, national and local levels? Which proper interests do the Central American countries track in adopting the migration management paradigm? And how is migration management being challenged?

After a brief overview of the main characteristics of migration management, I explore how the regional migration management initiative – the RCM – shapes new discourses, narratives, and practices on migration and border control in North and Central America. Taking Costa Rica as case study I then show how both North American and national Costa Rican interests in migration management merge together. I argue that migration and border management serve to control migration from, through and into Costa Rica. Moreover, they form part of new modes of domestic government that tend to 'manage' increasing social inequalities and conflicts through security-focused policies. The concluding section of the paper analyses how the mobile populations and their cross-border activities challenge the migration and border management paradigm at the Costa Rican-Nicaraguan frontier. To do so, I draw on findings of ethnographic field work carried out in Costa Rica in 2010.

Migration management: A success story?

Following requests from the United Nations Commission on Global Governance, the notion of migration management was first elaborated in 1993 by Bimal Ghosh. Overall, the idea of migration management was that in the post-Cold War era, migration had the potential to generate real crisis. Thus, a holistic global regime of rules and norms was needed to successfully address this phenomenon and turn international migration into a more orderly, manageable and predictable process. This implied both a regulated openness toward beneficial flows and the continuation of restrictions regarding unwanted migration. Consequently, Ghosh proposed a three-pillar model meant first to harmonise the politics and interests of all states

concerned with migration, and second to create a new international framework agreement on global mobility. Third, it should strengthen the role of non-government actors that were to become more influential in migration policy-making (Geiger and Pécoud 2010: 2f, Ghosh 2000).

Since then a wide range of different non-state actors such as UN-organisations, global and regional discussion fora, the World Bank and NGOs have achieved increasing influence on migration management. However, the most important actors aside from governments are the IOM and the Regional Consultative Processes on Migration. During the 1990s, the IOM became the world's most important intergovernmental organisation regarding both the production of discourses on what international migration is all about and the development of 'best practices' on how it should be 'managed' by policy makers. The main categories of thought and action can be summarised as 'migration and security', 'migration and development', 'migration and labour markets', 'readmission and return programmes', and 'border management' as a cross-cutting concern.

Furthermore, the IOM and its migration management strategy, which is based on Ghosh's three-pillar model, form part of a new type of international government characterised by the externalisation of policy making to private agencies. In contrast to the well defined and democratically legitimised mandate of the United Nations High Commissioner for Refugees (UNHCR), the IOM is a membership organisation situated outside the United Nations system without a clear mandate. Nevertheless, the IOM is playing an increasingly influential role in shaping governments' decisions, for example by producing knowledge, providing scientific or technical expertises to states, and developing programmes on behalf of governments or directly implementing policies. The IOM, therefore, can better be described as a transnational private company that provides migration services to governments. This character is also evident in the budgeting. The IOM receives little regular funding and hence depends upon extra-budgetary projects that are, in most cases, funded by metropolitan migrant-receiving states, particularly the U.S. The main characteristic of the migration management paradigm is its multi-level and multi-actor nature: intergovernmental actors like the IOM cannot implement their programmes without the cooperation of domestic actors. Thus, since the mid-1990s the most important

activity of the IOM has consisted of the creation and coordination of at least 15 so-called Regional Consultative Processes on Migration (RCPs) all over the world (see Geiger and Pécoud 2010: 3ff, Georgi 2010). RCPs are informal fora of governmental and non-governmental actors. Their objective is to discuss migration related topics on the regional and multilateral levels and to create new alliances between sending, receiving and transit countries. Even though RCP agreements are non-binding, the IOM sees them as the most important regional actors in the area of "managing intra-regional migration" and as a key instrument on the way to the establishment of a new international migration regime (Klekowski von Koppenfels 2001: 51, see also Hansen 2010, Thouez and Channac 2005).[7]

According to Andrijasevic and Walters, RCPs constitute crucial arenas where the power asymmetries between the respective RCP member states are reconciled, while reframing the unequal relations between metropolitan states and migrant-sending and/or transit countries of the global South as dialogues, partnerships and cooperation. Within this context the techniques corresponding to the migration management paradigm such as 'capacity-building', 'information campaigns' and 'action plans' contribute to the construction of the migrants-sending or transit countries as 'deficient' but 'learning partners'. RCPs hence are networks where the IOM "can align its activities with larger projects of regional governmentality, development and aid" (Andrijasevic and Walters 2010: 990).

Governing the global South through managing irregular migration and borders

This is especially the case with regard to the management of irregular migration and borders. Even though the notion of migration management is supposed to cover all types of human mobility, these two topics have become the central focus of the IOM's and RCPs' activities. Associated herewith are certain discourses, narratives and practices that target above all migrant-sending and/or transit countries.

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[7] Among the most important RCPs are the Regional Conference on Migration (RCM) and the South American Conference on Migration (SACM) in the Americas; the Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) and the Manila Process in Asia; the Budapest Process and the Cross Border Cooperation Process (Söderköping Process or CBCP) in Europe; and the Mediterranean Transit Migration Dialogue (MTM), the Migration Dialogue for West Africa (MIDWA) as well as the Migration Dialogue for Southern Africa (MIDSA) covering the European-African transregional space (see Hansen 2010).

Irregular migration can be considered a complex phenomenon. First of all its definition depends on immigration and border policies that vary from state to state and over time. Secondly, a wide range of different actors is involved in the organisation of irregular migration: migrants themselves, but also transporters, traders, landlords, employers and others. There is also a wide range of policy options to deal with irregular migration, for instance the regularisation of irregular migrants in migrant-receiving countries. However, these options are hardly addressed by the IOM and RCPs. Rather, the IOM's main activities *vis-à-vis* irregular migration were initially concentrated on knowledge production and analysis of what since then has become known as 'human smuggling and trafficking'. For instance, so-called country profiles of sending and transit regions regarding the routes and networks of irregular migration were elaborated, and existing legal options to punish smuggling and trafficking were analysed.

As of the mid 1990s onwards and mainly based on its own expertise, the IOM has been emphasizing the global need to privilege the fight against human smuggling and trafficking and the development of new legislative models that would enable the penalisation of these phenomena and the protection of their victims. In 2000 the United Nations, for instance, adopted two protocols on smuggling and trafficking which complement the Convention on Transnational Crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air. These documents define and differentiate human smuggling and trafficking as follows:

"'Smuggling of migrants' shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, from the illegal entry of a person into a State Party of which the person is not a national or a permanent resident" (UN Convention Transnational Crime, Smuggling, Annex III, 2000: art. 3, p. 2).

"'Trafficking in persons' shall mean the recruitment, transportation, transfer, harboring 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs" (UN Convention Transnational Crime, Trafficking, Annex II, 2000: art. 3, p. 2).

These legal models are communicated to the IOMs' partner states in the global South through the RCPs and by using techniques such as capacity-building activities, action plans, information campaigns and legal consulting. This helped to create a common language marked by a strong link between irregular migration and organised crime. The special importance of RCPs in consensus building and policy development regarding the migration-security nexus is stated in several IOM reports. A record published in 2001, for instance, concludes that "in face of the increase in smuggling and trafficking – regional consultative processes can […] assist in the management of extra-regional migration" (Klekowski von Koppenfels 2001: 51), while a recent evaluation of RCPs states that "criminalization of trafficking is now common practice" and that "[m]ultiple RCPs are dealing with people smuggling and human trafficking and have induced participating states to adopt policies on this matter" (Hansen 2010: 28f).

Thus, managing irregular migration has now become a by-word for combating human smuggling and trafficking. Geiger and Pécoud even suppose that "many measures to stop unauthorised migration" such as stricter visa requirements and border controls are "presented as 'necessary' to fight human smuggling and trafficking" (Geiger and Pécoud 2010: 13). Sabine Hess and Vassilis Tsianos refer to this reformulation of irregular migration in terms of organised crime as "Anti-Trafficking discourse" (Hess and Tsianos 2007: 29). But this discourse is not only a criminalising discourse that constructs the human smuggler or trafficker as an extra-legal actor of violence who is a threat to public security. At the same time it is a victimising discourse that presents irregular migrants solely as (potential) smuggling or trafficking victims whose human rights need to be protected by counter-trafficking efforts. However, the Anti-Trafficking discourse not only reduces the most diverse actors involved in the organisation of irregular migration to a pair of discursive figures: the delinquent and victim (ibid.). In addition, it blurs the important differences between human smuggling (service provision in the area of facilitating irregular

migration) and trafficking (trading in human beings aimed at their sexual or labour exploitation) defined by the Palermo Protocols. It is also worth mentioning that this "victimhood approach" to irregular migration has replaced any kind of binding commitments to safeguard migrants' rights. Migration management initiatives such as RCPs indeed have not produced a single binding commitment from member states in the field of human or migrants' rights (see Geiger and Pécoud 2010: 13).[8]

Closely related to the management of irregular migration is the idea of border management. As Andrijasevic and Walters point out, the migration management paradigm conceptualises borders as "problem" zones of government and control (Andrijasevic and Walters 2010: 986). Thus, according to the IOM, well-managed borders would assure the efficiency of all migration management programmes: "The border management system is the key control mechanism for overall migration management. [It] must both 'facilitate bona fide travellers, providing a welcoming and efficient gateway to the state' and also 'provide a barrier and disincentive to entry for those seeking to circumvent migration laws' […]".[9]

Migration management in North and Central America: the Puebla Process

The emergence of migration management in North and Central America can be seen as part of broader transformation processes in the Isthmus region. These processes started with the cessation of armed conflicts in Nicaragua (1990), El Salvador (1992), and Guatemala (1996). One important axis is the so-called economic integration of the Free Trade Agreements between the Central American states and the U.S. Robinson refers to these processes as the peripheral integration of the Isthmus countries into the global economy (2003: 64f). Within this context the migration of labour from the Isthmus countries to the U.S. has been significantly increased, though migration '*al Norte*' had already started to increase in the late 1970s when Nicaragua, El Salvador and Guatemala were characterised by internal armed

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[8] I neither aim to negate the existence of national and transnational criminal networks involved in human trafficking nor the human rights abuse associated with human smuggling and even more with human trafficking. But due to poor qualitative and quantitative data I do question whether human trafficking networks have achieved an importance that might justify the intensity of global, regional and national efforts to combat these forms of organised crime.

[9] http://www.iom.int/jahia/Jahia/about-migration/managing-migration/border-management-systems/cache/offonce/ (10/01/11).

conflicts and civil wars. Thus, the number of Central American migrants in the U.S., especially from El Salvador, Guatemala, Honduras and Nicaragua, tripled between 1980 and 1990, doubled again up to the year 2000 and continued to increase rapidly in the 2000s.[10]

Since the early 1990s, the U.S. has reacted to this phenomenon by adopting stricter immigration requirements, laws and border control mechanisms (Dunn 1996, Sandoval 2005). These nationally defined policy measures did not lead, however, to the decrease of immigration but to the illegalisation of the major part of immigration from the Isthmus: in 2003 around 2.2 million persons from Central America were registered in the U.S. (GCIM 2005: 5). According to estimates, however, between four and five million people from the Isthmus region reside in the U.S., the majority having no legal residence status.[11]

Mexico is indeed the most important transit country for irregular migration movements heading north. Since the 1990s, however, Central America has become an increasingly attractive transit space, not only for Central Americans themselves but also for migrants from South America, Africa, Asia and Eastern Europe. The reasons for this are the stricter immigration and border control policies of the North American countries and also, up to the late 1990s, the lack of coherent immigration policies and visa rules in the Central American nations. Furthermore, the land borders of the Isthmus states were barely controlled and thus more or less open to be crossed.

In addition, Costa Rica has become an important destination for the so-called South-South migration, especially from Nicaragua and more recently also from Colombia (Rocha 2004 and 2006). In 1984, at the height of Nicaragua's civil war, less than 90,000 foreigners were living in Costa Rica and less than 46,000 of them were Nicaraguan citizens. In 2000, the Nicaraguan population in Costa Rica had grown nearly five-fold to more than 226,000. Nicaraguan citizens now comprise 76 % of the immigrant population in Costa Rica, not including the thousands of undocumented

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[10] At the same time the registered migrants' monetary remittances significantly increased. In 2007 for instance they amounted up to between 10% (Guatemala) and more than 25 % (Honduras) of gross domestic product (GDP) (see World Bank 2008: 116, 121).

[11] See e.g. U.S. Census (2002), http://factfinder.census.gov/servlet (11/01/11).

Nicaraguans who are both permanent and temporary residents in the country (Lee 2010: 11f).[12]

It was against this backdrop of increasing cross-border migration and the widely unsuccessful national attempts of the North American countries to restrict immigration that, in 1996, the Regional Conference on Migration (RCM), better known as the Puebla Process, was established in Mexico in order to address cross-border migration as a regional issue. It was one of the first RCPs to be created and it is considered, according to several IOM publications, as one of the most consolidated and 'successful' with regard to its outcomes.[13]

The RCM is mainly funded by the U.S. and Canada. The other member states with voting rights are Mexico, Belize, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama and the Dominican Republic. Argentina, Ecuador, Colombia, Jamaica and Peru participate as observers. The regional OIM office for Mexico and Central America, located in San José, Costa Rica, administers the funding and coordinates activities. A wide range of further intergovernmental organisations also cooperates with the RCM, including for instance the UNHCR, the United Nations Development Fund (UNDP), the Economic Commission for Latin America (ECLA), the United Nations Children's Fund (UNICEF) and the United Nations Population Fund (UNFPA). Regional organisations such as the Central American Commission of Migration Directors (OCAM) and the Central American Integration System (SICA) are represented as observers together with a network of regional and national NGOs. A special institution called the Regional Network against Smuggling and Trafficking completes this organisational diagram. The RCM holds annual meetings that are only open for the deputy home and foreign secretaries of the member states. The representatives of the observer states and cooperating organisations have access to special events, workshops and seminars. The presidency (*presidency Pro-Témpore*) rotates between the member states (http://www.rcmvs.org; 15/01/11).

The Puebla Process articulated a then widely accepted conceptualisation of cross-border migration as a proper and increasingly important policy field that had to be

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[12] See also Castro Valverde (2002: 5), GCIM (2005: 17).

[13] See Hansen (2010), Klekowski von Koppenfels (2001), Thouez and Channac (2005).

dealt with on the regional and multilateral levels. The first declaration published after the initial meeting in 1996, defined migration both as a phenomenon that potentially benefited the countries of origin and destination and at the same as a potential security and development problem that could negatively affect North and Central America alike. Thus, according to the declaration, migration had to be "ordered" through regionally coordinated interventions (*Comunicado Conjunto, I Conferencia Regional sobre Migración*, Puebla, 1996, p. 1 and 3). The declaration also contains twenty basic agreements. The first stresses the need to promote the development and adoption of an "integral, objective and long-term focus on the migration phenomenon which covers both its reasons and manifestations" (ibid. p. 1). However, even more explicit than in the case of other RCPs, "the Puebla Process was initiated with the firm intention of reducing irregular migration in the North and Central American region" (Klekowski von Koppenfels 2001: 34). Thus, the majority of subsequent agreements identified quite concrete measures to reduce irregular migration and to combat human trafficking and smuggling.[14]

The Director of the regional IOM office in San José attended the first Puebla Process meeting in Mexico and recounts how and why irregular migration and counter-trafficking efforts became the most important topics. According to the Director the representatives of the U.S. arrived at the Puebla meeting with the clear intention of reducing irregular immigration by externalizing border control policies to Mexico and the Isthmus countries. The Mexican delegation, in contrast, was above all concerned with the poor treatment of their co-nationals by U.S. authorities, while the Central American delegations were disappointed with how Mexico treated transit migrants from the Isthmus countries. Within this conflict-ridden and polarised situation, human

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[14] These include information and data exchange between the member states (agreement 14), legal reforms that facilitate the penalisation of migrants' smuggling (15), public information campaigns on human smuggling (16), extended regional cooperation in terms of technical assistance and capacity-building in order to perfect the national systems of investigation, management of proofs and criminal proceeding of migrants' smugglers (17), promotion of information exchange and regional cooperation aiming at technical assistance and capacity-building of human resources in order to control flows of undocumented extra regional migrants (20), and the development of measures in order to combat the falsification of travel documents. Only two and hardly concretised agreements refer to the facilitation of documented migration (13) and labor migration (10). Further two agreements address the need of social and economic development in sending countries (3 and 4). There can also be found three paragraphs naming basic rights of irregular migrants (5, 6 and 7) as well as one agreement concerning the need to harmonise migration laws and policies throughout the region (12) (Comunicado Conjunto, I Conferencia Regional sobre Migración, Puebla, 1996, p. 1 – 3).

smuggling and trafficking served, as the following quotation shows, as an easy topic with which to start the meeting:

"[The delegations] agreed that something had to be done, not so much at the U.S.-Mexican border but rather in the south … encouraging the capacity of the region's governments to face a problem that affects all countries in the region and all of us […]. Everybody could agree with respect to this phenomenon – trafficking – nobody is against the idea that this is something bad […]. Not a single state would say: 'I am helping trafficking'; […] 'I am involved in smuggling' […]. And they [(irregular migrants)] are all from other continents, so they [(the delegations)] could agree that something had to be done in order to investigate an arrival which is not normal […], and that Central America is being instrumentalised to achieve another thing [: reaching the U.S.]. The Central Americans did not want this, the Mexicans did not want this, the U.S. and Canada did not want this. Hence, […] something …. easy [was discussed], smuggling and extra-continentals, somebody from outside … And after discussing these easy topics they came to other more difficult ones" (interview with the Director of the regional IOM office, San José, 15/06/10).

Hence, the Anti-Trafficking discourse can be seen as the Puebla Process's founding narrative while presenting irregular migration as a common and extra-regional security threat to all North and Central America countries. Thus, it created consensus and legitimised further multilateral cooperation by embracing the Isthmus countries as supposed equal partners. The Anti-Trafficking discourse, therefore, could both reconcile the different interests and power asymmetries between the member states and justify prospective interventions in Central America.

The first step toward the consolidation of the Puebla Process was the development of an action plan, which was adopted at the second annual meeting in 1997 in Panama. According to Andrijasevic and Walters, the action plan is a "key technique" of migration management "through which governments become constructed as agents bearing ethical responsibility and calculability for reforming particular policy domains". Furthermore it serves as an instrument of international government that "configures a new kind of relationship between governments, [and] the international community" (2010: 991).

In the Puebla Process's action plan scheme the term migration management (in Spanish: *gestión migratoria*) appeared for the first time as a comprehensive framework for migration related activities. The IOM played and continues to play a crucial role with regard to the action plan. It produces knowledge and analysis, coordinates activities and organises workshops for government representatives (see Historical Plan of Action, Regional Conference on Migration, 1997).

An IOM report on combating irregular migration and smuggling of migrants, for instance, served as a sort of expert report, providing guidance for the action plan. This document, in contrast to the Puebla Process's founding narrative, not only named extra regional irregular migration, but also irregular migration from the Isthmus countries themselves as a common threat. Furthermore, Central America was now presented as a largely ungoverned space of unauthorised and uncontrolled movements. Thus, the 'need' for intervention in this sub-region was reaffirmed:

"Central America […] serves increasingly as a corridor for the irregular movement of persons. Significant numbers of nationals of the Central American countries contribute to the streams of irregular migrants to the north. Furthermore the Central American […] territories are increasingly used as a transit zone for migrants from outside the region. This increase of irregular movements and smuggling of migrants has caused an increasing […] understanding that these practices could constitute a threat to national security. The governments increasingly perceive the need for solutions." (IOM 1997: 2)

As a result counter trafficking efforts, as well as other measures to reduce irregular migration, occupy the most significant portion of the action plan: seven of twelve objectives focus on the reduction of irregular migration and the eradication of human smuggling and trafficking. These include the encouragement of regional cooperation, data exchange and public information campaigns, the securitisation and 'ordering' of borders, the development of return programmes for irregular migrants, and technical cooperation in order to modernise information, control and security systems. Further, important objectives constitute regional harmonisation of migration legislation, technical cooperation in capacity-building for civil servants involved in migration related issues, and promotion of cooperation with intergovernmental organisations

and NGOs. Topics such as migration and development and migrants rights, while incorporated within the 1996 declaration, did not find their way into the action plan scheme (see Historical Plan of Action, Regional Conference on Migration, 1997).[15]

In 2002, the IOM published another report on the Isthmus countries entitled, "The State of Migration Management in Central America". This document presented migration management as a constitutive part of state transformation and development in the Isthmus sub-region, thus reaffirming the role of the Central American countries as main targets and 'learning' partners of migration management activities (IOM 2002: 6). In addition the selection of "essential aspects" clearly identified the Central American borders, the border regions' populations and their border related activities as the main problem for efficient migration and border management in the region:

"Exclusion to which Central American migrants are subject [...] encourages the growth of clandestine migrations and trafficking of people [...] Geographical conditions that facilitate crossing the borders through places not authorized for the international movement of passengers favour the entry and transit of undocumented migrants […] assisted by organizations involved in trafficking, by local inhabitants, and at times without any help at all. Other contributing factors are the limitations imposed by Migration Agencies, and the lack of personnel, communication and transportation means [...] to effectively perform their duties […]. While there are organizations devoted to the trafficking of people, some inhabitants of the border-town play a significant role in keeping this illegal activity going. Because they know the area so well, these persons help undocumented migrants to cross the border by going through so-called 'blind spots'" (IOM 2002: 10 and 17).

Even though social exclusion is named as a factor of irregular migration, the report ends up criminalising irregular border-crossings as well as border town dwellers, and proposing solely technical or punitive solutions. These include, for instance, the

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[15] The action plan scheme was reworked in 2009. The new version includes, beside migration management still focussing on irregular migration and borders, two new categories of intervention: human rights and development. The human rights area, however, emphasises the supposed victims of smuggling and trafficking, defining women and children as particularly vulnerable groups (Plan of Action, Regional Conference on Migration, 2009).

reinforcement of inland inspection posts away from the main border posts (*pre-frontier* control strategies), or the inclusion of anti-smuggling and anti-trafficking paragraphs into national laws in countries still lacking legislations on the topic (ibid. 17 and 22). The recommendations, however, not only aim to control and punish irregular migration and their facilitating networks, but also to optimise the "speed" of border-crossing procedures for tourists or truckers (ibid. 23). Thus, the IOM constitutes the Central American borders as zones "of experimentation and innovation in technologies of government" (Andrijasevic and Walters 2010: 986).

To date, all IOM reports on RCPs believe that the Puebla Process has achieved a great deal with regard to the prevention of irregular migration through regional cooperation, increased border controls and tighter regulations. The current report, for instance, states that the Puebla Process has been most successful regarding migration policy achievements in the area of human smuggling and trafficking (Hansen 2010: 27f). Indeed, between its creation in 1996 and 2007, all member states have adopted penal and/or migration law reforms in order to include human smuggling and trafficking as criminal activities and to protect their victims.

With regard to the North American countries, Canada reformed its migration legislation in 2002 to include the legal concept of human smuggling, and in 2005 Law C-49 defined human trafficking as a crime and incorporated it into the Canadian penal code. The U.S. adopted a proper law to protect the victims of human trafficking and violence in 2000. The Immigration and Nationalization Act was reformed in 1996 and again in 2005 providing since then criminal penalties for "acts or attempts to bring unauthorized aliens to or into the United States, transport them within the U.S., harbour unlawful aliens, encourage entry of illegal aliens, or conspire to commit these violations, knowingly or in reckless disregard of illegal status". Mexico's federal penal law contains several paragraphs regarding the criminalisation and penalisation of human trafficking (201, 203, 205 and 366) and the general population law covers criminal offences related to the facilitation of irregular migration. However, it has not been possible to determine when these paragraphs were created and adopted.[16]

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[16] http://www.rcmvs.org/documentos/investigacion/pagina_matrices.htm (13/01/11).

With respect to Central America, Costa Rica's penal law was reformed in 1999 to include a law against the sexual exploitation of minors (No. 7899) and again in 2009 to include the criminal offence of human trafficking. In El Salvador, Guatemala and Honduras a counter-trafficking decree reformed the penal laws in 2003 (El Salvador, No. 210) and in 2005 (Guatemala, No. 14-2005; Honduras No. 234-2005). Since 2004 Panama has had a law to prevent and typify crimes against integrity and sexual liberty. Furthermore this law modifies specific paragraphs of the penal law.[17] (see RCM 2007: 50). While El Salvador, Honduras and Panama included the offence of smuggling in the reforms of the their penal codes, Costa Rica and Guatemala attached legal precepts to punish smuggling to their migration legislation, reformed in 2006 and 2010 (Costa Rica) and 1998 (Guatemala). Nicaragua had already adopted a proper law against smuggling in 1996 but by 2007 was still discussing a proposed law to define and punish trafficking. Furthermore the fact of irregular migration itself is criminalised through certain paragraphs in the immigration or population laws of the United States, El Salvador, Guatemala, Mexico, and Nicaragua, while almost all Central American countries have introduced or tightened visa rules.[18]

Adopting and challenging migration management in Costa Rica

The Puebla Process can be interpreted as the crucial institutional arrangement of an emergent and comprehensive regional migration regime in North and Central America. This regime is characterized both by multilateralisation efforts and the criminalization of undocumented cross-border mobility. The following close analysis of the new Costa Rican migration law as well as of the dynamics between cross-border mobility and control at the Costa Rican-Nicaraguan border aims to demonstrate how regional migration management discourses and practices are negotiated, adopted and challenged at national and local levels.

In March 2010 the General Immigration and Alien Law No. 8764 (*Ley General de Migración y Extranjería*) came into force in Costa Rica.[19] It replaces the former law No. 7033 from 1986. The bill for the novel legislation has been discussed over the

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[17] http://www.rcmvs.org/documentos/investigacion/pagina_matrices.htm (13/01/11); see also RCM 2007: 93)

[18] http://www.rcmvs.org/documentos/investigacion/visas.htm (15/01/11).

[19] Actually the new law constitutes a reform of a version of the law No. 8764 which already was adopted in 2006 but not brought into force due to resistance of the government at that time.

past ten years. The result is a completely new legal-institutional framework for the regional migration management paradigm dominated by the migration-security-nexus: the design is heavily influenced by the legislative model of the Palermo Protocols, the Puebla Process's action plan scheme, and IOM participated actively as a consulting agency in the development of the bill.[20] Hence, similar to almost all Puebla Process member states, the new Costa Rican migration legislation contains two of legal precepts against human smuggling and trafficking that the former law did not exhibit. This concerns firstly the criminal offence of *tráfico ilícito de personas* (human smuggling) which is defined as follows:

"By jail sentence from two to six years will be punished [anyone] who leads or transports persons in order to facilitate their entry into the country or their exit from it by crossing sites not authorised by the migration agency, and thus evading the migration inspections, or who uses falsified or expired data or documents. The same penalty rules for those who promote, promise or facilitate the receipt of such documents aiming at promoting the unauthorised transport of migrants, the lodging, obscuring or hiding of aliens who enter or stay illegally in the country" (Ley No. 8764, título 15, artículo 249).

As an effect the term *tráfico ilícito de personas* is increasingly replacing the popular word *coyotaje* in Costa Rica. Within the Central American context '*coyote'* is an umbrella term that denotes the most diverse types of intermediary service providers including those facilitating irregular migration, and *coyotaje* indicates a wide range of practices related to the enabling of unauthorised or semi-legal border-crossings. These vary from lodging and feeding irregular migrants, the bribery of border authorities and immigration officers, the local cross-border transport of persons by passing them through the border's blind spots, to more transnationally organised forms of migrant smuggling across several borders, countries and even continents.

As a report of the Tabasco Human Rights Committee (Codehutab) from 2005 points out, that within the Mexican and Central American popular imaginary the *coyote* figure does not necessarily carry negative or criminal connotations since it presents a sort of bridge to an imagined better life elsewhere or a promoter of cross-border

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[20] See interview to the coordinator of the IOM's regional office' unit against human smuggling and trafficking in San José (13/05/2010).

activities. Hence, the image as a 'good' or 'bad' *coyote* depends on how the individual *coyotes* treat their 'clients', i.e., if and how the contract negotiated between the *coyote* and the migrant is fulfilled, and whether the *coyote* abuses the vulnerable situation of irregular border-crossers or not. However, the redefinition of *coyotaje* as *tráfico ilícito de personas* as fixed in the new migration law and the criminalising discourses related to it opens the possibility to state authorities to prosecute and punish the whole range of migration facilitating actors and practices outlined above.

A penal code reform in 2009 included the offence of *trata de personas* (human trafficking) which was also largely defined according to the Palermo Protocols.[21] The definition of *víctima de trata de personas* (victim of human trafficking) in contrast forms part of the new migration law as well. This migratory status is a special and temporary one. A person considered a trafficking victim enjoys certain rights and must not be expelled or deported while "regularising those migrants' situations that, due to their nature, require attending to differently than other categories of migrants" (Ley No. 8764, título 6, capítulo 4, artículos 93 and 94). According to the novel migration legislation the category of victim constitutes the only legal status irregular migrants can obtain without being expelled, deported or punished. While victim status ensures certain social and protective rights, these rights are limited until the moment the migrant's situation has been 'regularised'. With regard to the victimisation of migrants, this status is comparable to political refugee status. According to the new law, 'political refugee' constitutes another legal status for migrants, though without temporal delimitations.

The new migration law is not only influenced by international actors and discourses but also by national interests and not just with regard to the regulation of immigration. Indeed, the new law can be analysed as part of new forms of domestic government that emphasise security-focused policies. The law for instance envisages the expansion of the national migration agency's sphere of influence. Previously, the competences of immigration officers were limited to migration related

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[21] The wording of the paragraph is: "By jail sentence from six to ten years will be punished anyone who promotes, facilitates or favors the entry into the country or the exit from it of persons of all genders in order to realise one or several acts of prostitution or to subject them to sexual exploitation, sexual or labor serfdom, slavery, forced labor, services, marriage, or vagrancy, illicit organ extraction or irregular adoption" (Código Penal de Costa Rica, artículo 172).

administrative issues. The new law, in contrast, permits them to conduct proper judicial investigations "in the area of migration against corruption and transnational organised crime" as well as "against the criminal offences of smuggling and trafficking" (Ley No. 8764, título 4, artículo 18; 2 y 26). Previously, only the Organism of Costa Rica for Judicial Investigations (OIJ) was authorised to carry out such investigations.

Control and escape at the Costa Rican-Nicaraguan border

As mentioned above, regional migration management discourses constitute the Central American borders as problem zones of government and, indeed, the state borders of the Isthmus countries can be seen as very permeable transition zones (Bernecker 2005: 33). The border as a line of demarcation and thus a marker of territorial sovereignty has little historical significance. In contrast, local societies developed in the border regions with their own cross-border practices, forms of social organisation, and economic relations. The borders themselves hardly played a role in the shaping of this societal space. Jacques Ancel refered to this phenomenon as "border societies" (1938: 182f). The border which separates Costa Rica and Nicaragua, the so-called northern border, is a particularly lucid case in this regard. Only two authorised border posts exist along the 300 kilometre long border: these are Peñas Blancas which is a land post, located in the province of Guanacaste, and Los Chiles in the Alajuela province where the border has to be crossed by a river (see Map 1). However, the border reveals countless blind spots, for instance at least seven rural roads or tracks. Furthermore, until the Nicaraguan Sandinista Revolution in 1979, neither the Costa Rican nor the Nicaraguan state had even tried to establish any form of control in these parts of their national territories.[22]

Hence, to date the daily routine of living and surviving in border districts like Upala and La Cruz, the latter including Peñas Blancas, is marked by border crossings in both directions, most of them unauthorised. The population that lives along the border between Peñas Blancas and Upala or in the rural communities on the Nicaraguan side of the border uses a wide range of blind spots and forms of transport in order to cross the line. The reasons for crossing the border range from

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[22] See e.g. Acuña (2000), Medina-Nicolas (2004), Nuñez and Marín (2009), Girot (1989), Girot and Granados (1997).

working, trading or farming, to visiting family members or obtaining social services. This is especially the case in the district of Upala and its neighbouring Nicaraguan communities – places that do not have any border post in the immediate vicinity. In addition, transit migrants from South America and other continents heading to the north, as well as people from all parts of Nicaragua who seek to work or live in Costa Rica, frequently cross the border clandestinely.

Map 1 The Costa Rica-Nicaragua Border Region
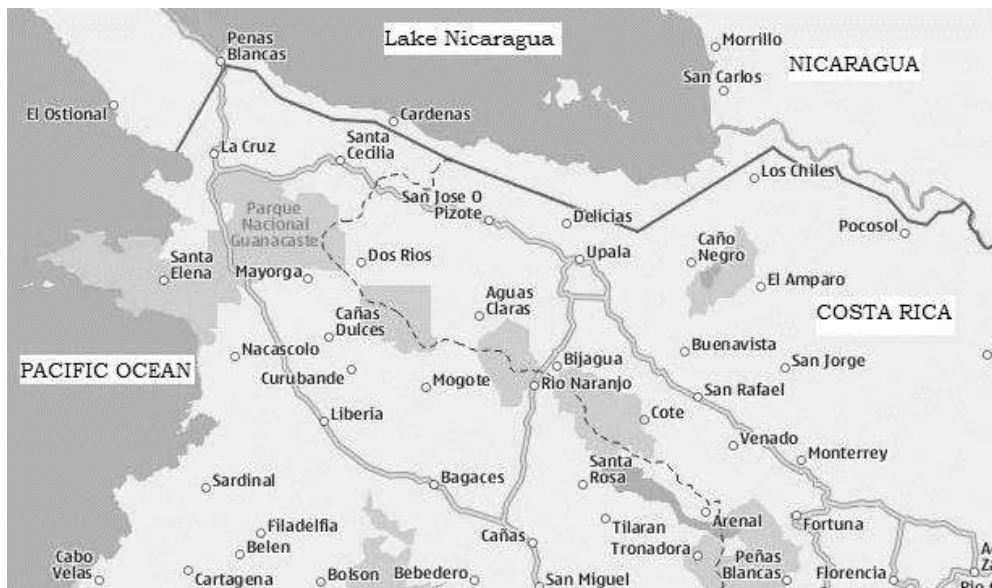
In order to outline the emergent new border regime in the north of Costa Rica, I emphasize in this concluding section the main actors and practices of border management that target the border as a site of innovative technologies of government (Andrijasevic and Walters 2010: 986). Additionally, I focus on representative actors and practices that challenge these interventions.

Traders, border communities and seasonal workers

Costa Rica and Nicaragua show enormous differences regarding production costs, incomes and sales prices. For instance, the informal trade of Nicaraguan products constitutes an attractive commercial activity for people who live on the Costa Rican side of the border region. In particular the border town Upala is a typical market place for Nicaraguan commodities. Here the Riveras[23], who hail from the Isla

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[23] Name changed.

Ometepe in Nicaragua and came to Upala about 17 years ago, operate a small shop selling shoes and clothing located in the centre of the town. Mrs. Rivera buys the merchandise, via Nicaraguan intermediates, from manufacturers in the Nicaraguan town of Masaya. She travels to Nicaragua at least six times a year to negotiate conditions and prices with the Masayan manufacturers and the intermediaries. The Riveras hold Nicaraguan citizenship but possess Costa Rican resident identity cards. However, they do not possess passports since a passport is expensive and implies extensive bureaucratic procedures. While the Costa Rican resident identity card enables a person to legally exit the country, a valid passport is required for legal re-entry at one of the two border posts.

Mrs. Rivera deals with this situation through a combination of legal and illegal strategies to maintain her commercial cross-border activities: she uses her resident identity card to exit the country legally via the border post of Peñas Blancas, without any costs or risks. The return from Nicaragua to Costa Rica is achieved clandestinely, by passing a blind spot located close to the Costa Rican border town of Santa Cecilia where a rural road leads her back to Upala. The costs and risks of this clandestine border-crossing are higher than the legal border crossing: Mrs. Rivera has to count on a potential monetary bribery (*mordida*) ranging between two and five U.S.-Dollars to the police officers who show up from time to time at the blind spot she regularly uses. She also runs the risk of being requested by these authorities to pay with so called "sexual favors" (Interview Mrs. Rivera, Upala, 27/04/2010).

A few kilometres away from Upala two rural communities are located between the Nicaraguan side of the border and the shore of the Lake Nicaragua. In administrative terms these communities belong to the Nicaraguan province of San Carlos. However, they do not have any direct access to a road and, thus, it takes residents at least a whole day to reach a Nicaraguan town that provides basic social services. But, in contrast, the communities are well connected to Upala by a gravel road that crosses the border at a blind spot close to a small border village called Mexico. The communities' residents frequently use this road, and thereby cross the border undocumented to travel to Upala to obtain basic social services such as health care or schooling (notes of field trip 29/06/10; www.canal2.com.nica, 14/01/11).

Rural seasonal workers from Nicaragua form another important group of border actors. Especially during harvest times at the large orange, sugar cane and pineapple plantations, which have been expanding on both sides of the border over the past 15 years, thousands of workers from all parts of Nicaragua irregularly cross the border. These border crossings are realised with or without support from *coyotes* at many different blind spots between Peñas Blancas and Los Chiles. Within this context it is worth mentioning that in many cases the irregular border-crossings of rural workers are organised by the fruit companies themselves, which contract *coyotes* in order to bring in cheap labour from Nicaragua.[24]

Transit migrants

Extra-regional transit migrants heading north, in turn, prefer to cross the border at the formal border post of Peñas Blancas, or close by, since this post is located on the Pan-American Highway that connects North, Central and South America. This constitutes a crucial fact for long distance migrations that need to move quickly. One day in April 2010, I observed the detention of six people – probably from Somalia – at the border post of Peñas Blancas. According to the police officer who detained the migrants, the group had entered the country two weeks before by crossing the border post of Paso Canoas on Costa Rica's southern border with Panama. When, as the officer pointed out, the group was unable to show valid passports they turned themselves in to the border authorities and requested political asylum. The migrants were then transported to the country's capital San José in order to proceed with their requests. However, a few days after their arrival in San José, they disappeared and reappeared shortly after in Peñas Blancas where they tried to cross into Nicaragua by using a small track that runs parallel to the inspection facilities. In doing so, they attempted to evade document inspection. Once detained, the six migrants were supposed to be returned to San José (interview with police officer, Peñas Blancas, 24/04/2010). According to another police officer stationed at the border post of Paso Canoas, transit migrants, especially those from East African countries, increasingly request political asylum from the border authorities, a category for legal immigration

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[24] Due to their precarious legal status it was not possible to conduct interviews with seasonal workers. These informations are therefore based on conversations with the catholic priests of Liberia (23/04/10), Upala (27/04/10), and Los Chiles (28/06/10) as well as with the deputy director of the migration agency of Upala (29/06/2010).

which was not abolished by the new migration law (interview with police officer, Paso Canoas, 26/07/2010).

This occurs against the backdrop of new visa requirements for non-residents introduced by the Costa Rican government in 2003 tt had adopted new visa rules for non-residents, thus restricting the ability of citizens from most of the countries of the global South to enter the country easily as tourists. The new visa rules, for instance, make applying for a consular visa, which is only valid for 30 days, a condition of entry for Nicaraguan and Colombian citizens. The rules for citizens of most African and Asian states, as well as of Eastern Europe countries that are not members of the European Union are even more restrictive. Citizens from these countries have to solicit in advance a so called restricted visa from the Director General of Migration in Costa Rica.[25]

Drivers

Drivers constitute another crucial group of border actors since the practices of undocumented or partially-documented, cross-border mobility outlined above are realised through several forms of transport. Counted among the most important forms are buses and registered taxis as well as informal or pirate taxis (*taxis piratas*). Especially in Upala a considerable number of pirate taxi drivers survive by transporting persons to and across the borders' blind spots.

Border authorities and coyotes

The detention of the Somali migrants at Peñas Blancas constitutes an unusual case. In general the whole range of irregular border crossing practices previously outlined can be realised not only with thanks to countless blind spots but also to informal agreements with the border authorities. These agreements are based on tolerance or bribes such as money or "sexual favors" even at the Peñas Blancas' border post. This implies that border authorities like the police, customs and immigration officers also constitute important promoters of undocumented border-crossings. Furthermore, several groups of local *coyotes* run a sort of 'office' within the billiard

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[25] http://www.rcmvs.org/documentos/investigacion/visas.htm (15/01/11).

saloon of 'Pedro's Bar' located in front of the customs facilities on the Costa Rican side of the Peñas Blancas border post. This fact is at least tolerated by the authorities and it is more than probable that they even cooperate with the *coyotes* (see also Villalobos et al. 2008).

At the same time the border authorities count among the most important domestic migration and border management actors. All of the more than 20 Costa Rican police and migration officers I conducted interviews with mobilised the Anti-Trafficking discourse when it came to the question of irregular border crossings. For instance, during the conversations I had with the police officer who detained the Somalis, he repeatedly stressed his assumption that the Africans were certainly not politically persecuted in their country but were probably trafficking victims. However, this assumption could not be confirmed by any observable evidence (interview police officer, Peñas Blancas, 24/04/2010). Furthermore, the border authorities I interviewed frequently intermixed human trafficking with discourses on drugs and arms. Thus, they presented the border as a problem zone of government: their narratives centred on the image of the border as a *bodega*, a store and reloading point, dominated by alien criminal syndicates from Mexico and Colombia, as well as by the chaotic circulation of unauthorised commodities and smuggled or trafficked humans. The deputy director of the national police force in the Costa Rican northern region when was asked to point out the major challenges to the border authorities, summed up these representations as follows: "the northern border shows three problems: trafficking of arms, drugs and humans" (interview with Deputy Director of the National Police Force, Liberia, 09/04/2010).

These discourses materialise as reinforced police presence and control posts throughout the border region, less along the border itself but rather along the principal routes that lead to it. According to the same informant, over the past ten years these pre-frontier control strategies have been extending up to 100 kilometers into the country's territory. Furthermore, the new control posts are operated by a combination of different police units including the national police force, counter-drug, and migration officers (interview with Deputy Director of the National Police Force, Liberia, 09/04/2010).

Intergovernmental and civil society organisations

As previously outlined, migration and border management does not only entail top-down strategies of control but also emerges as a kind of social control for mobile populations. In this regard the most important border actors in Costa Rica are intergovernmental organisations, NGOs and the Catholic Church. For the past five years the IOM, UNHCR and UNICEF, for instance, have established local offices at the border region and have been conducting capacity-building activities and workshops in cooperation with religious organisations, municipalities, local NGOs, police departments and migration agencies. Many of these programmes target police and immigration officers as well as NGO representatives in order to sensitise them to the human rights of migrants and to indications that a person could either be a human smuggler/trafficker or a smuggling/trafficking victim.[26] One of the interviewed Upala immigration officers, for instance, had already attended several capacity-building workshops and claimed to have learnt to be more aware of "alien" or "suspicious" persons who circulate in the border region and to treat "familiar", local border crossers more respectfully. He highlighted, for example, that in the case of Nicaraguan seasonal workers and residents of the Nicaraguan border communities the immigration officers now tended to refrain from controlling documents (interview with immigration officer, Upala, 29/06/2010).

The Catholic Church, in turn, not only participates in capacity-building activities but also provides social and religious services to mobile populations, especially to Nicaraguan border communities, seasonal workers, and other irregular migrants who pass through the Costa Rican border towns. The Catholic parishes of Upala and Los Chiles, for instance, run so-called *casas de migrantes* (migrant shelters) where irregular migrants can obtain free lodging and food for a limited number of days. According to the new migration law the shelters operate within a grey area between charity and human smuggling.[27] Thus, the priests who manage the facilities draw

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[26] This information is based on interviews with representatives of NGOs, municipalities, and the Catholic Church as well as immigration and police officers in Liberia, Upala, La Cruz, and Los Chiles. These interviews were carried out between April and July 2010.

[27] However, the shelter in Upala is supported by the IOM, while the one in Los Chiles is funded by a cross-border fruit company because it constitutes a cheap and safe form of housing for seasonal workers.

heavily on an Anti-Trafficking discourse in order to place their projects within the realm of humanitarian aid and to distance themselves from smuggling.[28] The shelters indeed provide a refuge from control and prosecution since the police cannot enter the facilities. But the shelters' rules have a tendency to the social control of migrants' bodies and to divide them into 'good' and 'bad' migrants. Women and men are spatially separated and sexual relations as well as the consumption of alcohol and other drugs is forbidden. According to interviews with shelter staff in Los Chiles (28/06/10) and Upala (27/04/10), people who appear drunk, drugged or in another way "suspicious" cannot be admitted. Furthermore, all residents have to leave during day time working hours.

Selective criminalization and graded zones of tolerance

The ethnographic analysis of border actors and practices reveals that territorially based border control and a repressive approach to irregular migration are neither feasible nor envisaged at the Costa Rican northern border. Migration and border management activities tend to establish a new governmentality of border permeability, as well as of the tracking of movements and bodies throughout the border region. The Anti-Trafficking discourse thereby works as a leading narrative in order to reorganise the field of irregular migration by creating 'suspicious' and 'familiar' border crossers, 'good' and 'bad' border actors as well as 'tolerable' and 'intolerable' practices of cross-border mobility. The combination of decentralised top-down as well as social control strategies results in what I call 'selective criminalisation of irregular border crossers' and converts the border region into 'graded zones of tolerance'. These concepts indicate that certain actors, movements and practices of irregular cross-border mobility are tolerated while others are criminalised. Tolerance, for instance, is given to students from the Nicaraguan border communities who cross the border's blind spots in order to attend the school in Upala. The same counts for Nicaraguan seasonal workers as long as they do not appear drunk, drugged or in any other way deviant. This tolerance is spatially limited however: without the required documents, it is much more difficult for either group to pass through the pre-frontier controls, leave the border zone and move towards the

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[28] See interviews with the priests of Liberia (23/04/10), Upala (27/04/10), and Los Chiles (28/06/10).

Central Valley of Costa Rica. Mobile individuals, in contrast, like irregular transit migrants who seem 'suspicious' or 'alien' to police and migration officers or to religious and civil society organisations, might easily be associated with smuggling or trafficking and thus criminalised or victimised and subjected to inspections, detentions or questionings. Hence, in contrast to the Nicaraguan students and seasonal workers these groups face problems entering the border zone and passing the pre-frontier controls heading from the Central Valley to the border. Furthermore, the new criminal offence of *tráfico ilícito de migrantes,* defined by the new migration law, includes the transport of persons who do not carry the required documents to enter or exit the country. Thus drivers, especially the pirate taxi drivers, are subjected to prosecution and penalisation either if stopped at one of the pre-frontier border posts and found to be transporting people who lack the appropriate documents or if the taxi is attempting to cross the border at a blind spot.

Strategies of escape

The Costa Rican border regime, however, is also marked by strategies of escape from control, even though these are rather ambiguous and hybrid. Among the escape strategies are bribing the border authorities and the combination of legal and illegal border crossings, both having been demonstrated by the case of Mrs. Rivera. Another escape strategy consists in duping the authorities, as attempted by the Somali transit migrants. The only remaining legal status an irregular migrant may obtain in Costa Rica without being expelled or rejected is to be considered a victim of trafficking or of political persecution. In effect, the Somali transit migrants appropriated victim status and transformed it into a strategy of moving forward through Costa Rica on their way to the north. But it is, of course, the *coyotaje* which constitutes the most premeditated strategy of escape.

The idea of autonomy of migration conceptualises tricking and *coyotaje* as dissident strategies in opposition to actors and strategies of control. The migration management paradigm, in turn, produces a binary discursive distinction between the state authorities on the one hand and the law breaking migrant or the extra-legal, criminal human smuggler or trafficker on the other. The local context of the Costa Rican border society, however, shows how both constructs dissolve. At the Peñas

Blancas border post, for instance, the figure of the border authority and the figure of the *coyote* merge together. Another hybrid social phenomenon is that of the migrant shelters. These facilities indeed support escape from state control by providing refuge, lodging and nourishment. But their rules for admittance result in new forms of social control on migrants' bodies. These are informed by Catholic norms and values. Thus, neither autonomy of migration nor a clear distinction between actors of control and of escape can deliver an appropriate framework to analyse the local border regime in the north of Costa Rica. However, migration, cross border mobility and border societies can be analysed as powerful social forces that constrain the institutional arrangements of a border regime to adopt flexible strategies of control.

Conclusions

In this paper I have analysed manifestations of, as well as contestations to, the migration management paradigm in North and Central America. I started with several assumptions. First, I argued that migration management in this region is not about erecting a 'Fortress America', but rather about establishing social control on mobile populations. Second, in order to understand the logics of regional migration management, intergovernmental organisations and the understudied Central American Isthmus countries, especially Costa Rica, needed to be more systematically included into the analysis. Furthermore, the Isthmus countries had to be perceived both as dependent peripheral or global South countries and as independent nation-state actors with proper interests. Third, I argued that the migration management paradigm is being challenged by the power of migration and cross-border mobility. I claimed that this is especially the case at the very permeable Central American borders, which can be considered critical junctures of migration management. Therefore, I deemed it crucial to pay special empirical attention to Costa Rica and its northern border. The analysis of the Costa Rican border society shows, in contrast to the assumption of autonomy of migration, that these contestations are not necessarily opposite or dissident to control.

Thus, in order to answer the questions of how migration management materialises at the regional, national and local levels and how this paradigm is being contested I developed a multi-level and multi-actor framework of analysis. I drew upon studies

on neoliberal governmentality, international government and the dynamic concept of ethnographic regime analysis. This framework enabled me to emphasise on the one hand the institutional arrangements of the migration management paradigm such as the Puebla Process, the new migration law in Costa Rica and actors of migration and border control at the Costa Rican northern border, and on the other hand, the strategies of escape from control that could be identified within the local context of Costa Rican border society.

I demonstrated that the migration management paradigm shapes the characteristics of a new regional mobility regime in North and Central America as well as a new national migration regime in Costa Rica and a local border regime at the Costa Rican northern frontier. The institutional arrangements of these regimes are marked by the criminalisation of irregular migration that links undocumented cross-border movements to organised crime, especially to human smuggling and trafficking. This Anti-Trafficking discourse works as a leading narrative in order to reorganise the migration field at the regional, national and local levels. In general the reformulation of irregular migration in terms of organised crime and the related victimhood approach fuels, according to Geiger and Pécoud (2010:13), the "confusion between humanitarian, development and security agendas, while also reinforcing the depolitisation of migration and migration policies". Counter-trafficking efforts, which ostensibly aim to protect the human rights of irregular migrants, are unlikely to be questioned by anyone. Thus, they create consensus between governmental and intergovernmental actors as well as between metropolitan states (most of them migrant-receiving countries) and global South countries (most of them sending or transit countries). But, at the same time, the human rights discourse of the Anti-Trafficking paradigm seems to have replaced any policy regarding binding commitments or international agreements on migrants' rights.

Furthermore, as the analysis of the Puebla Process shows, regional consultative processes on migration can be seen as arenas where the Anti-Trafficking paradigm forms an important part of innovations in the "ways in which metropolitan states govern the countries of the global South" (Andrijasevic and Walters 2010: 990). Hence, by defining human smuggling and trafficking as a common threat the institutional arrangement of the Puebla Process indeed constitutes North and Central

America as a single region. The "borderland" countries (Duffield 2001) of the Isthmus sub-region, however, seem to participate only as deficient, 'learning' partners of western norms and standards especially with regard to the management of irregular migration and borders.

Costa Rica, at first glance, is no exception in this regard. However, this state is not only a peripheral global South or borderland country marked by emigration and transit migration but also the most powerful actor in the Isthmus sub-region, and an important destination of immigration, particularly from impoverished Nicaragua. Furthermore, the most diverse forms of local cross-border mobility can be observed within the Costa Rican northern border region. Hence, in the national Costa Rican context the criminalisation of irregular border-crossings and counter-trafficking efforts respond not only to post-imperial logics of international government but also to national interests. These consist in re-regulating and restricting legal immigration, especially from Nicaragua. Moreover, the transformation of the domestic migration and border regime can be seen as part of broader state transformation processes that tend to govern social inequalities through security-focused policies.

The analysis of the Costa Rican local border regime in turn shows that its institutional arrangement assures circulation in order flexibly to steer the movements and bodies of mobile populations. Here the Anti-Trafficking discourse materialises both as pre-frontier top-down control and as social control strategies. These work as selective criminalisation of irregular border crossers and produce graded zones of tolerance. The result is, among other things, a potential illegalisation of the local border society. But this historically constituted local society is formed by a wide range of actors: traders, agricultural workers, drivers, students, *coyotes* and, last not least, border authorities. These actors often tolerate each others' illegal cross-border practices and they live, survive or enrich with these practices. Thus, the concept of autonomy of migration, which constructs the border crosser as opposite to border control, cannot capture the social dynamics of border society. However, the border society continues to be a powerful social challenge to the migration management paradigm.

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