HUMAN RIGHTS AND LABOR MIGRATION ISSUES IN THE OPTIMAL TREATY FRAMEWORK

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Abstract

The existing literature regarding the protection of Human Rights has long been challenged by the problem of ratification, compliance of international instruments. This paper connects to that debate and tries to fill existing gap in the literature.

Drawing on product management and marketing models, the optimal treaty framework offers a broader and more inclusive approach to many current problems and can lead to the creation of optimal treaties, more efficient and effective treaty decisions. It aims to empower the legal theory and practices and provide a better understanding of many issues. For instance, the current theories emphasize on why states do not comply with international treaties and/or how to influence them, ignoring the treaties themselves; some others wish that there would be better designed treaties with no details about how to achieve them. The optimal treaty framework takes the debate a step further; not only it integrates the findings on State behaviors and influential strategies into the product or legal instrument policy but also it explores factors and alternatives facilitating optimal treaty development and higher performance.

This analysis is grounded on advanced studies in product management and marketing to bring about optimal international instruments that are able to meet actual needs and anticipate future ones. The optimal treaty framework offers a multilevel structure to analyze and confront theories, to explore and assess ideas, actions and practices in order to clarify contradictions and take corrective actions.

Keywords: optimal treaty, product management, marketing, Human rights, labor migration, migrant workers, international treaties, ratification, compliance, implementation.

Introduction

The main concern of this work is to help address the problem of ratification and compliance of legal instruments key to the protection of the rights of migrant workers. This matter that has caused a lot of ink to flow; however, the problem still persist with little hope to be solved any time soon. The ratification picture looks rather gloomy and the overall impression is that positive outcomes are not for tomorrow in spite of the fact that migration seems to become more and more a global issue. Indeed, multifarious factors such as conflicts, poverty and inequality lack of decent work entice thousands of individuals to uproot, leave their homelands and migrate elsewhere in search of warmer climes.

Ratification, according to the article 2 (b) of the Vienna convention on the law of treaties concluded at Vienna on 23 may 1969, means similarly to “acceptance”, “approval”, and “accession”, the international act establishing on the international plane the consent of a state to be bound by a treaty which itself is defined at article 2 (a) as an international agreement concluded between states in written form and governed by international law. Article 14 states that a state’s consent to be bound is expressed by ratification when the treaty itself provides such requirement, when the negotiating parties decide that ratification should be required or the representative of the state signed the treaty requiring ratification or when the representatives of the states show their intention to sign the treaty subject to ratification from their full powers or if they express their intention during negotiation. In most of the countries, to ratify or accede to a treaty, formal approval of the national legislature is required and after the fulfillment of all the relevant steps they still need to deposit the instruments of ratification or accession at the United Nations.

The international steering committee for the campaign for the ratification of the migrants rights convention, in the guide on ratification they published in April 2009, stated that the fundamental importance of the ILO conventions (C97 and C143) and the UN convention on the protection of the rights of all migrant workers and members of their families lies in the fact that they provide a rights-based approach and parameters for a wide range of international and national migration policy and they address regulatory concerns of all aspects of migration. Thus, ratification, they argued, would put in place the legal foundation essential to ensure social cohesion, international cooperation, to reinforce the prerogative of state’s sovereignty to determine labor migration policy by ensuring conformity with universal legal and ethical norms, to obtain guidance for the establishment of effective national policy implementation, effective bilateral or multilateral cooperation for equitable labor migration, lawful and humane, eliminating exploitation, work in abusive conditions and unauthorized employment, to obtain international

guidance and advisory services on legal norms implementation and so on. However, states refuse to take ratification matters seriously.

Another major problem is that when the states finally ratify the treaties they do not comply. For instance, there are serious concerns regarding the implementation of the convention of 1990 on the protection of the rights of all migrant workers and their families in the countries that have ratified it. Compliance is seen as a "subjective benchmark" to evaluate the behavioral change (Alston and Goodman, 2013). This Benchmark has evolved over the years in the sense that the Human rights bar has moved higher and what constitute violations today was not violations few decades ago. The mainstream compliance theories consist of the views of the realists, rational choice theorists, the constructivists, the functionalists and so on. The views of many international relations theories differ in the way they identify the causes and reasons of compliance or non-compliance (Shelton, ed., 2000). Realism, neorealism, neoliberal institutionalism and social constructivists differ essentially in their views on states. Whereas for realists and institutionalists, states are unitary actors and their choices as well as their behaviors can be studied and captured in terms of choices available to states and also the incentives at stakes (Haas; Shelton, ed., 2000). To the contrary, social theorists don't see states as rational, to be more specific not substantively or procedurally rational but they are subject in their decision making to bounded rationality. Moreover, they contend that states are not monolithic but functionally differentiated varying in their characteristics according to their accountability to domestic society. Finnemore and Sikkink (1998) noted on their side that the tendency to oppose rationality or rational choice to norms was not helpful in the explanation of many political processes such as the ones called "strategic social construction in which actors strategize to reconfigure preferences, identities and social context". They contend that rationality cannot be separated from any politically significant episode of normative influence and norms and rationality are intimately connected. As for Bentham (1931) the science of legislation is about knowing the true good of the community and the art consists of finding the way to create that good (Bentham, 1931). He argued that everything is subject to two eternal motives, under the empire of which nature has placed men, and, which ought to be the subject of study of all legislators and moralists: pleasures and pains; they govern men's judgments, ideas and determinations in life. He clearly stated:

"The obligation which binds men to their engagement is nothing but the perception of a superior interest, which prevails over an inferior interest…"

In fact, both in International Law and International relations, the theories on compliance abound; and indeed some authors argue that they are not mutually exclusive (Simmons, 1998), and that they could complement each other (Koh, 1999) to give a richer account of why and when states comply with international agreements. However, sometimes, some authors clearly argued the exact opposite of their peers. Analyzing all of them would lead to an endless story full of controversies going back in time, further and further in old history. The fact is that behavioral studies constitute a complex field of study. For instance, the analysis of individuals in consumer behavior is a real daunting task because consumers cannot be completely well captured. To facilitate their understanding researchers have borrowed extensively from diverse fields such as psychology, economics, cultural anthropology and sociology added to insights and ideas gathered from marketing experience (Peter and Olson, 1994).

However, the reality is that one single approach cannot explain fully consumer behavior since they focus each time on one element. When considered in the Optimal Treaty Framework where the analysis is lead from a product management and marketing perspective which make possible the beneficial use of Peter and Olson's lessons, it becomes obvious that in the case of the States it is difficult for each single theory to account fully for why states ratify and comply with international agreements. Indeed, many theories of States behavior only concentrate on just one aspect of all that should be considered to have a broader idea of the matter. Sometimes they focus only on the behavior, some other times on the environment or on the affect and cognition only. For instance, theories on how nations behave focus on the behavior, those about trading human rights or attaching it to preference trade agreements focus on the strategies, those related to acculturation, internalization focus on affect and cognition. The theory of expressive international law seems to have captured the most elements. Indeed, they talked about how states behave, thus behavior, they included the environment when they refer to the influence of international actors and their concerns about esteem of the international community and they slightly talked about affect when he discussed about the influence of ratification on normative belief.

Moreover, the Optimal Treaty Framework shows that these theories among others seem to have almost or completely ignored the legal instruments or legal instruments portfolio; as a result they missed an important aspect of a successful product management. The Optimal treaty framework, more inclusive, integrates the studies on consumer or state behavior to the product policy. This approach considers among other things state behavior/ legal instrument profile, multi-product interactions and the keys to successful legal instrument design and performance. These patterns are grounded on advanced studies by experienced and leading experts in product management and the findings aim at bringing the legal instruments to the next level. The intricacy of product policy in general is not a

secret for anyone; however technical glitch along the way can deeply damage the final product and compromise its future.

Chayes and Chayes (1995) argued that if the agreement in the international treaty making system, is well designed, comprehensible and sensible, with practical eyes to possible scenarios of interactions and conducts, issues related to compliance and enforcement could be manageable. They noted that a management strategy should be designed to foresee and bring the required changes. They also added that review and assessment of the reports of the countries by non-state actors was a good vehicle for ensuring compliance and improving performance in the future. The managerial model of Chayes and Chayes include capacity-building and technical assistance, dispute settlement and the adaptation and modification of treaty norms. Those elements are keys of a strategy for active management of the compliance process, argued Chayes and Chayes. NGOs use the report about investigation on human rights violations, historical facts of a State prior agreement to abide by international norms and its desire for esteem from others also bound by those norms to shame them for non-complying, they play with their fear of negative publicity to alter states behavior and push them to honor their obligations. For instance, Geisinger and Stein (2007) explained that Mental Disability Rights International (MDRI), an NGO fighting for the rights of persons with disabilities after undertaking an investigation of two year released a report displaying publicly the rights abuses against children and adults living with mental disabilities in Hungary. The report and the negative publicity that followed engendered reputational damages and esteem loss for Hungary therefore they recanted their policies immediately and altered their behavior by promulgating new legislation, creating institutions, establishing ombudsman system to counter the effects of the information released and remedied the esteem loss. This is in fact an example where the results were positive but it happens that these shaming activities of the NGOs have no effects on states or have the opposite of the expected effects. For instance, Collingsworth explained how in spite of several international pronouncements, reporting and so on, Burma although member of the WTO and in spite of several international reporting and pronouncements, did not change behavior and refrain from systematic human rights violations. Chayes and Chayes agreed also that it does not work all the time and more was required to improve the situation. With the Optimal treaty framework they have more tools and more opportunities.

Indeed, the optimal treaty framework intervenes in different ways to meet the issues raised. It adds to the managerial approach of Chayes and Chayes, tools for optimum treaty recovery and well-designed treaty, tools to increase state-customer experience and also for optimum treaty development which includes flexibility, reinforced problem solving and value-creation, which enables also an integrated system of information creation and transmission, the legal instrument performance focusing on current and future market attractiveness and current and future competitive strength. The optimal treaty framework (OTF) is of extreme importance since it can lead to greater design, development, and performance of the legal instruments. Promotion is part of product management and marketing; and it is an obvious fact that many international actors and norms entrepreneurs are doing it actively consciously or not. The optimal treaty framework is simply about putting it all together. When the international instruments relevant to the protection of human rights are seen as products within that framework, many things become obvious, and many things are possible. Just like the MRI (Magnetic Resonance Imaging) in medical science can be used to produce a detailed pictures of organs, soft tissues, bones, internal body structures and help diagnose medical conditions, evaluate several body parts and determine the presence of diseases (radiologyinfo.org, 2017), the optimal treaty framework can be used to evaluate, monitor and have detailed pictures of situations and conditions. It allows a detailed analysis of the studied ideas, theories and actions. The hope is that the considerations explored in this study might bring some lights to illuminate the pathway of the conventions so that they can successfully fulfill their mission and effectively lead to the protection of the rights of the migrant workers and their families.

Body of paper

This paper contains three sections. The first one presents the methodology and the approach used for the analysis. The second examines the optimal treaty framework, its features and relevance drawing extensively on product management and marketing. The third part explores and analyzes Human rights and Labor migration issues in that framework. Among other things, it seeks to understand through this approach why an instrument like the UN convention of 1990 for example failed to be ratified by many states although they all participated in all the process to its elaboration. This paper studies its interaction with the states, the potential consumers, and its interactions with other already existing legal instruments, it explores the general reasons why new products fail and the factors to consider in order to bring out and develop outstanding products that are not only able to meet the needs of the present but also the needs of the future. The optimal treaty framework offers a broader view of the issues; it is more inclusive and harmonizing and helps clarifying contradictions by recalling important information when analyzing theories.

Methodology

This exploratory study seeks to provide opportunities to explore and analyze enduring existing problems using an approach which allows data gathering and insights from other fields, mainly product management and marketing. It can be seen as an extension of the managerial approach of Chayes and Chayes. The specific problem under concern is the ratification, compliance and implementation of the relevant treaties to protect the human rights of migrant workers. However, the focus is not only on states behavior as it is usually the case in the current literature but also on the legal instruments. It is interplay of inductive and deductive reasoning.

The optimal treaty framework: what is it and why does it matter?

The Optimal Treaty Framework is a more inclusive and comprehensive framework which provides the possibility to consider the international instruments and everything that relates to it: the states, the transnational actors, the international organizations. It is basically grounded in few models although not restricted to them since it is a framework it can be improved overtime for more accuracy and more functions. It is indeed a flexible structure in which many methods can fit to increase its efficiency; however, in this paper it uses Mc Kinsey matrix to improve the legal instrument management and the upgraded pyramid of value developed by Almquist et al. to help deliver more value, retain and develop more loyalty. It also uses the Wheel of customer behavior to capture the limits of the theories on states behavior. The framework diagnoses theories, help detect their flaws, clear contradictions and fill the gap between theories and practices. It analyses customer complaints and explores alternatives. The optimal treaty framework also scans and diagnoses existing legal instruments in order to help in the management of the old ones and development of new ones for success. It gives an exact picture of their position and explores repositioning possibilities. It provides accurate pictures of outstanding products which can be a useful guide to create value and remarkable legal instruments or optimal treaties. The philosophy of the optimal treaty framework is to keep improving to be more efficient. As all human works, the framework is not perfect. There is no single inquiry that provides perfect answers and that is not subject to revision. That is why it embraces the philosophy of constant improvement.

Some considerations about the concept of optimal treaty

According to the Oxford learner's academic English dictionary (2014), optimal means "the best possible"; "producing the best results". It is synonym to optimum and they can be used interchangeably. Another important term also is to "optimize", it means "to make something as good as it can be". As for treaty, the Oxford dictionary defines it as "a formal agreement between two or more countries", can also be used conventions etc.. The Vienna convention on the law of treaties of 1969 defines treaty as "an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." The concept "optimal treaty" refers in this paper to the best possible treaty, optimized to the maximum in order to produce the best possible results, to optimize performance. Therefore, the aim of the framework is to capture the principles, ideas used to produce optimal treaties from a product management and marketing perspectives. However, to reach that goal, the concept of "optimal treaty" calls for few paradigms shift. The first one is that it considers a treaty as a product. It is not because it does not understand their value, their relevance or else. This paper recognizes like the Vienna convention that treaties play a fundamental role in the history of international relations and their ever-increasing importance in international law as a means of developing peaceful co-operation among nations. The aim again is to bring them to the next level, to optimize them and make them the best that they can ever be, above all to address more efficiently the enduring problems related to human rights and labor migration.

As a matter of fact, in marketing is very common to consider any thing as a product which can be tangible or intangible. A product is defined in the dictionary of Marketing terms (AMA, 1995) as: "a bundle of attributes (features, functions, benefits and uses) capable of exchange or use; usually a mix of tangible and intangible forms. Thus, the product may be an idea, a physical entity (a good) or a service, or any combination of the three." For Thomke (2007): "the product is an idea, with some assumptions about how it can be realized". Wind (1982) avers that many things can be considered as products: governments programs, the products and services of nonprofit organizations, university programs, cultural events etc… They can all be considered as "products" requiring development and marketing to "appeal a target segment." Sometimes, authors refer to international instruments as product. For instance, Falk (1981, p.138) in his study about human rights and State sovereignty argued that the Universal Declaration was the ***product*** of international negotiation, widely endorsed and evoked as authoritative in all parts of the world. And also Henkin (1990, 1988 reprint of 1978 ed.), analyzing the origins and antecedents of the rights of man, said that the conception of human as the legal and political claims of individuals, involving obligations as well as limitations on governments and societies, was a ***product*** of modern history. In his book titled how nations

behave, Henkin argued that protected by the principle of unanimity, governments could participate in the law-making process without any commitment to adhere to the ***final product***.

However, some authors went even further; they used the concept of ***legal product.*** Indeed, it has been used in previous years for different other purpose by Poirat, Reuters and Kelsen, mainly from a contract law point of view. As for Poirat (2004), she argued that as a material source of law, the treaty constituted a product no matter the mean of production, the modalities of its creation. She added that the conventional product was considerably rich in two ways. It is first an "undifferentiated" product (Produit indifferencié) because it is common to all legal acts. It is also a "specific" product (produit spécifique) because it is attached to the conventional mean and can create secondary rules. She mentioned that the analysis of the treaty as a mean of production of law or as a product of that mean of production, was also found in the works of Kelsen and Reuters. For Poirat, the treaty is an international legal act liable to analysis as mean of production and legal product (mode de production et produits légaux) and in her work she did so from a contract law perspective. To her view, it is a legal act because it is the result of the will of some subjects of law with the goal to produce effects defined and subordinate to the juridical order in which it aims to display. She argues that the binding force of the treaties is not contested and that parties have to execute them in good faith as stipulated by the principle pacta sunt servanda. However, she noted a gap in studies related to the substance and the modalities of the obligations and raises questions such as what behavior should be expected, how to assess the fulfillment of the obligations and what can lead to their terminations. She noted that before claiming that an obligation has been violated, those concerns should be addressed. She therefore focuses on the characteristics of such obligations. In few words, Poirat's work is about the formation of the treaties in general, whether their ratification is important or not in regards to the Vienna convention and a detailed analysis of the obligations that ensue, their characteristics and consequences. This tendency of few authors not only Poirat is far from eliciting unanimity. Indeed Evangelos Raftapoulos talked about the inadequacy of the contractual analogy in the law of treaties.

In fact, it is very important to clarify obligations and so on; however, as experience as shown the targeted subjects might not want to fulfill such obligations no matter how clear they may look or might not even want to enter the treaties which lead to such obligations in the first place. They might find thousands of reasons and excuses. Therefore, two points can be made here. First, the concept legal product cannot be restricted only to a functional aspect, it includes so much more. The product in general has in fact tangible and intangible dimensions which are well captured by the function of marketing (Littler, 1984). The second point is that the analysis of the means of production neither that of the product did not reveal many important things to Poirat. This is not surprising because contract law cannot obviously capture it all, surely not the several important considerations that go beyond its scope.

This paper, among its paradigms shift considers also the treaties as products; to facilitate the understanding the concept product will often be used or optimal treaty and also optimum treaty management to refer to product management where the products are treaties. However, the orientation is not on obligations, not on contract law; it takes a totally different direction with a perspective on product management and marketing. Marketing is "the bridge between an organization and potential consumers" (Barnes et al., 1997). It is essentially concerned on one side with the reappraisal and the modification of existing products to face the dynamic nature of modern society and on the other side with the development of new products to meet the emerging needs or to take full advantage of new market opportunities (Littler, 1984). With its interests in the environment, whether political, economic, social etc, and also the help it provides in monitoring the activity of the competitors, with its mix of Ps and Cs, it has great impacts on the long term success of organizations in general (Barnes et al., 1997). So far with the promotion of Human rights, the P for promotion has been at the forefront of the fight for protection. This paper focuses more specifically on one P, the product, without ignoring its interaction with the other Ps. First we will consider the concept product in its usual context to see what is missing.

The concept of product in the product management sphere can be analyzed in several ways and can be explored through the combination of three elements (Barnes et al., 1997): its features, its advantages for the producer or manufacturers and its benefits for the consumers or purely with regards to the benefits it offers to the consumers. The consumer refers to the ones who buy the product for reselling whereas the customer himself buys the product for its own use. Sometimes the consumer and the customer can be the same person or entity. The features have to do with the physical attributes of the product, the advantage are the features of the product that give a competitive advantage to the company producing it, and it coincides sometimes with the benefits perceived by the consumers. The benefits relate to the actual or perceived benefits for the consumer, including performance, brand identity and price. In the thinking of Consumers, products constitute bundles of benefits and they want to know about the personal and symbolic values that the products will bring them (Peter and Olson, 1994).

Considering legal instruments as product does not mean that they are not valuable and does not either mean that we underestimate or belittle them. They are complex products in a complex environment. Therefore, creating a framework to help capture the issues they face should not be seen negatively, it is certainly not a bad move. It does

create opportunities to analyze and consider everything that relate to them in order to optimize them and make them more successful. The legal instruments like a product carry features particular to them; they provide benefits and advantages to different people and several strategies are used to sell them. In fact, product management from a marketing approach has to do with the generation, the organization, and the implementation, the control of the existing and new product of an organization in order to satisfy the needs and wants of the customer segments selected while also meeting the firm's objectives (Wind, 1982). This marketing emphasis is useful in that as Wind (1982) argued it contribute greatly to identification and solution of problems based on utilization of market research, management and behavioral science methods, concepts and tools to help improve decision making. The international organizations often do market research related to the application of conventions, the feedback of the states on the conventions related to implementation or reasons for non–ratification as well as problem faced. They are used in this paper to explore solutions. Thus, from the perspective of International Law, not only we can use the framework to explain why countries do not ratify and why they do not comply after ratifying but also we can get many other advantages: failure is explained and successful products tips revealed, the relevant international instruments can be repositioned successfully similarly to several other complex products facing difficulties in their life cycle. Promotion takes its real dimension and the product design, performance, brand strategy and marketing communication which play a key role in positioning (Barnes et al. 1997) can be explored, revised and restructured in the international law system. All these can be part of the overall organizational capability building process. Moreover, the optimal treaty framework in itself fits really well in the literature. The following section establishes its theoretical background.

The theoretical background

This paper connects deeply with the international process more specifically with the theory of transnational legal process and the works on regime design and on managerial approach to compliance. It fills few existing gaps, answer to their call for further research, address some issues they raised and in the end optimize them. Indeed, many theories called for further researches to develop more several points that they overlooked or could not consider; many of these considerations are possible in just one framework. As explained by Goodman and Jinks (2004), the first generation of international human rights law scholarship provides a framework that is not complete although indispensable. They argued that the mechanism called acculturation could lead to behavioral changes through pressure to assimilate through micro processes such as status maximization, mimicry and identification. They found in this process some commonalities to Koh' since he discussed also about mechanisms that were similar to acculturation mainly at the latest phase of norm implementation, however, they complained that he emphasized only persuasion. Geisinger and Stein (2007) took over from Goodman and Jinks work to provide an understanding of the forces behind human rights treaty creation and compliance through the lenses of the literature related to expressive law. Those two works are extension of Koh's transnational legal process which they complete. The OTF encompasses them all and go one step further. Each one of them taken alone is incomplete, but once put in the framework they are well harmonized and can work more efficiently.

As for the first generation of international human rights scholarship, it argues that law changes the practices related to human rights whether by coercion to push states to comply or by persuasion emphasizing the validity and the legitimacy of human rights law. However, Goodman and Jinks concluded that the first approach failed to grasp the complexity of the social environment and the second did not explain fully the way in which legal and social norms were diffused. They then developed a third mechanism to account for state behavioral changes in international law called acculturation which is the general process by which actors adopt behaviors and beliefs of the culture surrounding them. This mechanism holds that the identification with a reference group generates cognitive and social pressures, imagined or real, enticing states to conform. They argue that without considerations of such social processes and influence the human rights law regime design would be faulty. Geisinger and Stein (2007), still with the concern to improve regime design provided a model called theory of expressive international law that follows a similar idea as Goods and Jinks since it also explores the influence of surrounding environment. In their theory they argued that states change their behavior because of their desire to be part of the international community; international society is then seen as a pull that influence their behavior. They found that Goods and Jinks did not account for how the different processes they identify would affect states behavior in a certain situation and they also noticed that Koh when he talked about the process of internalization did not explain how it worked. Therefore they developed a theory to understand "the forces behind treaty creation and compliance" to repeat their own words. Their theory draws on domestic expressive law and by expressive law they mean the impact that law and legal process exert on the behavior of individuals and states. This model led them to few conclusions they claimed to be relevant to the structure of treaty regimes and provide a model on how expressive influences can be best harnessed to bring ratification and compliance. Their theory tries to understand the potential of the law for changing the social meaning

of a behavior and alter the social cost of undertaking that behavior. They argued that when the law is designed adequately it can push individuals to change their behavior by inducing them to change their taste through internalization or by nourishing fears of social sanctions. They found that two factors influenced individual's decision to behave a particular way. The first is the attitude of the individual toward the behavior itself and the second is the beliefs about what other people think of the behavior. Thus they concluded that desire of one individual to undertake a behavior might be determined by the understanding of his attitude toward the behavior and his belief about the subjective norm. When ratification and compliance are explained through the model of expressive international law, international law and process are seen as means used to change behavior by changing beliefs related to the subjective norm or to objective reality (Geisinger and Stein, 2007). They argue that ratification had impacts on several beliefs about norms and therefore affects compliance. Thus changing belief about the reality can lead to change beliefs about the norms which refer to the aggregated preferences of members of the group of States to which that State belongs.

Those considerations are certainly valuable since belief and meanings are elements of cognition system. Cognition is important in understanding consumer behavior as well as affect; however, for some marketing purposes and depending on the case, sometimes one is important while some other times the other one is important (Peter and Olson, 1994). It is to note that sometimes consumer choose products because of their symbolic meaning rather than their functionality (Peter and Olson, 1994). This taken into account, the expressive theory of international law pointed out many important points useful to understand states behavior. They contributed positively to the literature review and added to the work of Goodman and Jinks. When put in the framework and confronting the wheel of consumer behavior, it seems like the theory does not explain many subtleties important as well and does not grasp all the complexities of the issue of ratification and compliance particularly when it comes to international migration and human rights. In addition, they mentioned how an adequately designed instrument was important without entering into details. Many other theories do the same thing; they mention the relevance of the normative content in ratification and compliance without going further into it.

In fact, International process provides information relevant to the subjective norm and context plays a significant role in the way ratification occurs, argued Geisinger and Stein. Human rights more specifically which are not reciprocal or influenced by changing in scientific understanding depend more on direct normative influence (Geisinger and Stein, 2007). For instance, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is ratified by states because of their general desire to be members of the international community rather than about new information related to biological realities of women (Geisinger and Stein, 2007). They claimed with their theory of expressive international law to provide a more comprehensive understanding of the forces behind treaty creation and compliance. They drew on the reasoned-action model of decision making to explain how normative pressure influences rational actors to alter their behavior and beliefs while seeking esteem from other group members. They suggested what they mentioned was a commonly held assertion; that the most effective way of using the international society as a pull to States to comply with Human rights treaties lie in the creation of objectively-verifiable provisions which reflect goals that each state of the treaty regime can realize. They contended that one implications of their theory is that states must be involved in other cooperative relationships and that strategies for human rights protection must be drawn beyond the human rights institutions and the pursuit of cooperation must be more aggressive. The expressive theory of international law is a little bit limited in that it only provides means for describing the effects of ratification; their focus is more on the direct and indirect influences of ratification on norms. They warned that by doing this they do not argue that other elements of international law-making cannot affect normative belief.

Goodman and Jinks concluded that their work which they mentioned was an extension of Koh's work was one step toward a more effective regime design but that an integrated approach was necessary to better meet the need of the current international legal scholarship. Their provisional reflections on the general contours of such integrated model include among other things considerations of the micro processes of social influence, the force of acculturation, the negative interactions among the three mechanisms namely, coercion, persuasion and acculturation and conditions under which they operate successfully and so on. They added that the aim of such integrated model would be of course to improve the understanding of how norms operate in international society and to improve the capacity of the global and domestic institutions. The optimal treaty framework was conceived with similar ideas, to fulfill similar needs aiming to be an integrated model to empower international human rights law and to increase capabilities. Indeed, elements of acculturation such as cognitive pressures, socio-psychological benefits of conformity to group norms and expectations are studied in the considerations about states as consumers. The theory of expressive international law did a valuable work regarding this cognitive and affect part of it but analyzed in the framework few elements are missing. OTF therefore seek to fill the gap.

The Transnational legal process, according to Koh (1996), provides the key to understand issues of

compliance with international law. He argues that it has dominated in the international legal scholarship for decades and such might probably be the case for the years to come. Koh explained that the transnational legal process describes the theory and practice of how private as well as public actors interact to make, interpret, enforce and internalize rules of transnational law. It has four key features: non-traditional, non-statist, dynamic and normative (Koh, 1996). It is non-traditional in that it removes the traditional dichotomies between public and private, domestic and international. It is non-statist because besides states it takes into account other international actors such as international and non-governmental organizations, individuals and multinational enterprises. It is dynamic because to repeat Koh's exact words, it transforms, mutates, percolates up and downs, back and forward from public to private sector and from domestic to international level. Finally, it is also normative in the sense that new rules of law emerge from this process of interaction; and like a cycle, those rules are interpreted, internalized, enforced and so on. If at the individual level and national level, it aims to transform lawless individuals in law-abiding people by influencing the way they perceive themselves, a similar process is expected in the international arena. He advocates for a theory of transnational legal process which can allow according to him the internal acceptance of international norms by states so that they can be more motivated to obey international human rights law and not comply or conform depending on their convenience. Such theory claims to capture how the international norms are enforced throughout history and goes beyond the conventional horizontal process of international Human Rights enforcements by exploring also a vertical dimension of it which is the intervention of "transnational norms entrepreneurs." Transnational entrepreneurs can be individuals as well as private or international transnational organizations who mobilize public opinion and public support both at the national and international level for the development of universal Human Rights Norms. They also participate in the interpretation of those norms in particular circumstances and national governments should internalize such norms interpretations into domestic and political structures. In short, the expected outcomes are that, over time, the structures of domestic decision making enmeshed with international legal norms and that legal ideologies reach the point where they prevail among the decision-makers. The cycle of interaction, interpretation and internalization, which is part of the transnational legal process lead to default patterns of compliance and nations come to obey international human rights law out of a perceived self-interest. This process provides stickiness to International Law and deviation from that pattern creates frictions. Koh noted himself that his theory of transnational legal process with its vertical approach is a complement and aim to complete previous mostly horizontal picture of the international legal process on how to capture enforcement issues. The transnational legal process in short is about how law influences why nations obey and consider on one side how international actors shape laws through their interaction and on the other how laws shape future interactions.

Koh's theory of transnational legal process predict that nations will comply with international norms if the transnational processes are triggered aggressively by other transnational actors in a way that forces interaction in forums capable of generating norm-internationalization (Koh,1996). In turn, such processes of interaction and internationalization push governments to engage at new modes of interest-recognition and identity-formation in a way that lead them to compliance (Koh, 1996). There is a lot in common between identity formation and branding and interest recognition implies value creation. These two aspects are important but cannot be studied in details from a transnational perspective only. In the optimal treaty framework for example they can be better understood. Koh realized this when he called for lawyers to develop interdisciplinary skills but without forsaking their lawyerly skills.

Indeed, the OTF brings the debates a step further since it does not only considers state behaviors, the influence of the international environment, the work and the strategies of other international actors such as International organizations but also it considers the content of the law also. Thus, complementing them the optimal treaty framework connects deeply to previous theories for which we can get feedback. The outcomes contribute to reinforce previous theories and lead to better practices. In short, the OTF by exploring product management in full and using it for international law challenges can surely lead to a better treaty management.

In fact, this is not a hazardous neither the first attempt to consider compliance more particularly from a management point of view since Chayes and Chayes set a good basis for it. The Optimal Treaty Framework is an extension of it and adds many positive tools to it. Chayes and Chayes emphasized more compliance. OTF includes ratification to it, considering it as a goal that should still be pursued. Thus, the OTF considers both ratification and compliance. The instruments of active management to repeat Chayes and Chayes are capacity building, dispute settlement and the adaptation and modification of treaty norms. They argued that these are useful in bringing compliance to complex and difficult treaty obligations.

Chayes and Chayes argued that the enforcement model, usually prescribed to face non-compliance problems with its sanctions and so on, could not be utilized as a routine for treaty enforcement but rather what they called a managerial model relying more on problem solving approach, more cooperative would work more. They explained that agreements involved varying number of parties and could cover multifarious subjects. Underlying the need for a well-designed treaty making system, Chayes and Chayes asserted that some could be umbrella agreements to build

consensus on more specific later regulations and create international organizations to watch them. They said that for the treaty regime to endure and stand over time it must be adaptable with inevitable changes in technology and environment and so on and that a management strategy should be designed to foresee and bring the required changes. Review and assessment process with the reporting system among other things is according to Chayes and Chayes a vehicle for bringing together compliance measures and instruments in a single coherent compliance strategy which has a compelling dynamic, improving performance. Reporting however is a big challenge for international organizations. The OTF explores tools and strategies to improve the experience with the reporting system and with product management it goes further in the analysis for the treaty regime to endure and anticipate the future changes. In addition, to meet the need for well-designed treaties it made possible the scanning of their internal and external structure. All these are possible due to the paradigms shift to which we turn now in the next section.

The paradigms shift and implications

In this paper, in the optimal treaty framework more specifically, the act of buying is equivalent to ratifying; compliance equate to loyalty; the international Labor Organizations (ILO) and the United Nations (UN) embody the manufacturers or the producers; the states are at the same time the customers and the consumers. The products refers to the legal instruments, the conventions or international agreements dealing with migrant workers: all the ILO conventions specifically related to migrant workers such as ILO migration for employment convention no 97 (revised) of 1949, the ILO migrant workers convention no 143 (supplementary provision) of 1975 and its recommendations, the UN convention on the protection of the rights of all migrant workers and their families of 1990. Besides the facts that they are displayed in the form of written documents with specific principles, these legal instruments offer the benefits of contributing to the legal order stability and provide directions to the states in migration management from a rights oriented approach. Human rights derived from well accepted principles and are necessary to reach individual ends like human dignity, fulfillment, happiness and also societal ends such as peace and justice (Henkin et al., 1999).

As a matter of fact, to the international organizations, they offer the advantage of realizing their objectives which vary from bringing decent work, international peace and social justice, well-being to the world, to settle disputes and stop conflicts among states. The ILO emphasized in the preamble of its constitution that regulation are required to give protection where conditions of labor exist involving hardship, privation and injustice to such a large amount of people that the situation lead to unrest and imperil the peace and harmony of the world. Moreover, the international instruments provide the states with provisions to ensure the protection of their citizens abroad and to avoid violating the rights of foreigners living and working in their territory.

The implications of the paradigm shift are numerous since it allows analysis and considerations that would not be possible otherwise. In this section one or two examples will be presented. For instance, the international organizations if they look at themselves as real producers of real life products which are particularly complex in a real competitive environment where they are fighting to have and increase market share, they can have a quite different experience with the products and the consumers. Regarding the products for example, they could score better in product competitiveness and attractiveness. An analysis of convention no 97 and 143 can give an insight into the relevance of the paradigms shift as well as relevance the legal instrument management and the optimal treaty framework.

Normally, product success resides in what the firm does and how it does it which are respectively product strategy and the management of the product development (Clark and Fujimoto, 1991). If we consider the international treaties as product the same thing is true for them also. Collingsworth (2002) argued that a continual focus on refining standards being well aware that there is no effective mechanism to enforce them show a “cynical detachment from reality”. However, achieving enforcement requires also, beside considerations about the mechanisms, a look at the standards, and how well they are articulated in order to be sure that the right information as well as its relevance gets across. It is therefore important to consider the integrity of the international instruments.

Product integrity explained Clark and Fujimoto, plays a crucial role in its abilities to attract customers and such integrity can be both internal and external. They averred that internal integrity for instance refers to its consistency, how well its parts match, how well its components fit and work together. They added that external integrity on its side relate to the linkages between customers and producers in order to bridge the product designs and the customer needs. If external integrity, although not perfect, is not so much to find fault with since the international organizations involved states in the conception of the legal instruments and try to work together with them and stay as close as possible to them, internal integrity is another story. Indeed, a comparison of conventions no 97 and no 143 highlights clearly major problems that can affect the success of those legal instruments. As Nagel (1991) noted, “the recognition of a serious obstacle is always a necessary condition of progress.” It would therefore not be otiose to go through such hurdles in the following lines.

Convention no 97 on migrant workers of 1949 contains 23 articles and 3 annexes. In its article 6, it protects migrant workers against discrimination based on their race, their nationality, sex, religion, in the labor market in matters of remuneration, social security, trade union membership and so on. Article 11 mentions the groups that are not protected by the convention, namely sea fearers, artists in a country for a short time and frontier workers as well as self-employed people. Articles 12 and 13 talk about technical details related to ratification and art 14 to 17 add some flexibility to the convention allowing states to exclude some of the annexes. In art 20 they mention that there will be report when necessary about the application of the convention at the general conference. It is important to mention that the convention 97 protects the rights of migrant workers in regular situation. The convention no 143 with a total of 24 articles protects the right of all migrant workers (article 1), it goes further in several aspects. For example, in article 2 it contains provisions to fight against illegal migration. In article 10 it states that there should be no discrimination, however the law makers did not give as many details as in convention 97 on this matter. Both convention 97 and convention 143 have a common article 11 talking about restrictions, however, convention 143 extended the list of uncovered categories. Thus, to the three previous groups mentioned in convention 97 were added people who came for the purpose of training and education and also people admitted in a country temporarily to perform tasks assigned by their company or organization established in that country. Article 12 pushes the member states to seek cooperation and collaboration of organizations of employers and workers and of all other related organizations or entities to promote the provisions envision in article 10 which fosters equality, social security, trade union and cultural rights, collective and individual freedom for the migrant workers and their families. Article 12 also asks the states to take the adequate dispositions to abrogate the contradictory laws and to facilitate the enactment of the appropriate laws and also to encourage programs leading to inform migrant workers about their rights. Article 13 states the right of family reunification extending that right to mother and father in addition to children and spouse. Article 14 guarantees the geographic mobility in the labor market and the acknowledgement of the qualifications acquired in other countries. From article 17 the convention talks about technical matters such as ratification (arts 17-10), report (art 21) and revision (art 23).

The problems start when they talk about exclusion. They did not seem to pay attention on few consequences that might result. For instance, when they mention in convention 143 that the states could freely exclude part I or Part II, where Part I deals with migration in abusive conditions and Part II equality of chances and treatment. In negotiation sometimes one party minimize the importance of one or more of its requests to avoid hostility of the other party and to be sure that they can easily get what they are really negotiating for, however, this cannot work with everything and certainly not with core values of an international convention. It contributes to lessen the value of such principles which are core to the protection of individuals and vulnerable groups. This refers to specific understanding of both affect and cognition in consumer behavior. It will affect the brand image which includes knowledge and beliefs of a consumer about brand attributes and consequences. The same warning that Peter and Olson address to marketers applies also to the law-makers and promoters. Indeed, they said that marketers should understand both affective and cognitive responses to marketing strategies such as product design, advertising and so on (Peter and Olson, 1994). They need to realize that the states receive the information and they give them meaning and make a decision as a result of the interaction between their affective and cognitive system. In the same way as a regular buyer, the states go through the "higher" mental processes described by Peter and Olson (1994). In other words, they go through a process of understanding, evaluation, planning, deciding and thinking. They interpret the stimuli they encounter; they will wonder why and will look for answers and alternatives, their affect system might give them the feeling that those products are not so important after all and their cognitive interpretations will make them decide to finally not to buy (ratify). This paper argues that in term of complexities and so on, the international instruments were similar to cars and that they were both complex products. We could see the situation described above more clearly with a car for example. It is like someone who is buying a car and the producer tells him to buy the car but to leave the engine since he already bought a previous car the engine might work with this new car. The buyer will be confused and wonder: why? The engine is very important for the car to work, right? Why should I leave it? Is it low quality? Then maybe the quality of the car is not so good either. Then what do I need to buy the new car, another car etc…? All these will affect what Peter and Olson call product involvement which refers to the knowledge of a consumer about the personal relevance of the product in his life. The theory of expressive international law partly captured this point when they averred that desire of one individual to undertake a behavior might be determined by the understanding of his attitude toward the behavior and his belief about the subjective norm.

When buying and using products, perceived risks such as financial and psychological risks are the negative consequences that consumers seek to avoid (Peter and Olson, 1994). The psychological risks concern what other people will think and how the product will make them feel (Peter and Olson, 1994). Peter and Olson also explained that consumers also have knowledge about the symbolic values that products and brands help them to satisfy.

However, they added that recognizing the satisfaction of value or the achievement of a goal could be very suggestive and intangible but that the functional and psychosocial consequences were more obvious, thus more tangible. In addition, Prof. Fujimoto asserted that product integrity was a key element in its branding. The product according to Kapferer (1992) is the first source of brand identity. Indeed, the brand reveals itself through the products and services that it encompasses. It is the inspiration of the production and distribution process and infuses qualities though the sale point. Therefore product design is an important element to consider since it can have so many repercussions on other aspects of product management.

Another implication of the paradigm shift is that it underlines a paradox regarding the state-customer. Indeed, the optimal treaty framework highlights an interesting paradox related to customer-states and products. For instance, Thomke (2007) asserted, the fact that customers are rarely able to express their needs with specificity due to the uncertainty they face, they will have to experiment it before they reach the point where they can make recommendation. Clark and Fujimoto (1991) reached similar conclusions in their studies in the industry of automobile. Indeed, they argued that very often consumers of cars are not able to express their future expectations, however when they actually see the cars they can easily tell which one they like. They agreed with other authors like Marsh and Collet; Holbrook and Hirschman and Levy that such facts are due to that criteria identified have the propensity to be emotional and subjective, involving fantasy and symbolism, thus their technical specifications are difficult to be articulated. Moreover they suggested that maybe following the voice of existing customers might not always be the right move since what they say about a product might obscure some key aspects of the latent needs of future customers (Clark and Fujimoto, 1991). Leduc (1969) averred, on his side, that one would think that in a world where consumers are considered as king, they would really provide great inspiration useful to bring about products that meet thousands of their desires but unfortunately that is not always the case since customers often lack imagination and have a vague idea of what can give them satisfaction before they actually see it. This is such a paradox and a revealing glimpse to help us understand why among other things, even if the states participated in the creation of the convention they still hesitate to ratify and implement it. Indeed, in the preparation of international instruments representatives of states declare human rights and recognize them, they determine the content well aware of the consequences in the system of nation states (Henkin et al., 1999). Regarding the lack of imagination factor, it is important to note that it might not go sometimes to the expected direction but it would be arguable to say bluntly that States lack of imagination considering fact such as window dressing (Hafner-Burton and Tsutsui, 2005) and Olympic citizenship (Shachar, 2011) and other strategies that are developed and explored by them when dealing with international agreements, and also the work of Meritt and Meritt (1985) about innovation in the public sector. All these illustrate how states can innovate and get breathtakingly creative when they face challenging situation.

The optimal treaty management framework in action

The optimal treaty framework, adding some useful tools to the managerial approach promoted by Chayes and Chayes, enables an optimal management of the treaties. Indeed, if treaties related to migrant workers' rights are complex products, they face similar issues as many other complex products and are therefore subject to many advanced techniques of product policy and management. Why some legal instruments are successful and others a failure? How can new products be managed in order to succeed? What to do with a problem legal instrument like the UN convention of 1990 on migrants' rights and their families which is not really well accepted by many states? What can be done in order to develop and control new products performance? How do environmental changes affect the legal instrument management and how to manage the uncertainties created by the changing environments? All those concerns can be addressed and will be explored in the optimal treaty framework; it is a though-provoking structure. Section 3.1 presents the management of the legal instrument portfolio in action. Section 3.2 deals with consumer complaints.

Managing the legal treaty portfolio related to migrant workers

The managerial approach developed by Chayes and Chayes (1995), as they explained, focused more on managing compliance strategies seeking to clarify issues, remove obstacles, and convince member states to change their behaviors. Their compliance strategy is cooperative-oriented and treats issues of non-compliance more as problem to be solved rather than wrong behaviors deserving punishment and the methods used tend to be more verbal, interactive and consensual (Chayes and Chayes, 1995). In addition, they revealed that there was in the background of the compliance strategy a threat of shaming, exposure, and other negative impacts on the reputation and international relationships of resisting party; and at its foundation could be found the treaty norms which stipulate the performance expected in particular circumstances. The treaty norms provide leverage for measures and activities toward compliance. Indeed, the first stage has to do with reporting and involves the development of data regarding the situation subject of regulations and the activities of the parties with respect to it. The reported

information will then be submitted to formal procedures of verification and less formal cross-checks (Chayes and Chayes, 1995). The more active management of compliance starts with the identification of the reprehensible behavior, the clarification of its nature and the exploration of ways to remove the obstacles identified. At that stage, capacity to comply is examined, and technical assistance as well as other resources provided. If, for example, the problem has to do with interpretation or the meaning of the norm, they said that the relevant entities should refer to the mechanisms established to settle the eventual problems or disputes. Such mechanisms constitute, according to Chayes and Chayes, essential part of their compliance management strategy. However, they noted that formal adjudication or other binding procedures were rare but mechanisms such as regular and systematic review and assessment of party performance supported with technical assistance was emerging as a powerful proactive management tool (Chayes and Chayes, 1995). They added that it might be the case that the interactive process for dealing with compliance reveal that there is the need to modify the norms themselves, this shall be done in the way authorized by the treaty, whether it is amendment, interpretation or any other adaptive procedure. In the end, they noted that although the treaty parties play an active role, the compliance management should be implemented with the support of an effective and strong international organization. They agreed that it might be difficult since the states developed a deep skepticism about the international bureaucracies because among other things they impinge on their freedom of action. However, Chayes and Chayes asserted that those international organizations and non-governmental organization played a major role in the efficiency of the managerial strategy they developed.

The optimal treaty framework since it is about optimal treaty management which is managing the treaties and every aspects that relates to it so that it can be as successful as possible, has the potentiality to intervene at all stages to make compliance easier and to even make ratification, the normal step before compliance, achievable. The ratification issues have reached a point where many do not want to talk about anymore because they lose hope on its feasibility. It can help in addressing the skepticism of the states towards international organization. It is also useful at the foundation, which is the norm level to provide a package combining well designed treaties, with good technical support and improving the overall experience of the states as well as the organizations with the treaties. The environment of legal instruments is not so much different than the one of many complex products and processes in general; therefore an optimal management strategy is required to maximize opportunities and reach success. Indeed, according to Wheelwright and Clark (1992) the environment of a product is characterized by many factors such as: competition, uncertainty, unforeseen problems, and rises of new circumstances that challenge the validity of basic assumptions and so on, which increase the complexity of product development; make the product design and development very challenging but dealing with them efficiently can provide competitive advantage. A look at the actual labor migration policies environment and states behaviors toward high skilled and low skilled migrants makes those challenges obvious. On one side, states are competing among themselves and get really creative in designing competitive policies to attract more high skilled migrants. On the other, they are finding ways to leave the low skilled behind. In this sense, many high income countries are developing robots to avoid them completely. This can impact the willingness of states to ratify conventions. Therefore, it is important to be strategic with product management which encompasses planning, development and performance in order to reach the overall goal which is to protect the rights of the migrant workers.

In particular, strategic planning involves starting with the ideal future vision and thinking backwards to the future (Haines, 2000). A certain amount of flexibility in product development can compensate for the accuracy issues faced in forecasting (Thomke, 2007). It also requires keeping in mind and applying the key commandments of all consumer-focused organizations (Haines, 2000) such as: being close to the customer, including them in meetings, decisions and deliberations because "people support what they help create", survey their satisfaction with the products and services, know and anticipate their needs and their wants, focusing on creating customer value and so on. The tree first commandments can be illustrated by few practices of some International Organizations. For instance, the ILO committee of experts, in charge of the application of conventions and recommendations, not only publishes every year a general survey on the national laws and practices on a subject that the governing body selects, it maintains constant dialogue with government taking into consideration of the information provided by organizations of workers and employers and they try to include them into their recommendations, court decisions, international instruments and national legislation (ILO,2016). This is an important step towards product problem solving and value creation. Indeed, complaints and feedback of the consumers are at the root of the conceptualization of value creation (Arogyaswamy and Simmons, 1993). Furthermore, as Leduc (1969) argued, the consumers have a great critical sense and they know very well the weakness of the products, mainly the ones they are using. Therefore their review can be useful information for new product idea or product modification.

In addition, it is important to follow and assess the performance of the legal instruments, their competitive strength and their position in the life cycle, not only to prevent them from dying but also to help them thrive and remain as long as possible in the growth stage. The concept of a product life cycle, borrowed from

biology, allows envisioning the product life as similar to the one of an organism meaning that it goes through stages of birth, growth, maturity, decline, and death (Wind, 1982). It used to play a major role in marketing literature as a guideline for corporate marketing strategy and as a forecasting instrument. The length of the period of introduction is among the most important aspect of the product life cycle and it should not be too long (Wind, 1982). In the case of the UN convention of 1990 related to migrant workers' rights, it took 13 years for it to become part of International Law (Iredale et al., 2005). From a product management point of view this is a major issue. Many promotional strategies have been employed with limited success. It is true that for a new product the marketing effort to create the demand should be greater, but should also be considered that competition is fierce from existing products and other new products (Wind, 1982).

Regarding competition there are many important points to mention mainly concerning product development. First, some products developed by the competitors direct or indirect might make the offerings of an organization look outdated and also cost issues might also be devastating, therefore it is vital to monitor competitive actions and assess regularly its own position (Barnes et al., 1997). To perform such evaluation many methods can be used. If for instance, the market share is declining this surely means that there is an increasing competitive pressure due to new development in the marketplace and that a product has reached the end of its life cycle (Barnes et al., 1997). In this paper the Mc Kinsey/ General electric will be used to illustrate the current situation of the legal instruments in terms of competitive strength and market attractiveness, and their future trends. It is important to note that assessment of market attractiveness more particularly is quite subjective, it has been conducted by the matrix user's evaluation of data gathered from States complaints and comments found in Unesco series of countries reports, reports of the Policy Department of European Parliament, ILO reports and database. However, it is useful in the sense that it helps provide a visual picture of the legal instruments positioning and give the insight on what further action is required whether it is further research or else.

Fig.1 Mc Kinsey/ GE Matrix

		Competitive strength		
		High/ strong	**Medium**	**Low/ weak**
Market attractiveness	**High**			
	Medium		**ILO fundamentals**	**C97,C143,UNCMW**
	Low			

This figure shows that the conventions specific to migrant workers are rather in a delicate situation. Their competitive strength is overall weak while the market attractiveness is rather average. The legal instruments specific to the protection of migrant workers have a weak competitive strength in a market of medium attractiveness. If we had had used the BCG model, the Boston consulting Group model they would have been considered as question marks. The market has growth potential but the products are not working well in it. It is common case for companies to have several question marks according to Little (1984), however, they usually can only support few of them. He also warned that question marks constituted such a gamble that they often end up as failed products. They involve withdrawal usually at loss or heavy investment with no guarantee that they will reach the level or outsmart the leading product (Little, 1984). However, he noted that they have great potential to become the stars of tomorrow.

The Mc Kinsey/ GE matrix analysis is based on a scale from 0 to 100, where 0 to 50% =low; 51-79%= medium; 80-100%=high. In addition, the factors taken into considerations are summarized as follow:

- Market attractiveness: market size (no of ratification), social/ political and legal barriers to ratification, segmentation (receiving/ sending countries), cost trends, opportunity to differentiate, competitive intensity.
- Competitive strength: market share, product quality, brand reputation, cost compare to available alternatives, promotional effectiveness, customer loyalty (compliance, implementation).

In fact, trying to understand the context in which the International instruments related firms evolve and within which the product is evaluated in terms of political, economic, social, technological, environmental and legal context, the OTF found that, the interactions of the different kind of political actors, a long decade of public opinion nurtured with all kind of conflicting ideas are involved in the shaping of immigration policies (Sassen, 1995). Added to this, the lobbying of interests groups is a key element influencing the drafting and the implementation of the law. Falk (1981) on his side argued that the geopolitical reality of the persisting dominance of the state and system patterns such as imperial sphere of influence, organizational fragmentation, and complex network of transnational social, cultural and economic forces would be a hindrance to rights promotion. Indeed, he pointed out that the protection of human rights depends on the interplay between normative standards and social forces involved in their

implementation; it results from the struggle between these opposed forces occurring at the state level within governmental bureaucracies. Henkin (1979) noted that process and politics have a different place and dimension in the law of human rights in particular. The countries of destination refused to protect migrant rights in order to keep the freedom of expulsion while the sending countries themselves want to ensure protection to the migrant workers to avoid the unlimited power of repatriation (Battistella, 2009).

Furthermore, the analysis revealed among other things that the market share of the conventions specific to migrant workers was lower than that of the ILO fundamentals and that the environmental barriers were also higher. This is the most obvious fact. Many empirical studies have drawn to the conclusion that the cost of granting specific rights to migrant workers was at the origin of the ratification of the convention of 1990 (Ruhs, 2013). For many immigration countries many rights stipulated in that convention were in conflict with their immigration policies, mainly regarding the low and medium skilled migrant workers for whom they have temporary migration schemes that restrict considerably the rights of migrants such as the rights to equal access to social welfare benefits, family reunification and free choice of employment (Ruhs, 2013). The committee noted that, taking into account the national circumstances, the ILO made room for flexibility in the structure and the requirements of the conventions No.97 and No.143 to facilitate ratification and implementation, so that states could selectively ratify certain provisions. Another point worth noticing based on the states complaints is that the competitive strength of the migrant specific convention is deeply affected by factors such as cost, misunderstandings, administrative difficulties, redundancy with other existing instruments both national and international, uncertainty about the benefits. Those comments were made for all the three conventions. As a result, they diminish considerably the products score on factors such as product quality, promotional effectiveness, customer loyalty and brand perception. The conclusion to be drawn is that since the competitive strength is not strong, they are less likely to do well in the near future and that the products offerings have to be revised in some ways, to reinforce one or all of the core, the real product or the enhanced one since there are several ways to add value. In any case, there is the need to be strategic which means here to avoid high risk but optimize the operations to reach success while saving costs.

Managing the customers complaints

This subsection optimizes the managerial approach of Chayes and Chayes in so many ways. More specifically it can be very helpful for the international organizations who gather data in order to review and assess the situation and decide what the next step is. It brings to the debate tools to explore value-creation. Managing consumer complaints efficiently is very important for successful product development. Thus, Clark and Fujimoto (1991) argued that a focus of the flow of information from product development to production, marketing, consumers and then back to product development can be really beneficial to an effective product development because among other things the impact of the information perspective can affect deeply the way we think about producers and consumers. They explained that from this information perspective the consumer is seen as consuming not the product in itself but the experience it delivers. Thus, product development creates messages that carry value embodied in the product which is delivered by marketing to the customer who in turn will interpret the information contained in the product which will generate an experience of satisfaction or to the opposite one of non-satisfaction (Clark and Fujimoto, 1991). They concluded that "Product excellence" therefore implies more than technical performance and basic functionality.

As far as value-creation is concerned, it is a recurrent element in customers concern because overall, they buy value. Therefore, the company who wants to be successful must try to add tangible and abstract values to the products and services it offers (Torsten, 1998). Almquist et al (HBR, 2016) admitted the complexity to clearly determine what customer truly value however they argued that universal building blocks of value exist although the amount and nature of value of a particular product as well as a particular service vary depending on the beholder. Inspired by the psychologist Abraham Maslow on the hierarchy of needs, they developed an upgraded pyramid of consumer value containing 30 elements of value that they classified in four categories: functional, emotional, life changing, and social impact. The underlying hypothesis of the model is that the companies that performed on multiple elements of value would have more loyal customers. A survey on more than 10,000 US consumers about their perceptions of nearly 50 US-based companies confirmed that hypothesis. Apple, for example, one of the best performers studied in the survey scored high on only 11 of the 30 elements. Their conclusion is that although it is not realistic to inject all 30 elements of value into a product or a service, more is better and also since their relevance varies depending on the industry, the culture and demographics, a strategic choice of the elements is essential. They found that "there are many ways to succeed by delivering various kind of value. Once they can improve on the elements that relate to their core value they will be able to set apart from competition and meet customers' needs better. They can then add judiciously elements to expand the proposed values sometimes without revising their products or services; some other times however, they might have to refine their product designs to deliver more

elements. In the light of their model and through structured listening, "ideation session" and rigorous choice modeling using discrete choice analysis, and also by the anticipation of all possible things that people might consider valuable, the firm can explore and develop concepts, products features that carry more value elements that can better resonate with the consumers and help the company to connect to them in a new way (Almquist et al., HBR, 2016).

Fig.2 presents some of the elements that seem to be important to influence customers' loyalty in 4 types of businesses, selected from the result of the research of Almquist et al. on 10 types of businesses. In the sector of smartphones for example, the authors noted a broad appeal of smartphones due to the fact that they deliver multiple elements and as a consequence, Apple, Samsung and LG, the manufacturers of such products received high scores in the value ratings among the companies considered in the study.

Fig. 2 top five elements influencing loyalty for some type of businesses

Brokerage	Smartphones	Auto insurance	Credit cards
Quality	Quality	Quality	Quality
Makes money	Reduces effort	Reduces anxiety	Rewards me
Heirloom	Variety	Reduces cost	Heirloom
Variety	Organizes	Provides access	Avoids hassles
Provides access	Connects	Variety	Provides access

Source: the elements of value by Eric Almquist, John Senior and Nicholas Bloch, HBR, 2016

This figure (fig.2) here provides an idea on what consumers mostly value when choosing among alternatives in several industries. Now, if this consumer value model is applied to human rights and labor migration issues, it can give insights on how to better connect with states as consumers of the products which are the international instruments related to migrant workers. If building blocks of value exist, opportunities can be created to improve legal instrument performance. According to Arogyaswamy and Simmons (1993), the conceptualization of value creation is based among other things on research and development, innovation offered by the supplier and the response to complaints and feedback of the consumers. Leduc (1969) also noted that the consumers have a great critical sense and that they know very well the weakness of the products, mainly the ones they are using. Therefore their review can be useful information for news product idea or product modification. That information can provide an idea on what the states mostly value and referring to the elements of value models, it can be figured out the critical value elements for the states. In the following two figures are summarized the main reasons why some states in Europe and in Asia did not ratify the international convention on migrant workers of 1990 (ICRMW).

Fig. 3: Product/ consumer profile in Europe

Equivalent elements in the upgraded value pyramid	Reasons for non-ratification
Reward me, provide hope, motivation	No added value
Reduce cost	Financial burden, expensive
Quality, variety, attractiveness	Redundancy with other existing international and national instruments
Reduce effort, avoid hassle, simplifies	Difficult to use, administrative burden

Source: Current challenges in the implementation of the UN international convention on the protection of the rights of all migrant workers and of members of their families, Directorate General for External Policies, Policy Department, 2013, European Parliament.

Fig. 4: Product/ Consumer Profile in Asia-Pacific (7 countries)

Receiving countries: Japan, Korea, Singapore, Malaysia and New Zealand
Sending countries: Bangladesh and Indonesia

Equivalent elements in the upgraded value pyramid	Reasons for non-ratification
Reduce anxiety, informs, reduce risk, motivation	Fear of losing markets, fear of being undercut by non-ratifying countries, competitiveness, uncertainty about the benefits
Reduce cost	Financial burden, expensive
Quality, variety, attractiveness	Redundancy with other existing international and national instruments
Avoid hassle, reduce effort, simplifies	Difficult to use, administrative burden

Source: Piper, N. and Iredale, R. R. (2003) Identification of the Obstacles to the signing and ratification of the UN Convention on the protection of the rights of all migrant workers:
the Asia-Pacific perspective, UNESCO series of country reports on the ratification of the UN convention on migrant.

In the light of this upgraded consumer- value pyramid, how to better connect with states as consumers of the related legal instruments become more obvious. For instance, the analysis of some surveys about the main reasons why some states in Europe and in Asia did not ratify or implement the international convention on migrant workers of 1990 (Policy department of the European Parliament, 2013; Pipper and Iredale, 2003), shows that States, both in Europe and Asia Pacific, complained about the redundancy of the convention with other existing international and national instruments, their difficulty to use, financial and administrative burden, uncertainty about the benefits, no added value, fear of losing markets. That information can provide an idea on what the states mostly value and referring to the elements of value models, it can be argued that the critical value elements for the states are of two kinds: functional and emotional. Thus, crucial elements that should be featured in this legal instrument would be: quality, avoid hassles, reduce risks, reduce efforts, variety, reduce cost, reduce anxiety, and reward me. Now to make the legal instruments more appealing to them more features should be added and finding the right combination should be of great concern.

Human rights also embodied a set of values in them which can find their places in the pyramid. The right of migrant workers, explained Ruhs (2013), has intrinsic value and play important role in shaping the effects of labor migration for all parties concerned, namely the migrants themselves, the sending and the receiving countries. As a consequence argued Ruhs the rights they are willing to grant to migrants depends on the impacts on such rights on their population; such impacts involve perceived and real benefits and cost economically, politically, culturally and socially (Ruhs, 2013).. Henkin et al (1999) on his side argue that human rights are not merely duty of the society, they are not meant to merely appeal to charity or brotherhood or love and they do not need to be earned or deserved. They imply moral, moral order under a moral law and as such human rights are included in the society's system of values with the weight to compete with other societal values (Henkin et al. 1999). Indeed, Henkin added that they are so important and fundamentals that life, dignity and other human values depend on them. One of the two major theories of rights called the "will" theory support the idea that the protection of the right to do something is about protecting the choice to do or not to do something which highlights freedom and self-fulfillment (Wacks, 2006). This could lead to the conclusion that, with such combination of values, human rights should be able to really give any legal instrument momentum and improve its positioning, so that it can be hold sacred as no matter the sacrifice for the power as Kant so wished it (De Raymond, 1998). However it does not seem to be the case, why?

Several authors share the view that some rights had inherently contestable or conflicting value some others carried chameleon value. Indeed, Equality for example, is seen by Sniderman et al. (1996) as a chameleon value. They explained how it has been a foundational value of liberal democratic politics which is complex rather than unitary idea. They purport that the pluralism of equality as a value is the key to its discordant role in contemporary politics. Equality is differently conceived and such conceptions sometimes conflict or complement each other. Falk (1981) pointed out that the protection of human rights depends on the interplay between normative standards and social forces involved in their implementation; it results from the struggle between these opposed forces occurring at the state level within governmental bureaucracies. He also noted that pressure to violate human rights reflect such forces also. Therefore, he concluded, the protection of human rights cannot be understood for the most part as an exercise of law-creation or rational persuasion. In short, all these considerations added to the "ineffectiveness and tiredness" of the Human rights discourse Battistella (2009) talked about to explain the lack of expectation from the conventions in the international society, can lead to the assumption that the brand power of human rights also need to

be rebuilt to motivate and inspire again.

With reference to the motivation of states, Pierre Arsac (De Raymond, 1988) averred that the respect of human rights is a matter of attitude, a state of mind besides the acquisition of the related necessary knowledge. He noted that it is a problem to bring the public to develop such reflex, such moral attitude consisting of a refusal of any tendency towards indifference, disinterest, and aggressiveness. He added that even in a country which has already reach a certain level of human rights protection, it should not stop there and try to go the extra mile in order to avoid going backward. All those issues, from a legal instrument management point of view, raise the need to create what Bradley and Wood (1994) would call a brand power which refers to satisfaction, quality and value to the customer. When customers can associate the brand name with satisfaction, quality and value, this will lead customer loyalty, word-of-mouth advertising, profits, and price premium and so on, leading to a more prosperous organization (Bradley and Wood, 1994). Bradley and Wood argue that customer choose one product or service over another because they believe that they will get better value than they could expect from other alternative. This also gives an insight on why States pick winners and go on a global race for talent. The motivation behind the Olympic citizenship and the cases of high speed citizenship granted to high skilled and talented migrants is the glory of sports and scientific achievement (Shachar, 2011). Nobel Prize and Olympic Medals, which are as described by Shachar the most prestigious and globally recognized as trademark of excellence, illustrate and symbolize power brand. They constitute a value package that brings satisfaction.

All things considered, the concept of value to a great extent plays a major role in product management in general, including the legal instrument. Indeed, if for instance we consider Sport laws in the optimal treaty framework and then we follow the model of value developed by Almquist et al (HBR, 2016) we can see that they offer a combination of values that is considerable and from all four categories: functional, emotional, life changing and social impact. If we compare international migration laws and international sports laws and more specifically dealing with the Olympic movement, the elements of value combination gap is big. This can help understand the conclusions of the cultural studies expert mentioned by Shachar who found that "the first laws ever to be voluntarily embraced by men from a variety of cultures and backgrounds are the laws of sports." Mitten and Opie seems to share a similar view; they explained how in 2009 more countries were members of the International Olympic Movement than of the United Nations which counted 192 members while the Olympic movement had 205 (Mitten,2010). Along with Nelson Mandela and Laureus sport for good foundation, they believed that sport carried the power to bring change in the world. They argued that sports could be used to convey educational messages to diverse audiences since it had widespread media coverage and the public nourished a strong interest in sports. They suggested that sports could be used as a venue to raise issues of wide social relevance such as intellectual property and anti-ambush marketing laws and also Human rights laws. They asserted that, due to its economic and cultural importance, sports law could lead to increased national legal protection of human rights. To reach such results, they are convinced that states ability to host Olympic Games or World cup should be linked to their human rights records and that the rules of the international federations could also incorporate provisions for human rights protection. As an example they cited the antidiscrimination principle embodied in the Olympic charter as a condition to belong to the Olympic movement. They concluded that such initiatives in the evolving international sports law could help advance the protection of human rights worldwide and protect the rights of individual in countries where they are not recognized. From a product management point of view, these ideas can be seen as an attempt of positioning or branding involving image and symbolism. It aims at increasing the visibility of a product and reinforcing its image; and enters in the logic of what many authors call "selling dreams" and customer experience improvement. This particular technique could be called co-branding.

Co-branding is a way to create value and increase awareness rapidly but deeply by using the reputation and the capabilities of a partner to reach new sectors, markets or countries (Blakett and Boad, eds, 1999). Blackett and Russell explained that in such value endorsement co-branding, the two organizations co-operate in order to achieve or to reinforce an alignment of their brand values in the mind of the customers (Blackett and Boad eds,1999). As Boad noted, co-branding can offer many advantages but it also carries some risks and therefore needs to be managed well to avoid serious damages for both partners in the co-operation. Indeed, it can minimize the expenditures, save resources, reassure customers, communicate quality and price premium; it can also help attract consumer interest, add distinctiveness and brand value to diluted products and finally but it's not all, it allows the assimilation of positive values from the brand of the partner (Blackett and Boad eds,1999) . For the pitfalls that littered the path of co-branding strategy, it's worth noticing the failure to meet the goals and projections, incompatibilities, the rapid changes in customers' attitudes and so on (Blackett and Boad eds,1999). Boad concluded that the list was not exhaustive therefore he suggested that in order to succeed it is important to understand the dangers and threats and deal with them at best.

Summary of findings and conclusive remarks

Once the legal instruments are put in the Optimal Treaty Framework, their potential to become optimal treaties increase; product and service management and marketing can enrich the debates and offer many possibilities to Human Rights in Labor Migration. It can help improve the international treaties as well as related services and systems. It can help develop international instruments that states would enjoy using. In fact, all the intricacies of international law in particular and of Human rights and labor migration in particular show that there is the need for a more inclusive approach where all those considerations regarding the success of the international instruments could be explored. Therefore the optimal treaty framework could be relevant in several ways. In one framework we could capture several keys aspects crucial to the success of the legal instruments in order to increase their acceptance by states and lead to ratification and compliance. In fact, analyzing human rights and labor migration issues in the framework led to many findings which can be summarized as follow:

This study found in the light of researches of Thomke and Leduc among others that customers were rarely able to express their needs with specificity due to the uncertainty they face and that they had a vague idea of what can give them satisfaction before they actually see it. This is a revealing glimpse to help us understand why among other things, even if the states participated in the creation of the convention they still hesitate to ratify and implement it.

As Leduc (1969) argued, the consumers have a great critical sense and they know very well the weakness of the products, mainly the ones they are using. Therefore their review can be useful information for new product idea or product modification. This led to the study of the complaints of the customers and to explore ways to deal with them. Indeed, complaints and feedback of the consumers is at the root of the conceptualization of value creation (Arogyaswamy and Simmons, 1993).

The study found that brand power was important and that when customers can associate the brand name with satisfaction, quality and value, this will lead to customer loyalty, word-of-mouth advertising, profits, and price premium and so on, leading to a more prosperous organization (Bradley and Wood, 1994). Bradley and Wood argue that customer choose one product or service over another because they believe that they will get better value than they could expect from other alternative. This gives an insight on why States pick winners and go on a global race for talent. There is also that the states that refuse to ratify the conventions are receiving high income states; high income is most of the time more concern with the brand than anyone else. This is a point to remember and that shows the relevance of studying branding for the international instruments. It was also found out that some strategies of the international organizations contributed to weaken the legal instruments and affect their image.

As Wheelwright and Clark (1992) noted, in a world where among other things competition is increasing and becoming more intense and global, doing product and process development is unavoidable and doing it extraordinarily well can provide competitive advantage. A product can be facing difficulties because it failed to appeal the customers, it is too vulnerable to competitive threats, its profitability and performance in the past and in the present are not so good and its future is therefore compromised. It can also be in a situation of potential failure due to its lack of differentiation with other existing products. Therefore, they have to work to add value. The study found in the light of the upgraded pyramid of value of Almquist et al that the companies that performed on multiple elements of value would have more loyal customers. In the framework, loyal state-customers were equated to states that comply. The analysis revealed that the crucial elements that should be featured in the legal instrument would be: quality, avoid hassles, reduce risks, reduce efforts, variety, reduce cost, reduce anxiety, and reward me. In addition, to make the legal instruments more appealing to the states more features should be added and finding the right combination should be of great concern. Like the laws of Olympic games which “sell dream” in a certain way and give the states their claimed sovereign rights to decide few things at the national level. The immigration laws at the international level need that inspirational background or underpinnings. It needs to give the states some high goals, some dreamlike vision to fight for. Somehow in the legal instruments offering as a whole, they need to infuse some elements to have the state united, to bring everybody together at the national level since domestically there are often conflicts of interests.

In short, the OTF is a life changing tool useful for the International organizations which have been struggling for a long time with ratification and compliance issues. It can increase their capabilities and provide dynamism to their activities. It is to remember that effective product development is challenging, no query why usually authors do not offer a list of steps to follow to achieve guaranteed success. Clark and Fujimoto (1991) found no easy answers to the questions regarding what makes sustainable success and what explains variations in performance among firms in similar sector of activities. However, some paths inevitably lead to success while some others to failure. As they put it “Effective product development rests on a product design’s ability to create a positive product experience; this calls for among other things to a cycle of information circulation from customers, to producers, and then to sales and then back to customers (Clark and Fujimoto, 1991). In any case, one last thing to

bear in mind is that learning from product management is a lifelong experience, and a constant search for improvement. When the most important lessons from product management will really and completely integrate international law not in scattered and furtive ways but rather in a way to officially build what can be called a real optimum treaty management with the trademark of International law, adapted to meet its particular needs and reality, international law will be stronger, more dynamic and have a better future.

Author

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