A Study of Human Rights and Labour Migration Issues in

The Optimal Treaty Framework

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“Understanding a question is half an answer”

Socrates

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Abstract

This thesis connects to a prominent debate in the existing literature regarding the protection of human rights: the problem of ratification, compliance, and implementation of international instruments. In labour migration as in many other fields, this is a big challenge.

Drawing on product management and marketing, the Optimal Treaty Framework offers a broader and more inclusive approach, and leads to more efficient and effective decisions related to international instruments. It aims to empower the legal theory and practices and provide a better understanding of many issues. As a matter of fact, most of the theories emphasize why states do not comply with international treaties and/or how to influence them, and sometimes they clearly contradict each other. The Optimal Treaty Framework shows that they are valuable in that they provide precious input for the optimal treaty design and policy; however, they represent only one part of the whole picture. The Optimal Treaty Framework moves the debate a step further by integrating those findings, on state behaviours, and influential strategies, into the product policy and by exploring factors and alternatives facilitating optimal treaty development and performance.

The result of this study is a useful pattern grounded in advanced studies in product management to bring about products or international instruments that are able to meet actual needs, and anticipate future ones. The Optimal Treaty Framework with its diagnostic and forecasting ability offers a multilevel structure to analyse and confront theories and to explore and assess ideas, actions, and practices in order to clarify contradictions and take corrective actions.

Keywords: product, product management, human rights, labour migration, migrant workers, legal instruments, optimal treaty, ratification, compliance.

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ACRONYMS

EU	European Union
IACHR	Inter-American Court of Human Rights
ICBL	International Campaign to Ban Landmines
ICC	International Criminal Court
ICJ	International Court of Justice
ILC	International Law Commission
ILO	International Labour Organization
IO	International Organization
NGO	Non-Governmental Organization
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OTF	Optimal Treaty Framework
PTA	Preference Trade Agreement
SC	Security Council
UN	United Nations
WTO	World Trade Organization

LIST OF CASES

LIST OF TREATIES AND OTHER INSTRUMENTS

Constitution of the ILO

Universal Declaration of Human Rights

International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Economic, Social and Cultural Rights (ICSCR)

American Convention of Human Rights of 1969

ILO Migration for Employment Convention 97 (revised) of 1949

ILO Migrant Workers Convention 143 (supplementary provision) of 1975 and its recommendations

UN Convention on the Protection of the Rights of All Migrant Workers and Their Families of 1990

ILO Fundamentals: C087 and C098 on Freedom of Association, C029 and C105 on Forced Labour, C100 and C111 on Discrimination, C138 and 182 on Child Labour

The Vienna Convention on the Law of Treaties of 1969

Introduction

The specific problem under consideration is the ratification, compliance, and implementation of the relevant treaties to protect human rights of migrant workers in general and low-skilled migrant workers in particular. The Committee of Experts (ILO, 2016) reported that Convention 66 of 1939 on migration for employment failed to obtain ratification; only 49 countries of the 186 members of the ILO have ratified Convention 97 on migration for employment, 18 have excluded all three of the annex provisions, 23 have ratified Convention 143 on migrant workers, and one excluded Part II of this convention.

However, the International Labour Organization (ILO) is not the only one to face such issues. Indeed, the United Nations (UN) is also struggling with some conventions. Five UN legal instruments are related to international migration: the International Convention on the Protection of the Rights of All Migrants and Members of their Families; the Protocol of 2000 for the Prevention and Suppression and Punishment of Trafficking in Persons Especially Women and Children, the Protocol of 2000 against the Smuggling of Migrants by Land, Sea and Air; the Convention related to the Status of Refugee of 1951 and the protocol related to the status of refugee of 1967. Unfortunately, the number of ratifications of those instruments is quite low.

In their report of 2016 related to the situation in 2015, the experts stated that 145 countries ratified the Convention of 1951 and 146 ratified the protocol; they also mentioned that only two thirds of the member states ratified the two protocols that aims to reduce irregular migration, human trafficking and migrant smuggling, and only one quarter ratified the Convention of 1990 on migrant workers (UN, 2016). The results for October 2015 highlight the fact that 36 member states ratified all five legal instruments related to international migration and 14 member states did not ratify any of them. The convention of

1990 on the protection of the rights of all migrant workers and their families, considered as a major achievement in the fight to improve migrants' rights, has been the most disappointing of all (Ruhs, 2013). It took 20 years to negotiate it but finally it was ratified by only a very few countries and mostly sending countries. The receiving countries have signed some general human rights treaties but when it comes to those specific to migrants they refuse to consider.

Based on the concept "human rights for all" articulated in the universal declaration of human rights, human rights and the related principles are true and valid for all peoples, in all societies and under all conditions of ethnic, economic, cultural and political life (Taran, 2000). Nevertheless, it was a long and challenging process to extend the application of universal human rights principles to vulnerable groups such as women, children, indigenous peoples and migrants. The 1960s saw the adoption of two major covenants to define and ensure the protection of political, civil, economic, social and cultural rights; together with the universal declaration of human rights they form the bill of rights applicable to all human beings in general. However, since the practice revealed that some specific groups were left behind, specific conventions were adopted to extend rights to the groups in needs of more protection (Taran, 2000). Unfortunately, even if conventions on the rights of the child, women and the one against discrimination have been ratified widely, the convention to protect migrants and indigenous peoples faces strong resistance (Taran, 2000). Until the current days, ratification of international instruments for migrant rights remains a delicate issue.

Indeed, governments do not want to depart from their position, and increasingly, principles of universality, inalienability and indivisibility of human rights are being challenged (Taran, 2000). The states are concerned, among other things, with questions such as whether economic, social and cultural rights should be considered at the same level as the political and civil rights and so on, and whether or not all of these rights should be extended to

migrants (Taran, 2000). These features among others have been pointed out by states to justify their refusal to ratify and their resistance to extend human rights protection to migrants. Although for many, rights represent an interdependent system of guarantees and they interact in synergy, in practice states have the tendency to pick and choose which international agreements they will ratify and comply with (Donnelly, 1986). Even the most basic rights are being challenged, "those fundamental moral rights of the person that are necessary for a life with human dignity" (Forsythe, 2000). Unfortunately, as stated by Shachar (2011), neither the emphasis on human dignity nor simple compassion is likely to convince the states which keep increasing their restrictions. Even children are being denied the right to nationality inherent to their dignity and well-being in countries that have jus solis although they were born there due to the situation of their parents. However, migration policy makers at the domestic level do not hesitate to transform their immigration law to grant "Olympic citizenship", for example.

The fact is that migration policies are complex issues which require complex approaches, cross-transfer knowledge and so on in order to grasp the intricacies of the issues better and explore more opportunities to find solutions. For instance, to help solve the most glaring inequalities regarding citizenship issues in the United States where some categories of people are not eligible for citizenship according to traditional principles placing them outside the security and membership line and raising conflicts and debates among different sectors, Shachar (2011) drew property lessons for immigration reform in the country. She developed the concept of "jus nexi" and the principle of rootedness to reconcile what she called "the nation of laws and the nations of immigrants". Those two groups, she explained, have competing visions and in terms of policy framing, the "nation of immigrants" perspective challenged the "nation of laws" opinion that certain categories of people should not be set on the road to citizenship. In the same way, to help increase acceptance of the international instruments relevant to the protection of the rights of migrant workers, this thesis drew lessons

from product management with the hope that it will be really developed in international law in the same way that the notion of rootedness, which started from property theory, is widely recognized in common law nowadays mainly in modern contract, family, and private international law. The concept of jus nexi stems also from property, said Shachar.

In fact, property, subject to constant philosophical and legal contestation, is notorious for escaping any simple or one-directional definition (Shachar, 2011). Property is a rather multi-faceted institution that creates and maintains relations among people in regards to tangible as well as intangible entitlements; law gives special validity to such relations but since old times it is seen as a web of social and political relations. In short, this is the background of the property theory that Shachar used to address issues of broken immigration systems. She noted the growing depth of the interdependence between the individual and the political community increased the claim to move away from the usual hyper-legalistic paradigm toward a jus nexi approach and instead of raising arms in despair it is better to harness such opportunities.

It is clear that migration-and human rights-related issues are not so easy to manage because they are at the intersection of several fields. Makau Mutua (1995–1996) argued that in spite of what many authors want to say, such as human rights are non-ideological and non-contentious, human rights are deeply rooted in politics and cannot transcend it. The editors of the Harvard Human Rights Journal, for their part, noted in the introduction of the Boundaries in the Field of Human Rights section: “Human right is no longer solely the discipline of Lawyers, if it ever was; its boundaries have been pushed back, opened up and made porous”. Moreover, international law is having a hard time upholding itself with so many challenges including the ones related to human rights and migration, without forgetting the problems with many international treaties in general. Battistella (2009) averred that there was limited expectation from the conventions to protect rights mainly because of the “ineffectiveness and

tiredness" of the human rights discourse which has almost disappeared from the agenda of the international society. Furthermore, the law-making system, according to Boyle and Chinkin (2007), is eclectic, overlapping, poorly coordinated, and unsystematic. All this being considered, it is, therefore, important to have the most inclusive and efficient tool possible to capture the issues and above all to bring results.

Product management to begin with is far less controversial than the property theories. In a firm it is the function responsible for ensuring that each product the company offers to the market is as successful as possible; it is responsible for every aspect of the product offering as well as the overall success and failure of the product (Lawley & Schure, 2017). It draws attention to any part of the whole product offering that might be a hindrance to its success. Product management is the best choice for driving products strategically in order to ensure that the customers are happy and the company is doing well. Due to the fact that it encompasses product strategy, product management contributes to drive the efforts of the company through a solid product strategy leading to the ability to capture and own markets for the long term.

However, like international law in general and international human rights in particular, where efficiency is required but real authority is not always there, product managers usually do not have any authority; they must lead and influence in subtle and effective ways. Indeed, Henkin always called for the understanding of the limits of international law's influence in the international arena constituted by sovereign nations. Product management is an example of possible success even without strong and formal authority. Therefore, useful lessons can be drawn from it. However, this is not the first time that management has entered international law.

Indeed, a few years ago Chayes and Chayes developed a managerial approach to address compliance issues with international agreements. They argued that against the enforcement model of compliance, an alternative managerial one could be develop relying primarily on cooperation and problem-solving approach. The managerial model of Chayes and Chayes includes 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. Also review assessment and reporting are for them and other authors like Geisinger and Stein (2007) the most important mechanisms to foster compliance.

Indeed, they emphasized that it is exactly because states value esteem from the global community that they are compelled to alter their actions. NGOs use the report about investigation on human rights violations, historical facts of a state's 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 behaviour and push them to honour their obligations. To illustrate their point Geisinger and Stein (2007) cited the example of Mental Disability Rights International (MDRI) and Hungary, an NGO fighting for the rights of persons with disabilities, after undertaking an investigation of two years, 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 behaviour by promulgating new legislation, creating institutions, and establishing an ombudsman system to counter the effects of the information released and remedy 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 a member of the WTO, did not change its behaviour 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 (OTF) they have more tools and more opportunities.

In addition, the OTF not only focuses on compliance but also works to first obtain ratification and to also foster compliance. Effective product management is not easy, said Clark and Fujimoto (1991), in all industries, there are some products that are not easy to market or that fail to meet the performance objectives of the firms that launched them. Achieving excellent product development requires consistency in the total development system including organizational structure, processes, strategy and technical skills (Clark & Fujimoto, 1991). If product management is performed effectively, it helps a product team to march in the same direction, toward building an experience or features that serves the customer better. The goal of achieving more successful international instruments has led to the analysis of their internal structure and the exploration of treaty making which is an important step to consider when there are ratification problems. Ratification is certainly the last stage of treaty making; however, technical problems in it can affect not only its legitimacy but also its propensity to be accepted by states.

Furthermore, in International law and migration issues, one important element that is not so much emphasized is the concept of value-creation which plays a major role in product management in general. Indeed, if for instance we consider sport laws in the Optimal Treaty Framework we can see that they offer a combination of values that is considerable. If we compare international migration laws and international sports laws, more specifically dealing with the Olympic movement, the elements of value combination gap are big. This can help explain 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 seemed to share a similar view; they explained how in 2009 more countries were members of the International Olympic Movement (205) than of the United Nations (192) (Mitten & Opie, 2010). This shows how a strong brand becomes a symbol which has the power to mobilize internally and attract on the outside. It raises interests and motivation to dig deeper into product management and marketing to optimize international law and international treaties. This and much more are explored in this framework; many other aspects crucial to the issues at stakes are also developed. In short, it is a journey worth undertaking. It starts with two specific research questions:

- How could the optimal treaty framework be relevant to human rights issues in labour migration?
- What could product management bring to the ongoing debates?

The OTF is of extreme importance since it can lead to greater design, development, and performance of the international instruments. Promotion is part of product management and marketing; and it is an obvious fact that many international actors are doing it actively, be it consciously or not. The OTF 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 Magnetic Resonance Imaging (MRI) in medical science can be used to produce a detailed pictures of organs, soft tissues, bones and internal body structures and help diagnose medical conditions, evaluate several body parts and determine the presence of diseases (radiologyinfo.org, 2017), the OTF 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 purpose of this work is to find very concrete answers to those questions that can help us to understand better and address the long and constant issues related to human rights in labour migration. It is divided into five chapters. The first establishes the concept of optimal treaty and the approach used for the analysis. The second examines the optimal treaty framework, its features and relevance drawing on product management and marketing. The third explores and analyses human rights and Labour migration issues in that framework. The fourth one presents some management patterns and examples. The OTF offers a broader view of the issues; it is more inclusive and harmonizing and helps clarifying contradictions by recalling important information when analysing theories.

"What can we expect to happen over various periods of time in relation to a variety of proposed human rights initiatives? What steps would be necessary to attain particular human rights goals?" These questions as posited by Falk (1981) are enormously complex since the intricacy of human rights issues does not allow expectations of rapid success or even steady progress and the related struggle is bound to ebb and flow. However, as Falk said, there is time for perseverance in this era of increasing global awareness. The disappointing record of observance and implementation might be a signal indicating that the means used so far should be reconsidered (Falk, 1981). Indeed, one should not give up, but as Boileau (1674) said, try a hundred times, or "put your work twenty times upon the anvil". In fact, the original French version says that:

"Vingt fois sur le métier, remettez votre ouvrage

Polissez-le sans cesse, et le repolissez

Ajoutez et souvent effacez"

Calling for a different way of thinking and a wider perspective, this thesis wants to offer a framework where this suggestion of Boileau would be possible, but rather than a

cumbersome exercise it made it a wonderful journey full of discoveries and an interesting experience. Nevertheless, as with all human work, this one is not perfect; however, it hopes to humbly contribute to broadening the views, enlarging perspectives of all relevant sectors in the ongoing search for a more effective approach to the Protection of Human Rights in Labour Migration.

Methodology, scope, and limits of the thesis

This is an exploratory study seeking to provide opportunities to explore and analyse enduring existing problems using an interdisciplinary approach. It includes primary as well as secondary sources, survey results and reports of the ILO, the UN and other researchers. Extending the managerial approach of Chayes and Chayes and borrowing from product management and marketing it explores the general reasons why new international instruments fail and the factors to be considered to bring out and develop outstanding ones that are not only able to meet the needs of the present but also those of the future. The study relies on the interplay of inductive and deductive reasoning. In addition, the study beneficiated from the useful insights of several experts in marketing and product development, mainly: Prof. Claudius Claiborne and Prof. Takahiro Fujimoto. Their interesting comments and suggestions were useful in many ways to this research. However, it is important to note that the author of this thesis is personally accountable for all the mistakes and misunderstandings. Moreover, as with all human work, this one does not make any claim of perfection but rather aims to humbly contribute to the protection of the rights of migrant workers.

Chapter 1

Establishing the concept of an optimal treaty: Paradigm shifts

The Optimal Treaty Framework aims for ratification and compliance. It is a must for international organizations and contributes to the empowerment of international law. Among other things, it turns around optimal treaties, optimum treaty design, and recovery. It makes plenty of sense and its relevance is tremendous. Since it leads to a few paradigm shifts, the first step is to define and understand the concept itself and the paradigm shifts it leads to. Following that, the second step establishes its theoretical settings and, finally, the third step determines the implications. That is the purpose of this chapter, which has three sections. The first one (1.1) presents some considerations about the concept of an optimal treaty. The second section (1.2) sets the theoretical background. The third one (1.3) elaborates on the paradigm shifts that the concept implies and discusses more extensively how optimal treaty management can empower international law and how this research fits in the literature, filling an existing gap. The third section also explains how the study moves the field a step further and opens a path for follow-on research.

1.1. Some considerations about the concept

According to the Oxford Learner's Academic English dictionary (2014), optimal means "the best possible" or "producing the best results". It is synonym to "optimum" and they can be used interchangeably. Another important term that will often be used in this thesis is "optimize", which means "to make something as good as it can be". The word treaty is defined as "a formal agreement between two or more countries", the word convention can also be used. The Vienna Convention on the Law of Treaties of 1969 defines a 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 thesis 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 and ideas used to produce optimal treaties from a product management and marketing perspective. However, to reach that goal, the concept of "optimal treaty" calls for a few paradigm shifts. The first one is that it considers a treaty as a product. It is not because we do not understand their value, their relevance or other factors. We recognize, as stipulated in the Vienna convention, that treaties play a fundamental role in the history of international relations and acknowledge 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 labour migration.

As a matter of fact, in marketing, it 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) also avers that many things can be considered as products: governments programs as well as the products and services of non-profit organizations, university programs, cultural events etc. They can all be considered as "products" requiring development and marketing to "appeal to a target segment". Sometimes, authors refer to international instruments as products. 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. Also Henkin (1990, 1988 reprint of 1978 ed.), analysing the origins and antecedents of the rights of man, said that the conception of human rights 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 purposes by Poirat, Reuters, and Kelsen, mainly from a contract law point of view. Poirat (2004) argued that as a material source of law, the treaty constituted a product no matter the means of production or 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 means and can create secondary rules. She mentioned that the analysis of the treaty as a means 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, treaties are international legal acts liable to analysis as means of production and legal products (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 subordinated to the juridical order in which it aims to operate. 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 raised questions such as what behaviour should be expected, how to assess the fulfilment 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 a 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 has shown the targeted subjects might not want to fulfil 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 of "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 neither the analysis of the means of production nor that of the product revealed many important things to Poirat. This is not surprising because contract law obviously cannot capture it all, surely not the several important considerations that go beyond its scope.

This thesis, among its paradigm shifts also considers the treaties as products; to facilitate the understanding, the concept "product" or "optimal treaty" will often be used. So will be "Optimum treaty management" to refer to product management where the products are treaties. However, it is important to note and always remember throughout this work that 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 thesis 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 analysed 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. "Consumer" refers to those who buy the product for reselling whereas "customers" buy the product for their 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 advantages 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& Olson, 1994).

Considering legal instruments as products means neither that they are not valuable and nor 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, as it is certainly not a bad move. It does create opportunities to analyse and consider everything that relates 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, the implementation, and the control of the existing and new products 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 contributes greatly to identification and solution of problems based on utilization of market research as well as management and behavioural 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 and problems faced. They are used in this thesis to explore solutions. Thus, from the perspective of international law, not only can we use the framework to explain why countries do not ratify or comply, but we can also get many other advantages: failure is explained and successful products tips revealed; the relevant international instruments can be repositioned successfully; similar to several other 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 OTF in itself fits really well in the literature. The following section establishes its theoretical background.

1.2.Theoretical background

This thesis connects deeply with the international process, more specifically with the theory of transnational legal process and the works on regime design and managerial approach to compliance. It fills a few existing gaps, answering their call for further research, addressing some issues they raised, and in the end, optimizing them. Indeed, many theories called for further research to develop 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 it is indispensable. They argued that the mechanism called acculturation could lead to behavioural 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 also discussed mechanisms that were similar to acculturation mainly at the latest phase of norm implementation; however, Goodman and Jinks complained that Koh 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 completed. The OTF encompasses them all and goes 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 behavioural changes in international law. Their mechanism is called acculturation, which is the general process by which actors adopt behaviours 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. Goodman and Jinks argued 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 similar ideas as Goodman and Jinks since it also explores the influence of surrounding environment. In their theory, Geisinger and Stein argued that states change their behaviour because of their desire to be part of the international community; international society is then seen as a pull that influences their behaviour. They found that Goodman and Jinks did not account for how the different processes they identified would affect states behaviour 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 behaviour of individuals and states. This model led Geisinger and Stein to a few conclusions they claimed to be relevant to the structure of treaty regimes and provided 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 behaviour and alter the social cost of undertaking that behaviour. They argued that when the law is designed adequately it can push individuals to

change their behaviour by inducing them to change their taste through internalization or by nourishing fears of social sanctions. They found that two factors influenced an individual's decision to behave a particular way. The first is the attitude of the individual toward the behaviour itself and the second is the beliefs about what other people think of the behaviour. Thus, they concluded that desire of one individual to undertake a behaviour might be determined by the understanding of that individual's attitude toward the behaviour and 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 behaviour by changing beliefs related to the subjective norm or to objective reality (Geisinger & Stein, 2007). Geisinger and Stein argued that ratification has impacts on several beliefs about norms and therefore affects compliance. Thus, changing belief about the reality can lead to changing 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 a cognition system. Cognition is important in understanding consumer behaviour 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 & Olson, 1994). It is worth noting that sometimes consumers choose products because of their symbolic meaning rather than their functionality (Peter & Olson, 1994). This considered, the expressive theory of international law pointed out many important points useful to understanding states' behaviour. Geisinger and Stein contributed positively to the literature review and added to the work of Goodman and Jinks. However, as we shall see in detail in Chapter 3, when put in the framework and confronting the wheel of consumer behaviour, it seems like the theory does not explain many important subtleties 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, Geisinger and Stein 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. More specifically, human rights, which are not reciprocal or influenced by changing in scientific understanding depend more on direct normative influence (Geisinger & 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 because new information related to biological realities of women (Geisinger & 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.

Geisinger and Stein drew on the reasoned-action model of decision making to explain how normative pressure influences rational actors to alter their behaviour 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 lies in the creation of objectively-verifiable provisions which reflect goals that each state of the treaty regime can realize. Geisinger and Stein contended that one implications of their theory is that states must be involved in other cooperative relationships, 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 bit limited in that it only provides means for describing the effects of ratification. Geisinger and Stein 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 an 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 (i.e., coercion, persuasion, and acculturation), the 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 OTF was conceived with similar ideas, to fulfil 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 performed a valuable service regarding this "cognitive and affect" part of it but analysed in the framework, a few elements are missing. The OTF therefore seeks to fill the gap.

The transnational legal process, according to Koh (1996), provides the key to understand issues of compliance with international law. He argued that it has dominated 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 considers 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, and percolates up and down/backward and forward from the public to the private sector and from the domestic to the 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 into law-abiding people by influencing the way they perceive themselves, a similar process is expected in the international arena. Koh advocates 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 a 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 enmesh with international legal norms, and 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 aims to complete the 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; it considers on one side how international actors shape laws through their interactions and on the other how laws shape future interactions.

Koh's theory of the transnational legal process predicts 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 leads 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 OTF, 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 not only considers state behaviours, the influence of the international environment, the work and strategies of other international actors such as international organizations but also it considers the content of the law. Thus, complementing them, the OTF 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 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 OTF is an extension of it and adds many positive tools to it. Chayes and Chayes emphasized more compliance. OTF includes ratification to list, 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 a problem-solving approach, and more cooperation 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, they asserted that some could be umbrella agreements to build consensus on more specific later regulations and create international organizations to watch them.

Chayes and Chayes 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. A review and assessment process, with a 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 paradigm shifts to which we turn now in the next section.

1.3. The paradigm shifts and implications

In this thesis, in the OTF more specifically, the act of buying is equivalent to ratifying, compliance equates to loyalty, the international Labour Organization (ILO) and the United Nations (UN) embody the manufacturers or the producers, and the states are at the same time the customers and the consumers. The products refer to the legal instruments, the conventions or international agreements dealing with migrant workers: all the ILO conventions specifically related to migrant workers such as the ILO Migration for Employment Convention 97 (revised) of 1949, the ILO Migrant Workers Convention 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 they are necessary to reach individual ends like human dignity, fulfilment, and 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, and well-being to the world, to settling disputes and stopping conflicts among

states. The ILO emphasized in the preamble of its constitution that regulations are required to give protection where conditions of labour exist involving hardship, privation and injustice to such a large amount of people that the situation leads to unrest and imperils 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. They will be made obvious gradually in this thesis, but in this section one or two 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-life competitive environment where they are fighting to have and increase market share— 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 Conventions 97, and 143, can give an insight into the relevance of the paradigm shifts as well as the relevance of legal instrument management and the OTF.

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 & Fujimoto, 1991). If we consider the international treaties as products, the same thing is true for them also. Collingsworth (2002) argued that a continual focus on refining standards while being well aware that there is no effective mechanism to enforce them shows 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, and how well its parts match, how well its components fit and work together. They added that external integrity, on its side, relates 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 bad 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 97 and 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 97 on Migrant Workers of 1949 contains 23 articles and 3 annexes. Its article 6 protects migrant workers against discrimination based on race, nationality, sex, or religion, and in the labour 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 Articles 14 to 17 add some flexibility to the convention allowing states to exclude some of the annexes. In Article 20, they mention that there will be a report when necessary about the application of the convention at the general conference. It is important to mention that Convention 97 protects the rights of migrant workers in regular situations.

Convention 143 with a total of 24 articles protects the rights of all migrant workers (article 1), it goes further in several aspects. For example, Article 2 contains provisions to fight against illegal migration. Article 10 states that there should be no discrimination, but 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 to a country temporarily to perform tasks assigned by their company or organization established in that country. Article 12 pushes the member states to seek the cooperation and collaboration of organizations of employers and workers and of all other related organizations or entities to promote the provisions envisioned in Article 10, which fosters, equality, social security, trade union and cultural rights, and collective and individual freedom for the migrant workers and their families. Article 12 also asks the states to take adequate measures to abrogate the contradictory laws, facilitate the enactment of the appropriate laws, and encourage programs that 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 labour market and the acknowledgement of the qualifications acquired in other countries. From Article 17 the convention talks about technical matters such as ratification (Articles 17—10), report (Article 21) and revision (Article 23).

The problems start when they talk about exclusion. They did not seem to pay attention to a few consequences that might result. For instance, 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 negotiations, sometimes, one party minimizes 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 lessens 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 behaviour. 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 & Olson, 1994). They need to realize that the states receive the information, give it meaning, and make a decision as a result of the interaction between their affective and cognitive systems. 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 finally not to buy (ratify). This thesis argues that in term of complexities and so on, the international instruments are similar to cars and that they are both complex products. The situation described above could be seen 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 because, since he already bought a previous car, that 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 the desire of one individual to undertake a behaviour might be determined by the understanding of that person's attitude toward the behaviour and 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 & Olson, 1994). The psychological risks concern what other people will think and how the product will make them feel (Peter & 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. All those aspects of the international instruments are considered and studied in the OTF in later sections and chapters.

In an interview, Prof. Fujimoto asserted that product integrity was a key element in its branding. Kapferer (1992) also maintains that the product 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 through the sale point. Therefore, product architecture is an important element to consider since it can have so many repercussions on other aspects of product management. The following lines will examine in more details the relevance and implications of product integrity and branding for products in general and legal instruments in particular. For clarity concerns, the analysis will be divided into two subsections. The first one (1.3.1) will deal with the architecture and integrity of the international instruments and the second one (1.3.2) with branding matters.

1.3.1. Legal instrument architecture and integrity

To better capture the importance of having an OTF for the legal instruments and understanding the link between "the architecture and the integrity" of the legal instruments and ratification, we will consider the following case.

Judge Antonio Augusto Cançado Trindade wrote a separate opinion that accompanies the judgment of the case of the girls Yean and Bosico v. Dominican Republic (judgment delivered on September 8, 2005). He stated that in this judgment the court preserved the standards of protection embodied in its consistent case law. He mentioned that it availed itself of the very useful contribution made by its Advisory Opinion no18, on the Juridical Status and Rights of Undocumented Migrants (2003), and the legacy of its Advisory Opinion no 17 on the Juridical Status and Human Rights of the Child (2002); it interrelated the violated rights instead of dealing with them separately or, to repeat his own words, "in an unduly compartmentalized way". Thus, it combined the right to nationality and the rights of the child, the right to name and to juridical personality, and the right to equal protection and the right to humane treatment, underscoring the broad scope of the general obligations of Articles 1(1) and 2 of the American Convention. He concluded that he would regret if in the future, the Court departed from this case law, which maximizes the protection of human rights under the American Convention. Reminding that he made similar arguments in the case of Acosta Calderon v. Ecuador, (Judgment of June 2005), Para. 16, he asserted that he found it important to reiterate what he called his continued understanding that "the best hermeneutics for the protection of human rights is that which interrelates the indivisible protected rights and not that which seeks incorrectly to separate them, rendering the basis of protection unduly fragile".

This opinion of Judge Trindade draws attention to many important points. The first one is that the rights contained in the international instruments play an overall function in rights protection and that when they are interrelated they are more effective than when they are separated. It might lead to the hypothesis that an integral legal instrument is better than a modular one. This hypothesis is reinforced when other views are considered. Indeed, Boyle and Chinkin argued that complex treaties contain interwoven provisions that cannot be seen in isolation. They reported that multilateral treaties required the rational and deliberate effort to create general rules that can meet the needs identified; incorporated to them are provisions related to their amendment or updating which do not require additional conference or other formal process.

However, mostly when Chayes and Chayes (1995) argued that treaties that come into force do not remain static and unable to change and that treaties that last must allow inevitable changes in the political, social, economic, and technological settings (Chayes and Chayes, 1995), it seems to reflect more the modular type. They added that such adjustments might be realized by amendments, formal amendments or, "non-amendment amendments" designed by treaty lawyers. They also noted that another method that could be used was the one consisting of granting the power to interpret the agreement in the organs established by the treaties (Chayes and Chayes, 1995). As could be seen, at times the legal instruments architecture seem to be modular and at times integral. However, before dealing with this issue, let us mention the second point.

The second point is that this dissenting opinion by underlying those facts gives reason to and corroborates the idea that architecture and product design are important and should not be taken lightly because the consequences might be more considerable than one might think. Treaty-making has lost of its importance since the text has little bearing on state behaviour (Boyle & Chinkin, 2007). However, their central role in the international legal system cannot

be overestimated (Fitzmaurice & Elias, 2005). They are the principal means of international law-making and offer several advantages over customary international law in the regulation of traditional and contemporary issues of international law (Fitzmaurice & Elias, 2005).

Product architecture is made relevant also when we consider what Chayes and Chayes (1995) argued when they said that the international treaty making system, like domestic legislation leaves plenty of room for the accommodation of divergent interests. The treaty is necessarily a compromise, so if the agreement 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 (Chayes and Chayes, 1995). However, they did not explain how to design better agreement in order to ensure such results but they continued to say that if problems that have to do with compliance and enforcement are endemic, it is eventually because the range of parties' interests incorporated during the negotiation process was not broad enough (Chayes and Chayes, 1995). All these make obvious the relevance of an examination of product architecture. Indeed, the thesis intends to address these issues by providing a framework for well-designed agreements which have more chance of first getting ratified and then being complied with.

Indeed, experts agree that, usually, at the beginning of the product development process the firm has to decide about the architecture of the product. This architecture will have an impact on how the product will evolve in the future. Charles H. Fine, the Chrysler Leaders for Manufacturing, Professor of Management at MIT's Sloan School of Management, defined the word architecture as the arrangement of components and the ways they relate to each other. Takahiro Fujimoto, product management expert and Professor at the University of Tokyo, described architecture of a product or a process or an artefact in general, as the formal or abstract pattern of dividing and reconnecting the artefact's functional, structural and process design elements. He said that the two most basic types of architecture, the integral

type and the modular type could be distinguished, and that most of the products and processes in the real world could be positioned along the spectrum between the two extremities of pure modular and pure integral types.

Charles Fine, for his part, noted that modular and integral architectures do not mix well because they are like oil and water. He specified that modular architectures were flexible in structure, with highly standardized interoperability and standard connections for subsystems; they can be upgraded by replacement of lesser components with better ones. He added that the modular supply chain is also characterized by flexibility and interchangeability in the relationships between suppliers, partners and customers. Conversely, integral architectures link subsystems with tightly coordinated relationships and distinctive features that cannot be easily connected to other systems. To make sure that they are aligned, he suggested that a company uses three-dimensional concurrent engineering in the design of its product and supply architectures.

Thus, all these being considered, looking at the two international instruments, namely Convention 143 related to migrant workers and Convention 97 about migration for employment, it could be said that the ILO was trying to follow the modular architectures which are described as "flexible in structure, with highly standardized interoperability and standard connections for subsystems;" supposing also certain flexibility and interchangeability in the relationships between suppliers, partners and customers. Considering the dissenting opinion of Judge Trindade about the American Convention of Human Rights, it can be argued that it would be preferable that the international instruments aiming at rights protection follow integral architectures, which link subsystems with tightly coordinated relationship and distinctive features that cannot be easily connected to other systems. Here it is important to be careful since one could argue that it might depend on which systems are considered. If the system excludes of certain parts like the ILO allows it

with the two conventions under analysis then it is obvious that there will be a problem. This seems to be a dilemma legal instruments makers could face or have faced. However, the decisions regarding which one is better and/or which one to select involve more considerations.

Fujimoto (2012) explained that customers' preference and environmental constraint affected the selection of product architectures, and how these architectural selections in turn influenced the choices of the firm related to coordination mechanisms, as well as how the organizational capability building influenced the overall selection processes and how such processes result in the comparative advantages based on design and the structures of international trading at the onset of the 21st century. Fujimoto (2012) predicted that, given the number of design elements, a product with a rather integral architecture has the tendency to require a higher levels of coordination than the modular types of products. In addition, the basic architectural characteristics of the product such as the overall modular aspect or integral architecture would be influenced by the customer preferences on its functions, prices, technological constraints, and environmental and energy-safety-related regulations that the society imposed.

In the light of this explanation, we can conclude that the ILO ended up opting for a rather modular type of legal instrument because of customer (i.e., the states) preferences; concern over coordination costs, and the adversarial environment of the market since integral architecture would lead to higher workload. In fact, the market is rather mixed, organizational coordination cost also would be higher since conventions are complex products and market and social restrictions are numerous. Indeed, market and social restrictions weigh heavily in the balance. Falk (1981) explained that the geopolitical realities, 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,

which depends on the interplay between normative standards and social forces involved in their implementation and the struggle between these opposed forces occurring at the state level within governmental bureaucracies.

Therefore, Fujimoto's (2012) hypothesis which states that the choice of a given product's architecture depends on customer preference patterns whether it is modular or integral, or even a mixed form, helps explain the choice of the law-makers with the conventions. The main argument of Fujimoto is that social and market restrictions determine architectures. Indeed, for some categories of products the chosen architecture varies following the market needs, on whether customers focused on price or on function. He concludes that the customers who are function-oriented are more willing to pay large premiums for product overall functional performance, for product integrity.

Busuttil trying to answer the same questions, regarding how to decide on the features the product could have, referred to the Kano model devised by Noriaki Kano back in the 1980s. He reported that Noriaki Kano, Emeritus Professor of the Tokyo University of Science, designed a model to assess consumer satisfaction that demonstrated that not all features were equal (Busuttil, 2015). The Kano model suggests that individual product features could be differentiated and ranked depending on how consumers see them (Busuttil, 2015). If they consider a feature to be a minimum a product must have in order to be a contender, that feature is a baseline features. Features that add to the performance characteristics of a product, implying "the more the better", are seen as linear satisfiers. The last group is constituted by the delighters. Those are the features that "tap into the users' latent needs" to repeat the exact words provided by Busuttil in his simplified explanation of the Kano model. They are the features that increase consumer satisfaction but do not detract from it if they are removed (Busuttil, 2015).

As shown above, both Fujimoto and Busuttil argued that the consumer influenced the architecture of the product. This is very obvious in the international law-making system where negotiation and deliberation play a major role. If consumers have to participate in the product process, they have such opportunity in the international instruments more than any other product process. The problem is that what might be of minimal importance for the state as consumer might be keys and contribute greatly to the achievement of the main goal or the main objective of the company. Consequently, it is the job of the company to make sure that it does not lose such features but tries to convey the vision to the consumers as well as the organizations and the partners involved in the product design and development. Sometimes, the firms are so absorbed by the efforts of making their product accepted that they end up forgetting the real purpose and the real benefit of their products.

Busuttil captured the situation pretty well in his Practitioner's Guide to Product Management. Without a strong product management in organizations, it is very difficult to achieve alignment to a common goal because there is no consistency and no harmony in the voice evangelizing the product vision and reminding everyone that they work to make the life of people better (Busuttil, 2015). A product vision should be dreamlike he said, worthy to pursue because it enables people to anticipate their future sense of achievement, and give them motivation to fight for it. When firms only focus on their profits and how to maximize their revenues and share price they stop empathizing with the targeted market; and when they forget to empathize with customers, they end up forgetting the real benefits of their products —what those products actually bring to people's life. Since features do not resonate much with buyers, only benefits do, they need to pay attention also to the emotional impact of the product on the customers.

The problem is not so much about the fact that they used the modular architecture while they should have used the integral one, but that the product concept has not been

protected and that core components where unduly sacrificed, thus compromising the final product. There is not a problem per se in the choice of the modular type; as the experts mentioned, both the modular and the integral types of architecture, have their advantages and disadvantages, and each is more appropriate than the other in certain cases. A good illustration of this is the car industry, where the complexities of the negotiation process among the different sectors involved require tremendous leadership and problem-solving skills, among other things to harmonize it all. An additional example of this model choice process and intricacies would be in the international law field the UNIDROIT Convention on Mobile Equipment and its protocol.

Indeed, following a proposal from the government of Canada, UNIDROIT, according to Boyle and Chinkin (2007), set up a restricted exploratory working group in order to study the need and the feasibility of uniform rules on security interests in cross-border transactions. The convention concerned highly technical areas of private law and non-state actors involved were specialists and industry-oriented. Two international organizations collaborated: The International Civil Organization (ICAO) and UNIDROIT. Boyle and Chinkin reported that the texts had to go through a lengthy process and were submitted to the scrutiny of several bodies including the considerations of the legal committee of the ICAO and governing council of the UNIDROIT before their adoption by consensus in Cape Town in 2001.

The drafting of the aircraft protocol alongside the base convention revealed that the aircraft had more input in the substance and the structure of the convention than all the other industries (Boyle & Chinkin, 2007). Considerations were raised about a legal framework that could be adapted to other categories of mobile equipment and Boyle and Chinkin reported how the drafters found what they called a unique and innovative solution: the convention was seen as a base document taking effect with respect to each protocol, including future ones such as for the railway stock and space assets. They noted that this arrangement, by providing

flexibility, “facilitates the inclusion of new sectors within an umbrella of general principles”. We can add that this example demonstrates overall that sometimes the context and the circumstances call for a modular type of product architecture allowing certain flexibility, and that there should be no problem in adopting one model or another after careful analysis of the situation. However, some principles are important and should be the base, the standard even if the relevant sectors add their own variations.

The point is that some parts in the convention are key, sacred and should not be “removable” part of the product. As a matter of fact, Clark and Fujimoto (1991) argued that the strategy consisting of using old parts and borrowing parts from other models in order to create new models dates back at least to the 1920s, when GM introduced for the first time its full-line policy with closed bodies on a mass-production basis. “This industrial group under Harley Earl was centralized to facilitate body parts commonality across GM models and hold down soaring body tooling costs”. They also noted that building a car from all new unique parts is a strategy that has an even longer history. In the competitive environment of the 1980s, the issue was what mix of those strategies to employ on a particular product, how much off-the-shelf. The choice could significantly impact quality of design, time to market and engineering productivity. In short, bringing novelty in the product is welcome and trying out including some flexibility in the supply chain is not a problem either, as soon as the standard elements, the key components do not get dislocated. They are the baseline features of the product. The law-makers should try their best to always remember that.

Furthermore, Culliton-Gónzalez reported that in 2003, for the first time, the Inter-American Court, in its advisory opinion regarding the juridical status and rights of undocumented migrants, requested by Mexico and applicable to the US, held that many aspects of the fundamental rights of freedom from discrimination such as the principle of equality and equal protection before the law and non-discrimination belong to jus cogens.

This is because it is a fundamental principle that permeates law and the whole legal structure of national and international public order rests on it (Culliton-Gónzalez, 2012). The Inter-American Court held in the case of the children Yean and Bosico v. Dominican Republic that the peremptory legal principle of the equal and effective protection of the law demands that when regulating mechanisms for granting nationality, states refrain from producing regulations with discriminatory effects on certain groups of the population when exercising their rights. It also declared that states must combat discriminatory practices at all levels mainly in the public sphere and that it must adopt the required affirmative measures in order to ensure the effective right to equal protection for all individuals.

In addition, Trindade argued that the integrated vision of human rights that was proposed at the conferences on human rights in Teheran in 1968 and in Vienna in 1993, and that was widely accepted at the conceptual and normative level should be advanced at an operational level by relating methods of implementation to each other. They should proceed this way because the mechanisms of protection at the regional and global levels are complementary (Trindade, 2000). He concluded that the regional systems of protection, such as the Inter-American System, should be approached in the light of the universality of human rights, and this would have implications at the normative and operational levels. This is to say that the courts, law-makers, and law promoters should all sing in harmony, like one orchestra playing the same music to repeat Fujimoto. They need consistency and harmony of voice, evangelizing the product vision to repeat Busuttil (2015). Even if they want to add delighters to the product, it is crucial that they be careful because today's delighter will soon become tomorrow's baseline. If key principles are treated lightly to delight state-customers, then this will soon be the baseline.

To sum up, it is necessary to remember that product integrity is important, and plays a key role in product success. Convention 143 is composed of a preamble and three

parts. The last one contains final dispositions. Article 16.1 of Part three is the one that stated that all members that ratify the convention can exclude Part I or Part II of the convention. It is true that they added in 16.3 that the states that exclude Part I or Part II should indicate in their report regarding the application of the convention the states of their national laws related to the matters specifying the progress already realized or intended. It is understandable that the legal instruments producers want to facilitate ratification, but attention should be paid to what they are excluding since it can affect the image of the product.

Moreover, the Vienna Convention on the Law of treaties of 1969 states, in its Article 19, that a state may when signing, ratifying, or acceding to a treaty formulate reservation unless such reservation is incompatible with the object and purpose of the treaty. And article 18 mentioned that a states is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty to be ratified or when it has expressed its intention to be bound by it. Convention 143 is like Convention 97, supplementary or complementary legal instruments; they are there to reinforce previous conventions of the ILO, remind some key principles as stated in their preambles. And bring some more protection to the most vulnerable persons by drawing attention to neglected points.

Convention 143 was created in 1975; it covers some points that were not covered specifically in 1949, like illegal migration and family reunification, and so on. Everyone can understand the optional nature of the annexes of convention no 97 related to authorized personal belongings and equipment and dispositions related to tax and customs reduction or facilitation are optional, but principles like the ones related to equality and the fight against abusive work conditions are not only core principles of the convention but also of the ILO itself as an organization. In a document related to the International Labour Organization and the quest for social justice (Rodgers et al, 2009), they explain clearly that today the core

themes of the ILO's focus are freedom of association, freedom from forced labour, discrimination and child labour.

Thus, their goal is to bring decent work, equality, and social justice. Therefore, even if a state's national law is more advanced than what is stated in the conventions, they still should work on it because there is always room for improvement. As stated by Judge Trindade, in his dissenting opinion related to the case of the children Yean and Bosico, the ICHR asserted that the obligation to ensure respect for the protected rights such as those stipulated in Article 1(1) of the American convention, was of a continuous and permanent nature. New victims may arise if the state does not take all possible measures and the inaction of the state might lead to additional violations, sometimes with no relations to the previous violations. Therefore, it is important to maintain the value of the key provisions. The state can still focus on their weakness but as for the key and core principles they should not be open to exclusion of any kind.

When the product concept is not taken care of in the international instruments, it will lead to a "disintegrated mosaic" of provisions that will confuse the customers and the consequences will be disastrous. In the end, the overall brand will be affected and no matter how hard they try to promote it, the product will not be successful. That is why product management skills are very important, since the product managers— at least what Clark and Fujimoto called the heavyweight ones— are concept infusers and guardians. Their role is, among other things, to preserve the product concept from deterioration and infuse it into the design of the products throughout the "engineering" process. They also coordinate, but they may create conflict if necessary in order to protect and promote the product concept (Clark & Fujimoto, 1991). Product managers as well as testers also play a central role in external integration representing future customers in the product development process. Product

integrity leads to higher performance; a shared understanding of concept and customer expectation is crucial to the integrity of the product (Clark & Fujimoto, 1991).

"The hallmark of great product is integrity" said Clark and Fujimoto (1991). The key to product integrity, they added, was undertaking managerial actions that bring customer focus into the entire organization and also creating processes that can powerfully infuse the product concept into details of design. To be competitive from the perspective of product integrity the firm must be sensitive to and pay attention to the holistic and subtle aspects of the products and how the customers evaluate them (Clark & Fujimoto, 1991). If the product integrity is not coherent and consistent, it can have negative effects on the brand itself, which will be weakened.

1.3.2. International instrument branding

The conception of human rights, as legal and political claims setting obligations and limitations on governments and societies, is according to Henkin (1990) a product of modern history. In fact, according to Henkin (1990), human rights trace their origins to seventeenth-and-eighteenth-century concepts, both politically and intellectually. Nevertheless, the notion of equality of man and his dignity is supported by the Genesis story of a common ancestor of mankind and by the fatherhood of God to all men; man-made law is valid as long as it is consistent with that higher law (Henkin, 1990). For instance, the midwives refused to obey Pharaoh, who ordered them to kill the babies of the Israelites when they were male. Another example would be the servants of Saul who resisted his order to kill the priests. It follows that human rights derive from "natural rights" flowing from "natural law" (Henkin, 2009). Henkin reported that the Stoics and Cicero did not see natural law as a higher law justifying disobedience to man-made laws; neither did their jurist ancestors. He explained that they

perceived it as a standard for the creation, development, and interpretation of law. He added that it was the church's Christianized Roman ideas that rooted it in divine authority and raised it to the level of highest law. Natural law theory put emphasis on duties imposed by God on every human society, duties which came to be seen as natural rights for the individual.

Thomas Paine, one of the most influential proponents of the idea and ideology of human rights, argued that without touching any sectarian principle of religion, the rights of man should be traced back to the creation of man in the same way the genealogy of Christ is traced back to Adam (Henkin, 1990). Still according to Henkin's report, he noted that upstart governments trusting themselves and working to un-make man do not want to put it there. In addition, he argued that the illuminating and divine principle of the equal rights of man related not only to the individuals but to the generation of men succeeding each other. He added that every generation is equal in rights to the generation that preceded it. He concluded that everyone agrees on the unity of man, that all men are born equal with equal natural rights and that every child who is born must be considered as created by God with his natural rights which are the foundation of his civil rights. He did not enter society to become worse than he was before but to have his rights better secured (Henkin, 1990). However, Battistella (2009) among many authors mentioned that there is limited expectation from the conventions to protect rights, mainly because of the "ineffectiveness and tiredness" of the human rights discourse, which has almost disappeared from the agenda of the international society. In other words, it seems like it has lost its strength, its relevance to people in spite of its value throughout history. The brand power seems to be vanishing.

As for Keough (1994), he argued that some brands have managed to transcend national boundaries to become among the most powerful and genuinely international. Only the strongest brands possess brand power characterized by the distinctive nature and personality of the brand, the consistency of its communication, the integrity of its identity, and

the fact that it stood the test of time by the appeal and relevance of its image. The brand also works in different markets, as Keough explained. Moreover, brand managers do not take their success for granted; there should be continuous promotion of the brand in a consistent and robust manner to make sure that it has a long and bright future (Keough, 1994).

Stobart (1994) argued that brands are powerful strategies that can provide considerable rewards to their owners, if they are managed efficiently. For him, brand power, correctly handled and effectively harnessed, can bring growth in market share and corporate profitability. Thus, still according to Stobart, branding has become a specialized and highly skilled discipline relating to the management of a mix of tangible and intangible factors that attract consumer loyalty. Successful branding consists, therefore, of a blending of all these tangible and intangible elements of a brand in a unique way so that it can be perceived as unique and attractive by the consumers and influence their buying decisions. Brand power, Stobart concluded, is a phenomenon that needs to be managed carefully and meticulously; every element of the branding mix shall be constantly monitored and reviewed in order to ensure that it is always relevant and appealing in the eyes of the consumers.

Brand power results from the involvement of law-makers, states, law promoters, and so on. The power of any brand resides in a complex combination of factors such as the strength of its positioning and personality, the relevance and appeal of its image, the quality of the product it endorses and the service support behind it as well as the effectiveness of its marketing strategy (Keough, 1994). Power brands are worth billions dollars because they mean quality to the consumers, which in turns means consumer loyalty, repeat purchases, and word-of-mouth advertising. A 25- research effort reveals that brands that can convince customers of their superior quality achieve superior profitability (Gale, 1994). Gale asserts that many managers destroy brands when they fail to realize that brand power is essentially

the power of the perceived quality by the customers. He added that once a power brand is created a dominant market share will follow.

The customers, indeed, always recognize inferior products as well as quality and exceptional value offered (Gale, 1994). Gale argued that market perceived quality should be at the heart of any brand strategy, and is as measurable as market share. Quality includes also some non-price attributes that consumers consider in the purchase decision. They have to do with attributes of the product itself and attributes of the associated consumer service. Organizations that fail to deliver more perceived value than their competitors will definitely lose market share, and improvement in perceived quality will inevitably lead to high market share (Gale, 1994). Gale noted that customer will not act on the provided value unless they are helped to perceive it; managers sometimes neglect that part. Advertising helps customers recognize the quality offered. Gale concluded that the achievement of market-perceived quality produces superior return in any industry and marketers could create brand power almost anywhere if they pursue the goal of becoming perceived quality leaders.

Niefer (1994) argued that customers form a picture of the brand from their experience of the related products and services. He said that they used each message received from the manufacturers to fill in details of this picture; therefore, manufacturers must do their best to make a brand attractive and convincing and to avoid anything that does not suit the desired image of the brand. The brand is the most valuable asset owned by a company and its fate lies with the brand, so full commitment to the brand is crucial. For instance, Niefer explained that Mercedes-Benz's brand customers expect their individual needs to be fulfilled in a way compatible with social responsibility. Benz, therefore, follows two brand objectives with equal priority: first, they want to embrace flexibility in responding to the needs, and wishes of customers throughout the world and, second, they play an important role in providing

fundamental values such as quality, safety, reliability, and accepting joint responsibility for motor-related problem solving.

Niefer (1994) asserted that the automotive industry could not afford to overlook the desire for individual freedom and the need to be eco-friendly. Mercedes Benz, for example, realized that they had to contribute effectively in the fight to solve environmental and traffic problems while preserving the mobility for the customer. However, this is not all; the new market realities that all motor manufacturers have to cope with also include maintaining an edge in technology, and cost efficiency to provide a distinctive product to the customer, and also those manufacturers must also reduce costs but maintain quality and innovation at competitive prices (Niefer, 1994). The fact is that the market of the automobile world has long been in a state of considerable flux, and it seems that such will still be the case for the coming years. Niefer reminded us that the only certainty that prevails is that nothing can be taken for granted in such a market, which is highly complex, and governed by more than a mere relationship between the consumers' wishes and the quality of the products supplied. The primary issue that motor producers have to face is how to build cars which make others happy and satisfied and this is according to Niefer where branding plays a powerful role. Indeed, as he explained, because the different brands in each market segment broadly match each other in terms of quality, technological standards, design, and so on; it is difficult for manufacturers to clearly differentiate themselves and define outstanding features for their brands. They have to face what they called the "Japanese challenge", which is an important issue for motor manufacturers both in the USA and in Europe; the environmental protection challenge, and the sophisticated taste of customers who want more uniqueness, exclusivity, and special features.

Moreover, many factors outside the normal market dynamics of supply and demand influence the automobile market. Such factors include, among other things, the state

assistance for exports and the state import restrictions; the customs, duties, and taxes on fuel and cars; levies on passenger cars; the general economic situation; and private disposable income. Disposable income affects both the disposition of the consumer to buy and the ability of the manufacturers to be flexible on the price, the tradition and the underlying culture and attitudes of the manufacturer, which are often underestimated as factors influencing the ability to respond to change, without forgetting the regulations related to construction and registration, which makes the job of the manufacturer more complex and uncertain (Niefer, 1994).

Mercedes Benz's philosophy is competence without being cold or arrogant, genuine concerns for customers, and a wish to satisfy their requirements without departing from the fundamental values of the Mercedes Benz brand (Niefer, 1994). The fundamental values of the Mercedes Benz brand, the qualities that first come to people's minds when they are asked about Mercedes Benz, are: quality, safety, reliability, forward-thinking technology, and eco-friendliness (Niefer, 1994). The company tries to maintain these standards above the competition so that they do not overtake them in the 170 countries where Mercedes-Benz vehicles are sold and driven (Niefer, 1994). Moreover, they try to give those fundamental values an extra sparkle by adding to them the extra contemporary qualities and values customers long for, such as up-to-date design (both exterior and interior), sportiness, comfort, and so on; they also established a care and system service to increase the customers' experience in terms of enjoyment, benefit, and relief from maintenance burden (Niefer, 1994). Customers expect a leading brand to offer the best the industry can produce currently and the promise of direction for the future, Mercedes Benz meets these objectives, concluded Niefer (1994), and the company recognizes five factors that can influence the success of a brand: product, production, service, motivation, and communication.

Regarding the product factor, it has to do with research, development, and design of the whole product range as well as individual products. Mercedes-Benz was the first car manufacturer to be able to fit its vehicles for the German market with catalytic converters as a standard feature, and the durable high-performance closed-loop catalytic converters are now capable of purifying the exhaust emissions to an extent greater than what law requires (Niefer, 1994). Future product innovations will also take the same direction, which means towards; safety, environmental compatibility, fewer demands on the driver, and so on (Niefer, 1994). So many lessons remain to be learned for the international instruments related to labour migration. They also have to evolve in a market full of challenges. Similarly, to the automobile industry, they can face the hurdles and build a "brand power". Even if they face controversial issues, they can overcome them, and achieve their goals. Talking about managing controversies, Benetton provides an example.

Benetton, a clothing shop in Milan in Piazza San Babilla opened in May 1993 and always designed its advertisements with the consumers in mind, to raise awareness and provoke comments on important issues of the time without forgetting their logo: the united colours of Benetton (Niefer, 1994). Niefer presented one advertisement that shows a black boy and a white girl hugging each other, showing how children can be united in friendship and love no matter their race. One of their posters raised great controversy by showing a black woman breastfeeding a white baby to emphasize the fact that we are all human beings regardless the colour or creed (Niefer, 1994). The Benetton example illustrates that product managers have to stand sometimes against many to protect; the product vision, what they stand for, and their core values. This is an example of leadership, of brand power.

The brand, argued Kapferer, (1992) is a living memory, a genetic program, the memory, and the future of its products. Indeed, he explained how the implicit programme of the brand reveals the meaning and the direction of former products as well as future ones, the

attributes of later models, the characteristics they will share, and also their individual personalities. Kapferer (1992) told us that the internal requirements involved in branding include, among other things, being able to provide product homogeneity, and consistent quality supply. A strong brand becomes a symbol which has the power to mobilize internally and attract externally. Image, stated Kapferer, is on the receiver's side and identity is on the sender's side. It is the duty of the sender to specify the meaning, vocation, and the intention of the brand (Kapferer, 1992). The image is made by the customer and is the result of a decoding, the extraction of the meaning and interpretation of signals emitted by the brand (Kapferer, 1992).

The image is, thus, a reception concept referring to the manner in which a certain public decodes all the signals that the brand sends through its products, services, and communication programme. Of course, a brand should not go into a shell, to repeat Kapferer's (1992) nice expression, or cut itself off from the public; however, instead of trying to please the public, the brand in its advertisement process and other key activities should better express what it believes in, its own ideals, and vision of the world. Also, as Birkin (1994) said, a strong brand provides the confidence that the earnings of that brand will be maintained. An assessment of the strength of a brand requires that its positioning, the market in which it operates, the competition, past performance, future plans and risks to the brand, be all reviewed in detail. Birkin asserted that the overall score of a brand's strength includes factors such as leadership, stability, market, geographic spread or internationality, trend, support, and protection.

It is a fact that the concepts of equality and social justice have long been at the roots of a few controversies, and that there is much written about it; but this does not prevent many international companies from still endorsing and promoting them. It is true that Leyden (1985) noticed that the principle of equality in itself was kind of elusive, far from a fact, a

description of reality; it was nearer to a judgment of value, a moral demand, a wish. Some people even argued that since it was so abstract and vague, it should be put aside stressing that there has never been and there will never be such thing as equality (Leyden, 1985). Leyden asserted that there was a non sequitur to this since no one would agree to be personally subject of an unequal treatment even if no men are alike or treated equally. In fact, it seems to be a complicated issue that did not start yesterday; however, in any case, the strategy used by ILO, with Convention 143 more specifically, is not a positive way of promoting a complementary product—this will just diminish its value and kill it. This leads to another challenge of the international organizations as producers: how do you promote a complementary product? How to differentiate it when it is a complementary product among other complementary products? These are interesting questions calling for further specific research and making product management in general and legal instrument management in particular a fascinating journey, an eye-opening experience.

"A lens of transnational legal process calls upon lawyers to exercise all of their interdisciplinary tools, without asking them to forsake their traditional lawyerly skills"

Harold Koh, 1996

Chapter 2

The Optimal Treaty Framework: What is it and why does it matter?

The OTF is like the MRI! The analogy is neither fortuitous nor far-fetched; the OTF really resembles the MRI in many ways. In addition, this comparison helps highlight some key points regarding the OTF. Both the OTF and the MRI scan and diagnose: the latter, the structures and activities of the whole body; the former, the structures and activities of the legal instruments. The two tools offer similar functions and benefits although they are called and expected to address the complexities of two different worlds. Section 2.1 presents the structures and characteristics of the OTF. Section 2.2 explores its importance and implications and section 2.3 makes some considerations about product management and international law.

2.1. Structure and characteristics of the Optimal Treaty Framework: Like the MRI

For clarity, this part will be divided into two subsections. The first one, 2.1.1 demonstrates how the OTF is like the MRI, scanning ILO Convention 143 on migrant workers. The second, subsection 2.1.2, displays the structure of the OTF and explains its characteristics.

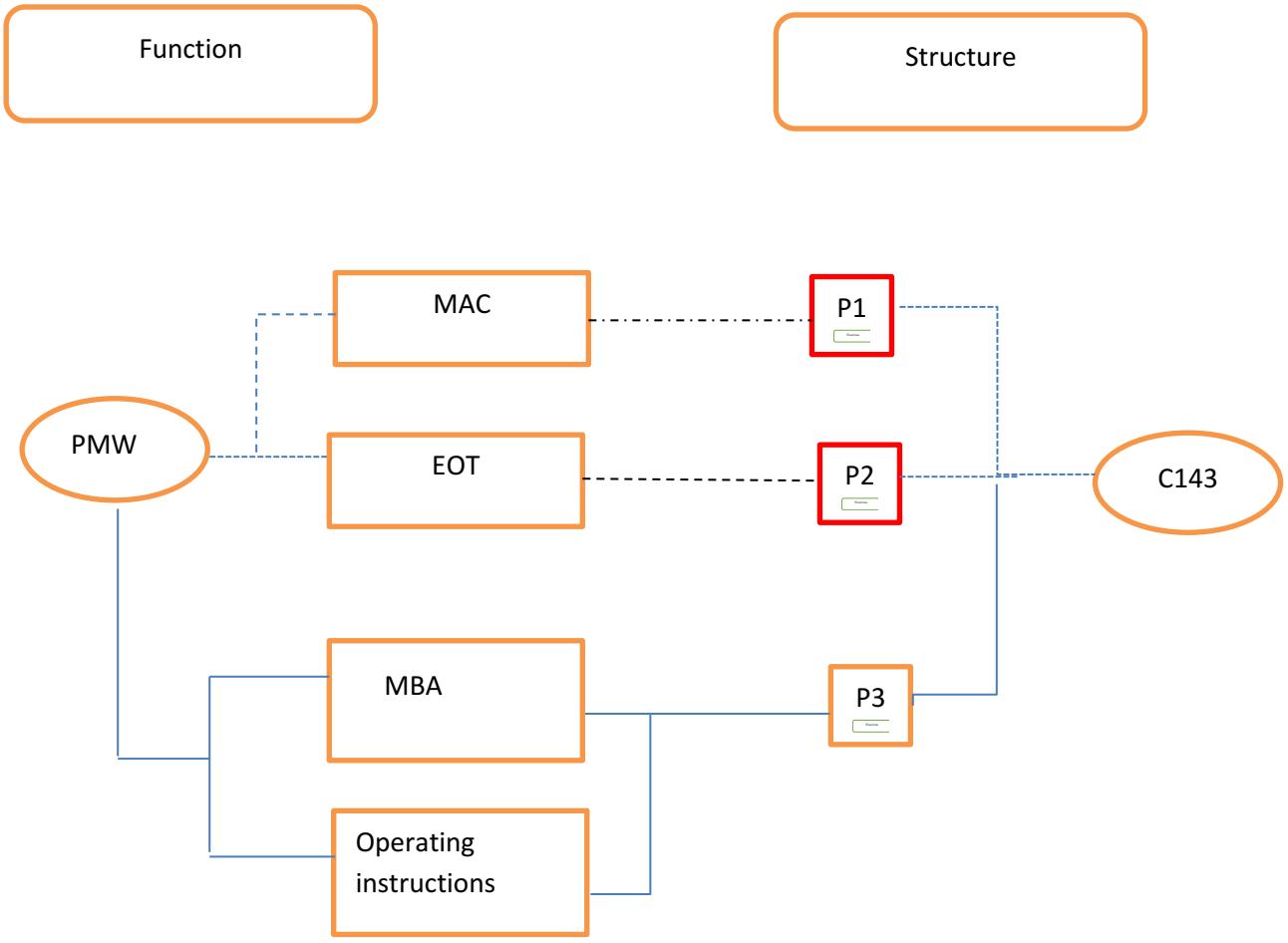
2.1.1. Like the MRI

As described in Medecinenet.com, a magnetic resonance imaging (MRI) scan produces image of body structures. The image and resolution are detailed and can detect even the smallest changes of structures within the body. They can provide valuable and accurate information about the structure of the soft tissues and bones of the body. The results of an MRI scan can defer or lead to more accurate surgery. Indeed, they can help the surgeon in assessing the risks posed by a brain surgery and in determining the effects of tumours, strokes,

and neurodegenerative diseases etc. (Lam, 2017). Similarly, the OTF aims to provide valuable and accurate information about the legal instruments in order to lead to better decision making, optimize them and bring about optimal treaties. It gives us a detailed image of the legal instruments structure, which reveals several abnormalities. Such considerations about legal instrument architecture are useful due to their impact on the success of the product. For instance, based on the information provided by Fujimoto (2012) regarding product architecture and coordination, the OTF displayed the image (Figure 1) of Convention 143

In figure 1, which reflects a rather modular type of architecture, P means Part. Convention 143 has three parts, among which, two (P1 and P2) are made optional according to the operating instructions provided in Part 3 (P3). Part I contributes to protecting migrants against abusive conditions, and Part II ensures MBA, which means multilateral and bilateral agreements by states. P1 ensures the functions of providing protection against migrations in abusive conditions (MAC), and P2 ensures equality of opportunity and treatment (EOT). Those two sub-functions are essential to the overall function protection of migrant workers (PMW).

Fig. 1: Architecture of the Migrant Workers Convention 1975 (No 143)



The ILO website (NORMLEX) introduced the instrument like this: "C143, Migrant Workers Convention 1975, Concerning Migration in Abusive Conditions (P1) and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (P2) , entry into force on 09 December 1978, adoption: Geneva, 60th ILC session (24 Jun 1975), Status: up-to-date. Instrument: technical convention…." Thus, as this introduction shows, Part I and Part II are the real key parts of the convention since they reflect the product concept and the main purpose of the conventions, and they contain important component enabling rights protection and standard dispositions existing in other conventions. Indeed, Part I talks about the respect of basic human rights (Article 1). Its Article 8.2 states that regular migrant workers should

enjoy equal treatment in terms of security of employment and retraining. It says that those workers should not lose their legal status due to loss of employment. In part II, Article 12 provides instructions related to implementation and enforcement. It says that the member states should by methods appropriate to national conditions and practice seek cooperation of relevant organizations and bodies to promote the acceptance and observance of the policy explained in Article 10, which states that countries in which this article enters into force shall pursue a national policy designed to promote and guarantee equality of opportunity regarding the employment and occupation, social security, trade union and cultural rights, and individual and collective freedom of regular migrant workers. Article 12 (d) also mentions that the state should repeal any statutory provisions and modify any administrative practices or instructions that are inconsistent with the policy. Article 12 (g) states that dispositions should be taken to guarantee equality of treatment regarding working conditions, for all migrant workers who perform the same activity.

As can be seen, Part I and Part II protect rights; some of them are fundamental rights, without which the migrant workers would be in a vulnerable position. Removing them would affect the overall function of protection. Moreover, the measures regarding implementation and enforcement are given in Article 12 of Part II, so making this part removable also affects the convention in that it undervalues the importance of taking steps to implement and enforce. There is no wonder why there are compliance issues with the international instruments. Thus, Part I and Part II cannot be excluded without affecting the convention in itself.

Part III does not specifically protect rights but it helps with the overall function of the treaty since it refers to ratification, an important step toward right protection. However, it contains a provision which is rather questionable in a product since it might affect its promotion and its ability to be accepted, among other things. This technical problem concerns Article 15, which states that “this convention does not prevent Members from

concluding multilateral or bilateral agreements with a view to **resolving problems arising from its application**". It is great that the states are called to take additional legal steps to make the application of Convention 143 easier and more efficient, in other words, to optimize the legal instrument and get the best out of it. Unfortunately, this is not the idea that the readers might get from the actual wording, the way in which the choice is expressed raises more tension and worries.

Indeed, it is generally accepted that when customers buy products they buy a solution to a problem that they have. They do not buy more problems, but they want the companies to surprise them, to solve problems that they did not even think they had. Lawley and Schure (2017) even argued that the terms product and solution were used interchangeably. This being said, how does the ILO expect to sell a product by saying implicitly that it is not effective? It is important to remember that in the buying-decision process there is that problem of functional perceived risk that the customers face, so they need to be reassured that buying this product is the right choice in solving their problem. According to Peter and Olson, problem solving involves a sequence of interactions between the three elements of the consumer wheel analysis: cognitive and affective responses, behaviours, and environmental factors. This sequence is goal-directed where the so-called "end goals" are the most basic consequences or values that a consumer wants to achieve or satisfy. The dominant end goals, as reported by Peter and Olson, involve maintenance and/or optimization of satisfaction, prevention of problems, conflict resolution, and escaping from problems. This being said it is obvious that a product that overlooks this important piece of information has a limited chance of success. Indeed, if there is something that goes against the basic purchase motivation regarding, for instance, avoiding eventual displeasing consequences, and reducing unwanted circumstances, the product needs to be better managed.

As we have seen before, products in general can be anywhere between the pure modular and pure integral types of architecture. In the ideal modular type architecture, the relationship between the functional and structural design elements of an artefact or a product is a one-to-one correspondence where each structural element as well as each functional element stands independently (Fujimoto, 2012). There is no structural or functional interdependence among them. This model, according to Fujimoto, is rarely found in the real world since the artefacts are more or less mixed in most cases. The characteristics of the purely modular architecture also include the fact that the functional and structural elements are interrelated by a one-to-one correspondence. The modular product can help achieve a high level of functionality, according to Fujimoto, even if they mix and match generic components with existing design from other firms or other products since standardized components can be shared allowing the company to reduce costs. Fujimoto (2012) drew attention to something very important, which is the fact that the concept of modular architecture could be decomposed into two sub-concepts. The first one is “closed modular architecture”, which refers to a product consisting of firm-specific parts and components which may be shared by different products within the firm. The second one is “open modular architecture”, which is constituted of parts that are “industry standards” and other components that can be shared across different firms of the industry concerned.

The integral architecture is seen by Fujimoto as the most complicated case of an interrelationship between design elements of a product. He averred that the interdependence between the structural and functional design elements is high, which means that mutual adjustment of structural elements is required in order to achieve the functional goals while keeping the structural coherence. The functional and structural elements are interconnected in the form of many-to-many correspondence; this is the main characteristic of the integral architecture (Fujimoto, 2012). Fujimoto explained that there is also a high level of

interdependence between the structural elements and a high level of interdependence between the functional elements. In real industries, still according to Fujimoto, products that are relatively integral in terms of architecture are observed in cases where customers request many demanding requirements regarding functionality and so on, and where the society imposes strict constraints regarding safety, environment, and energy. A car's functional and structural elements tend to have a one-to-many correspondence because the quality of the riding and driving characteristics of the total vehicle depends on the precise mutual adjustment of design parameters of many components (Fujimoto, 2012).

In fact, all things being considered, although it seemed that apparently the ILO wanted to make it more modular, Convention 143 revealed that it is not a purely modular product for many reasons. First, there is interdependency between the structural elements even though any of them might be subject to exclusion. It is an open modular product since it has standard elements of other conventions of the international law industry. The ILO probably made it modular so that states could adjust easier at the national level as well as the international level, to achieve higher performance, reduce costs, and facilitate coordination, and so on. The law-makers wanted to make it flexible; they enable states parties to add to the convention, they also enable them to remove Part I or Part II. The structural and functional elements of Convention 143 are interrelated on a one-to-one basis. All this puts it more on the modular side of architecture. However, some of the elements inside each part are standard, core elements and cannot be removed without a negative impact on the product coherence and effectiveness.

Thus, fundamental rights are displayed in Part I, more fundamental rights and measures to implement them are expressed in Part II, and operating instructions are given in Part III. Similarly to the car, the overall function of protection required the interconnection of many parameters scattered in Parts I, II, and III. This gives a rather integral image of

Convention 143. For instance, Article 1 of Part I states that the members for which the convention is in force undertakes to respect the basic human rights of all migrant workers. This relates to Articles 4, 7, 10, 12, and 18. Other interconnections are possible; this is the most obvious case. The overall function of protection depends on the basic structure guaranteeing basic rights protection (Article 1), ratification and entry into force (Article 18), and coordination and implementation measures (Articles 4, 7, 12). This clearly reflects more of the integral type of architecture. Furthermore, there is that notion of integral obligations developed by the Vienna Convention on the Law of Treaties of 1969 and promoted by regional and international courts, which reinforces that integral vision of the international instruments in general.

Fitzmaurice and Elias talked about conventions with conflicts clauses, in the light of the Vienna Convention on the Law of Treaties of 1969. Article 30 (2), stated that, when a treaty contains provisions that are incompatible with an earlier or later treaty, "the provisions of other treaty prevail". They mentioned the concept of integral obligations which the ILC used to describe the type of obligation which, if violated, affects the enjoyment of the rights or performance of the obligations of other parties. Articles 41 (1) (b) (i), 58 (1) (b) (i) (ii) and 60 (2) (c) of the Vienna Convention provide explanations about such obligations. Fitzmaurice and Elias (2005) said that if they treated climate change obligations embodied in the convention on climate change and the Kyoto protocol as creating integral obligations, it would follow that a later inconsistent treaty would constitute a violation of obligations towards other parties. In addition, they explained that the obligations imposed by that treaty would prevail between parties to the earlier treaty. They noted that this was the view reflected in Article 30 (4) (b) of the Vienna Convention.

Furthermore, they argued that the obligations that fall within the boundaries of the concepts of "common heritage of mankind" (CHM) and "common concern of humankind"

(CCH) are also integral obligations. They then considered that both concepts presupposed certain common interests and common responsibilities and breaches of obligations covered by such concepts would change radically the position of other states. Therefore, they concluded that environmental treaties under the regimes of any one of the regime of CHM or CCH would have priority over the provisions of treaties that could be seen as lower in order. This is due to the fact that as mentioned before they are assumed to contain integral obligations.

It is worth noting that the situation explained by Fitzmaurice and Elias and the one explored here are rather different but they share many similarities. Indeed, Fitzmaurice and Elias's analysis has to do with conflict clauses between two conventions and the situation explored in this thesis is about eventual "conflicts" within one convention. Those two situations have in common that they consider the effects of "integral" obligations, and where Fitzmaurice and Elias talk about integral obligations, the OTF talks about core components, standard elements. They made their analysis relating to treaty interpretation in the case of conflicting treaties between environmental law and international law saying that it is a speculation since it was not tested in practice; they were even wondering whether such an approach that departs from the traditional and classical system based on the Vienna Convention on the Law of Treaties was possible. The OTF provides an affirmative answer to their question and confirms their assumptions.

The logic makes plenty of sense and has its "raison d'être". Integral obligations as stated before correspond to core elements in the framework, key or standard parts, which if removed will affect the coherence, the consistency, and the overall function of the whole product and create conflicts. Integral obligation in a treaty or part of it makes that part crucial, and removing it will cause problems inevitably. This being said, it is obvious that if it is a major problem when there are "conflicts" with two separate treaties, there is no need to say how much it can disturb when such issues exist within one treaty. Such subtle and rather

technical problems are sometimes not easy to notice and even more difficult to accept but it would be so great for the future of human rights treaties in particular and international law in general if they could be taken into consideration more seriously.

As for the courts, regional court like the Inter-American Court, tend to reflect and protect the standards. Indeed, Judge Antonio Augusto Cançado Trindade, in his separate opinion that accompanies the judgment of the case of the girls Yean and Bosico v. Dominican Republic (judgment delivered on September 8, 2005), explained how the court preserved in this judgment the standards of protection embodied in its consistent case law. The court inter-related the violated rights instead of dealing with them separately "in an unduly compartmentalized way". Judge Trindade concluded that "the best hermeneutics for the protection of human rights is that which interrelates the indivisible protected rights and not that which seeks incorrectly to separate them, rendering the basis of protection unduly fragile". The ICJ stated in its advisory opinion on reservations to the Convention on the Prevention and Punishment of the Crime of Genocide of May 28, 1951 that, "it is a recognized principle that a multilateral convention is the result of agreement freely concluded upon its clauses. To this principle was linked the notion of integrity of the convention as adopted…"

Kapferer rightly reminded us that brand is updated not only by means of communication but also through its products. He explained that in improving its products constantly the brand reinforces its desires to keep up with the latest trends of the user; however, for it to survive it is crucial that it is recognized as symbolizing lasting values. The brand, argued Kapferer, should not follow the market; even though it "swims with the tide" it should always stick to its own values, promoting them on a constant basis (Kapferer, 1992).

If products are born, grow, mature and die, brands survive longer (Kapferer, 1992). Coca Cola is such an example — created in 1886, it is now 132 years old. Kapferer analysing

the secret of its "immortality", found that like other famous cases, this world-wide brand behaves like an "open religion". For instance, he noted that they made it easy for people who wanted Coke by removing the barriers preventing them from drinking it, like sugar or caffeine; however, the root of the product, the symbol of the identity, is preserved (Kapferer, 1992). He averred that "such products were like flags: the last thing one wants to change." Kapferer argued that to make a brand eternal, first, the product should be upgraded and adapted to the new demands of customers without running counter to the brand's core values. Second, the brand should not remain a "mono product" because it cannot run the risk of dying with the product. The emblem of the brand should be modernized and contemporary (Kapferer, 1992). When a brand communicates only through its products, the brand meaning must be injected in the product or service communication (Kapferer, 1992).

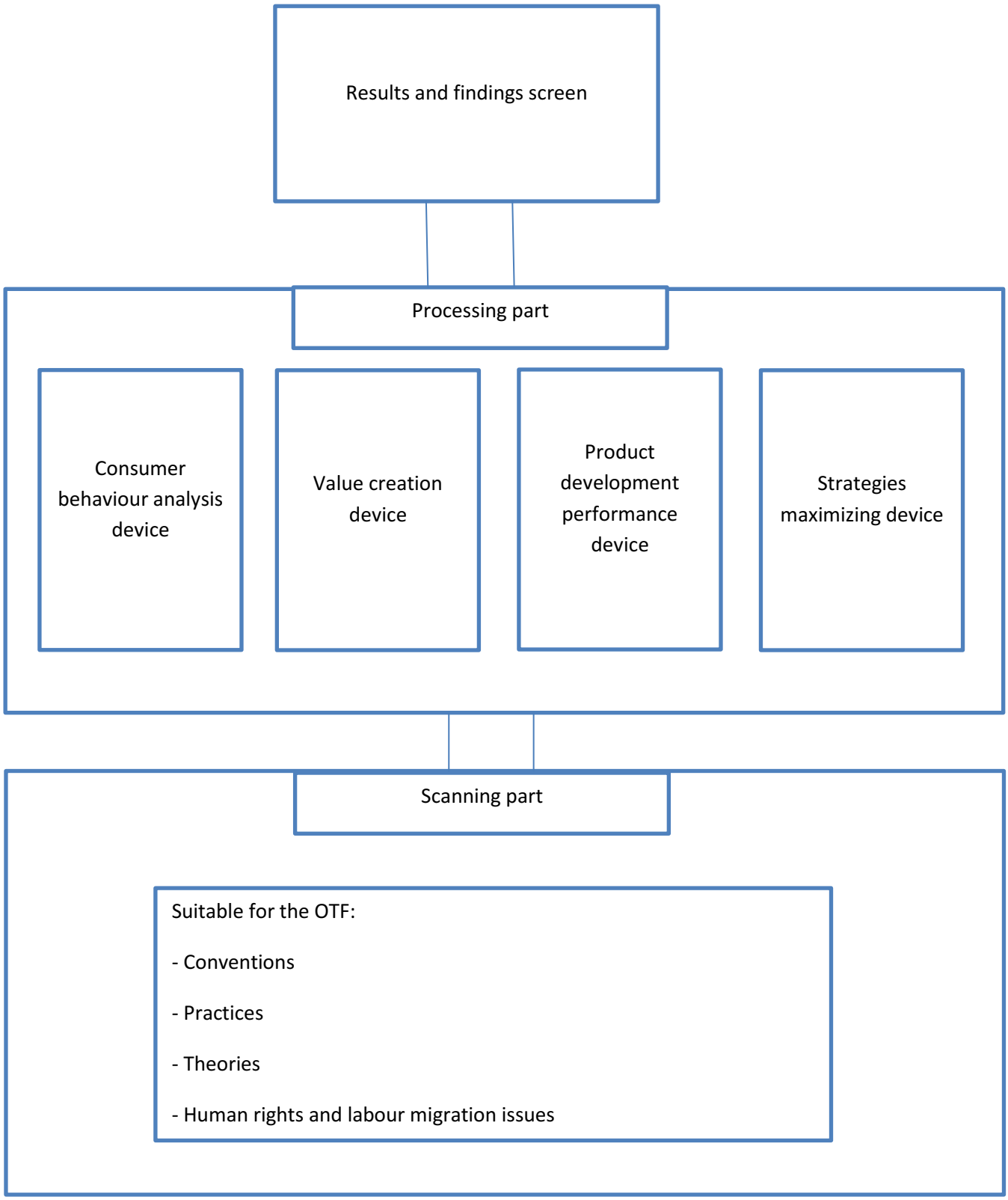
Thus, all this shows that structural problems are recurrent in international law and not only specific to migrant workers' issues. This is one of the characteristics of product managers, to reveal flaws in products so that the product designers can go back and fix them in the most creative way possible. They themselves would never notice that there is something wrong with their product because it is their beloved child. So, having a framework that can help in that sense is obviously useful and convenient. Moreover, the OTF not only highlights the issues but explores ways those issues have been solved in other industries, mainly the automobile industry which like the international law industry has to deal with complex products.

2.1.2. Structure and characteristics of the OTF

As for the structure of the OTF, it is different from the MRI. It does not have the visible set of apparatuses of the MRI. It is basically grounded in a few models although not restricted to them— since it is a framework it can be improved over time for more accuracy and more functions. It is indeed a flexible structure in which many methods can fit to increase its efficiency. Those models are referred to as devices, among which can be cited the product architecture analysis model developed by Fujimoto to check the product integrity, Fujimoto's product development strategies to empower the international human rights law system with useful tools and skills, the Mc Kinsey matrix used to improve legal instrument management, and the upgraded pyramid of value developed by Almquist et al. to help deliver more value as well as retain and develop more loyalty. The wheel of consumer analysis fits also pretty well in the framework and optimizes its capabilities.

The framework diagnoses theories, helps detect their flaws and clear contradictions, and fills the gap between theories and practices. The OTF 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. When developing new legal instruments, it detects the reasons why products fail, analyses customer complaints, and explores alternatives. It provides accurate pictures of outstanding products, which can be a useful guide to create value and remarkable legal instruments or optimal treaties. It helps capture future environmental changes and offers perspectives. It also provides an image of the market, the influential factors, and their effects; these are important elements in market attractiveness and strength. Figure 2 outlines the structure of the Optimal Treaty Framework.

Fig. 2: Schematic View of the Optimal Treaty Framework



The philosophy of the OTF is to keep improving to be more efficient. The models it uses to perform its analysis can be replaced and upgraded in order to be more efficient and give better results. As with 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. In addition, the framework wants to empower international human rights law with the heavyweight product management skills which are essential for success. As Clark and Fujimoto (1991) put it, heavyweight product management is not a once-and-for-all event but a journey with the theme of continuous improvement; it requires tenacity, a unifying driver, and new blood, among other things.

In the same way, engineers when developing a new car need a vision to guide their efforts; the people working in the product development organization need an objective and a vision to grab their imagination. Clark and Fujimoto captured it really well: it is more than being customer-oriented or market-driven, it is also about creating "products that fire the imagination, that surprise and delight the customer". Bringing adequate changes in international human rights law in order to reach such results with the international instruments would be so great that it is worth the efforts, the analysis pursued in this thesis. The outcomes would be tremendous. Heavyweight product management also calls for new blood in the sense of bringing new people with different approaches to the traditional organization.

Indeed, according to Clark and Fujimoto (1991), the most successful efforts to change product development organization were led by new people; the firm cannot change all the people but it can create new leaders and empower them to take different directions. This would require bringing product development managers into the international human rights law organization or empowering the actual people with the skills and attitudes to become heavyweight product managers. All successful companies try to develop such people for the future (Clark & Fujimoto, 1991). It requires tenacity because it is a discovery process that can

be very challenging and that therefore requires the creation of a true team with a team leader that can facilitate cohesion among all sectors of the company. Clark and Fujimoto carefully noted that the really outstanding companies remember that only product projects end not the journey, they then need to face the challenge of learning from experience and improving continually. They added that most companies rarely learn from their product development projects, and as a result the same problems pop up in later projects over and over again. All this is really relevant for international law today.

Regarding international law, Boyle and Chinkin noted that it was not simply an academic discipline but also concerns serious real-world issues important to electorates and governments. In addition, they found that international law-making was not tackled particularly by lawyers but as a political activity; it also called for political initiative, energy, and skill to start the process and maintain it. Citing Kimball, Boyle and Chinkin added that the lawyers and scientists were not expected to decide on policies—such a role is the responsibility of politicians; however, as experts their role consists more of refining the definition of the problem and identifying and exploring the possible solutions as well as their consequences. The international law-making enterprise is multi-layered, with a multipartite nature (Boyle & Chinkin, 2007).

According to Boyle and Chinkin, Ssates are the main entities of formal law-making and they retain the final word through adoption, accession, and ratification procedures as well as the power to make reservations in some cases. However, many non-state actors are also involved, whether they influence the process indirectly or they participate directly (Boyle & Chinkin, 2007). The IOs, for example, play an important role in the multilateral treaty-making process; four organizational patterns can be identified for treaty-making in international law: treaty-making conferences sponsored by the UN, expert treaty-making bodies, managerial forms of treaty making and treaty-making with strings attached,

exemplified by the ILO (Fitzmaurice & Elias, 2005). Deliberation is a very important element of any law-making process because it makes for easier participation, discussion, negotiation, compromise, persuasion and so on (Boyle & Chinkin, 2007). This allows each participant to have a voice whether they have the right to vote or not (Boyle & Chinkin, 2007). Due to the wider participation opportunities, contemporary international law-making became more transparent, showing how states and international organizations have changed in the perception of their role as law-makers (Boyle & Chinkin, 2007).

The tasks also become more complicated. In order to ease the burden of the law-makers from multifarious sectors; the OTF provides tools to protect the product concept, and align visions regarding the product within and outside the company. It helps them make sure that they are not giving too much away to their customers, partners, and so on to the detriment of the company and its values. The OTF empowers the law-makers with the characteristics and skills of great product managers, so that they can become experts in all areas regarding the legal instruments, namely: customers, competition, markets, trends, press, technology, and all other crucial winning elements (Lawley & Schure, 2017).

In short, the OTF reflects the characteristics stated by Lawley and Schure in their product manager's manifesto; it is committed to using the best methodologies, techniques, and tools available to be more efficient and effective, and is dedicated to bringing great products to the market that delight the customers and help change people's lives and work. Moreover, in front of the ratification and compliance challenges as in front of any challenges, the OTF urges and encourages the relevant people to develop the can-do attitude that characterizes all great product managers, to remember that obstacles are just opportunities to succeed and to cultivate optimism and mental toughness, not allowing themselves to stop until the problem is solved (Lawley and Schure, 2017). These are important attributes the OTF helps foster.

2.2. Importance and implications

The MRI scan provides the benefits to detect structural abnormalities of the body (Medecinenet.com). The MRI emerged in the late 1960s and the early 1970s and it constitutes a vital tool for diagnosing several diseases in clinics by providing information related to soft tissues, vascular structures, bones and so on (Taminiau and Bos, Falke (ed.), 1988). Intraoperative MRI guides neurosurgeons with real time information during surgery, making it possible for them to detect abnormal tissues, remove brain tumors more effectively, and minimize the risk of surgical complications (Hopkinsmedicine.org).

Similarly, the OTF detects structural abnormalities of the legal instruments. As a multilevel or multi-dimensional structure within which the current issues related to ratification, compliance and implementation of the international agreements related to human rights and labour migration can be studied, the OTF matters. Based on product management models, the OTF aims to provide a bigger picture, a broader understanding of the problems. It is, in a few words, about legal instrument planning, development, and performance. The impacts of the OTF on human rights issues in labour migration are numerous both in terms of theories and practices, whether it is to assess theories or actions or to take corrective actions, whether to anticipate, plan, or readjust.

The competitiveness of the product is determined by the product strategy of the firm and the efficiency of the product development management in terms of speed, efficiency, and quality of work (Clark & Fujimoto, 1991). Therefore, managing product and service development can help improve the legal instruments' services and systems. Questions and concerns can be enlightened by exploring the methods and ideas tested by hundreds of executives, experts and practitioners in the field of product development and strategy. We can then discover the old and new secrets of great products in general and adapt them to the

specificity of the legal instrument in particular. We can learn and apply, for example, the quantum leaps in speed, efficiency, and quality developed by Wheelwright and Clark, experts in product management and strategies, and see if they can revolutionize legal instrument development.

It is usually argued that the imprecise and indeterminate language of treaties related to human rights more particularly made possible the development of innovative arguments that had significant implications, leading to an eventual reconceptualization of substantive provisions (Boyle & Chinkin, 2007). An illustration of this is the case of Velasquez Rodriguez v. Honduras where the court declared (corteidh.or.cr) in the judgment of July 29, 1988 (Merits), that disappearance was a complex form of human rights violations. Categorized by international practice as a crime against humanity, forced disappearance is a multiple and continuous violation of many rights under the convention such as the right to personal liberty and so on provided by the Article 7 of the convention. The state parties have the obligation to guarantee and respect the rights stipulated by the convention. This case is considered as a landmark decision regarding the respect of disappearance as a violation of human rights, the responsibility of the state for omission, and the assertion of the positive duty to undertake due diligence in order to respect and secure the right to life (Boyle & Chinkin, 2007). Many NGOs made submissions to the American Court of Human Rights and the result was an extension of the understanding of state responsibility later incorporated in other contexts (Boyle & Chinkin, 2007). It led to the clarification of the legal standard of state obligation and developed new processes of accountability (Boyle & Chinkin, 2007).

Nevertheless, the law-making system, according to Boyle and Chinkin (2007), is eclectic, overlapping, poorly coordinated and unsystematic. They explain that the UN although the central element, is not the only one and it is not a coherent whole since it also counts multifarious specialized agencies, several organs, working groups and programs

operating under variegated procedures and mechanisms. According to Boyle and Chinkin (2007), various institutions are involved in the law-making process in a simultaneous and sequential way. Indeed, law-making proposals usually emanate from the main political organs of the UN, more often the UN General Assembly or the Economic and Social Council or the UN subsidiary bodies like the Commissions on Human Rights, Women, and Development, and the UN Environment Program or from specialized agencies (Boyle & Chinkin, 2007). In practice, the main international organization, which is the main promoter of international law-making in the modern world is the United Nations, and more particularly the General Assembly (Boyle & Chinkin, 2007). In the law-making process each state has equal vote and equal voice in the General Assembly, but such is not the case in the Security Council or other elected bodies with limited membership like the Human Rights Council (Boyle and Chinkin, 2007).

In addition, Boyle and Chinkin argued that the expansion of the international law-making process, and the corpus of international law that arises from it, shows a certain belief in the international rule of law and that an international system subject to law is for the benefits of the weak as well as the strong international actors. They noted that in treaty-making however, inevitably, leading states influence the multilateral processes by providing substantial briefing, financing a pool of skilled negotiators, and so on. Moreover, they added that secure communication allowed contact with further expertise at home on a regular basis. Even so, still according to Boyle and Chinkin (1995), US experience in the law-making processes of adopting the Rome Statute of the ICC, the Convention on Climate Change, the Kyoto Protocol and the Landmines Convention proved that a dissident state, no matter how powerful, cannot dictate the outcomes against the wishes of the majority. “Non-states actors and like-minded” states acted in alliance, strengthening in this way their negotiation power as well as that of the weaker states in order to promote change through treaty-making.

Nevertheless, successful negotiation cases that result from these alliances do not mean that multilateral treaty making might not be dictated by the agendas of the most powerful mainly if practical application might not be feasible without them (Boyle & Chinkin, 2007).

Thus, although states are at the centre of the international legal system, many other participants intervene in the contemporary processes of international law-making: states-based international organizations (IOs) and non-state actors generally called civil society such as non-governmental organizations (NGOs), transnational advocacy networks, and social movements (Boyle & Chinkin, 2007). They found that NGOs tend more to seek law-making in hard form and social-based NGOs more particularly pursue activities to ensure governmental regulations over other non-state actors to make them accountable for abuses related to human rights, while business organizations such as transnational corporations on the other side show a preference for soft, self-regulatory guidelines or codes of conduct. For instance, in the area of climate changes, while the sectors of the industries are in search of more flexibility in ways of meeting targets related to pollution, environmental NGOs are lobbying for stronger controls on fossil fuel use (Boyle & Chinkin, 2007). As a result, different non-state interests might lead to different solutions, and at times IGOs or states become mediators between conflicting forces (Boyle & Chinkin, 2007).

Sometimes NGOs take the initiative; they identify areas that should be subject to law reform, they undertake the substantive work for its introduction into the international agenda, and they engage in a range of activities including campaigns in collaboration with the United Nations to help raise consciousness of the international community in order to reach their final end, which is the adoption of a treaty or at least a soft law instrument (Boyle & Chinkin, 2007). In some cases, their activities lead to blocking the adoption of a treaty where they think it might have harmful effects (Boyle & Chinkin, 2007). As they argued and illustrated with the example of the ICRC, the influence of the NGOs is not new in international law making.

Indeed, the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted after the activities of the ICRC. As they explained on their website, the idea came after Henry Dunant witnessed war atrocities and misery of wounded people and reported the story in his book titled “A Memory of Solferino”, where he questioned if military authorities could establish some international principles sanctioned by a ratified convention to improve the situation. He found the help of Swiss lawyer Gustave Moynier, who presented the questions to the charity where he had a chair, Geneva Public Welfare Society (Boyle & Chinkin, 2007). At the beginning the International Committee of the Red Cross was composed of five members including Dunant. Apparently, the committee organized the first conference in February 1863 in Geneva, and the Swiss government as well as many other states joined along the way. The ICRC website says that by the end of the year they had brought together government representatives to agree on the proposal Dunant made to help military services. In August 1864, the ICRC persuaded governments to adopt the first Geneva Convention (ICRC, 2016).

Boyle and Chinkin reported that the ICRC prepared the draft for the diplomatic conference to the adoption of ten resolutions in treaty form, which was used by 16 states delegates to elaborate the final convention. Since then, the organization kept innovating, visiting prisoners of wars, and son on. The ICRC said on its website that the organization did its best in 1929 to convince governments to adopt a new Geneva Convention to provide greater protection for prisoners of war but they could not have them agree on new laws to protect civilians in time to prevent the atrocities of World War II. However, in 1949, after their initiatives, states agreed to revise the three existing Geneva Conventions related to the protection of wounded and sick people on the battlefield, prisoners of war, and victims of war at sea. They also added that same year a fourth convention to protect civilians living under enemy control. Later, in 1977, their initiative led to the adoption of two protocols to the

conventions establishing rules concerning the conduct of hostilities: one applicable to international armed conflicts and one to internal ones (ICRC, 2016). Boyle and Chinkin (2007) reported that like the ICRC many international NGOs working in the field of human rights, environment, and so on have been particularly active to include their political or social agendas in the accepted fabric of international law. Alliances, coalitions between NGOs, and networking have been among their most successful tools in treaty campaigns (Boyle & Chinkin, 2007).

Industry-based NGOs sometimes build coalitions against environmentalist NGOs such as the NGOs representing the automobile industry participating in a concerted voice at the convention on climate change and the Kyoto protocol against the NGOs fighting for the environment (Boyle & Chinkin, 2007). Coalition building is also helpful in generating innovative and substantive arguments by borrowing from one issue area to help improve another (Boyle & Chinkin, 2007). For instance, the International Campaign to Ban Landmines (ICBL) gathered together NGOs with totally different mandates and expertise such as medical assistance, humanitarian assistance, disarmament, public health, and human rights (Boyle & Chinkin, 2007). Thus, state reporting which is a mechanism mostly used in human rights, fact finding particularities of humanitarian law and verification drawn from disarmament were introduced into the UN Convention on the Landmines of 1997 (Boyle & Chinkin, 2007).

As illustrated with the Rome Statute of the International Court, NGOs use coalitions to ensure the promotion of education and awareness on issues at stakes, the promotion of ratification and universal acceptance, and the facilitation of technical cooperation for the adoption of domestic implementation legislation (Boyle & Chinkin, 2007). They pooled their technical, political forces, and expertise to work on the different aspects of the laws and procedures; they tried to encourage more states to participate in the process, assisted smaller

countries in their preparations and disseminated information and draft texts (Boyle & Chinkin, 2007).

In summary, this overview was to illustrate the intervention and the impact of many actors on the law-making process. Indeed, many actors intervene in the international law-making process, sometimes directly proposing draft texts, and sometimes indirectly influencing the process and the content in one way or another. They are from different sectors and they have different interests which do not coincide all the time. Such fact is not without effect on the final text of the legal instrument. This is not to say that they are not relevant. Independent human rights institutions, in Gallagher‘s (2000) point of view, should be encouraged to play a leading role; because they are the logical national collaborators of the treaty bodies, and also the logical vehicle for the dissemination of the reports of state parties and the results of the examination of those reports by treaty bodies. They play an important role in monitoring implementation and compliance, and also in providing full insights into laws, practices, and traditions impacting upon states’ compliance with obligations regarding human rights treaty law (Gallagher, 2000). Gallagher even argued that national partners should be strengthened through technical cooperation. She added that the identification of key actors was one aspect of improving implementation and compliance, while another important one was to consider the role of national structures on one side and on the other the role which the treaty bodies are currently playing and should play in the practical assistance and support to state parties.

However, as some authors have argued in the literature, it might even affect the legitimacy of the treaties and diminish their acceptance by other parties. Choices about the content of the product, its different parts, and related suppliers can influence greatly the performance of the product project (Clark & Fujimoto, 1991). Thus, this might affect the design of the legal instruments due to the fact that, in seeking consensus they might want to

put more flexibility to increase the acceptance but, unfortunately, dismantling the brand and damaging the product integrity in the process. Indeed, Boyle and Chinkin asserted that contemporary international law presented a fragmented landscape which the ILC divided into three categories: the clash of particular laws, and the emergence of exceptions to general international law that are institutionalized, and emergence of interpretations that deviate from general international law. They also found fragmentation in the separate legal regimes that exist within the international order and the smorgasbord of law-making processes.

The need for specialist or technical regulation generated variegated and more specialized legal regimes in a world more and more globalized; this contextualization included legal regimes for human rights, environment, trade and so on (Boyle & Chinkin, 2007). Such regime seems to be a self-referential and self-contained system of law (Boyle & Chinkin, 2007). Even the media intervene to a certain extent, if we consider Boyle and Chinkin (2007) arguments emphasizing that the role of the media was often overlooked, but they are important participants in international law-making because they hasten legal change by instantly making images related to human rights plight available worldwide. Boyle and Chikin concluded that the existence of several and such diverse institutions promoting international law-making within their respective areas of specialty constitutes a real challenge for the coherence and integrity of international law (Boyle & Chinkin, 2007).

Indeed, the scanning of some legal instruments and court decisions revealed a lack of conformity in the preservation of the legal instrument concept. The desire to increase acceptance of the international conventions by states had pushed some international organizations to put the possibility to exclude some core elements essential to the overall value of the instruments. As shown before, on one side some courts are preaching for an integrated vision of human rights and of mechanisms among regional as well as universal courts. On the other, some law-making institutions are promoting instruments whose internal

structures are affected by dispositions diluting the product concept. As Busuttil asserted, without a strong product management in organizations, it would be very difficult to achieve alignment to a common goal because there would be no consistency and no harmony in the voice evangelizing the product vision which should be dreamlike giving people motivation to go for it (Busuttil, 2015). A product vision, as he said, is worthy to pursue since it helps people to anticipate their future sense of achievement. Thus, legal instrument management is relevant to capture this issue better and to avoid technical mistakes that can compromise the future of the product.

Another crucial issue in the law-making process asserted by Boyle and Chinkin (2007) was who should decide about the arena and the process. They added that US practice showed how such choices could be fluid in nature and how they could shift depending on the institutional composition, the assessment of national interests and the predicted voting patterns. Moreover, Henkin (1979) added that the weakness in terms of enforcement was greater in the area of human rights law than anywhere else in international law. Since the end of the Second World War the law to control how states behave toward people living within their territories has been facing extraordinary challenges.

Henkin explained that, unlike other international law, the law of human rights does not serve any particular national interests but rather idealistic ends; however, it became entangled with politics, even more when they are heavily ideological. It contradicts the premise of an international system by saying that how a state behaves towards its own citizens in particular and people living within its territory more generally is a matter of domestic jurisdiction. Therefore, governments have been reluctant to submit the way they manage things at home to external standards and scrutiny; they have not been excited either to scrutinize what is going on in other countries (Henkin, 1979).

Henkin (1979) explained that officials and governments who make and negotiate foreign policy are concerned with economic, political interests by tradition, inclination, and experience; they have the propensity to categorize international human rights law-related matters as unsophisticated, officious, unrealistic, diversionary or disruptive of real international politics, and detrimental to friendly relations among nations. This is a problem that the traditional theories, the studies on state behaviours and treaty-making have failed to capture and address efficiently. It reveals in fact a serious problem of positioning. This term, simply put, refers to what the product means in the mind of the customers (Lawley & Schure, 2017). This is well studied in product management literature and would be very useful for international human rights law.

Considering all these among thousands of other things, the OTF is a life-changing tool essential for international human rights law, and also 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. They can benefit from:

- The product planning advice, which is consumer-focused and future-oriented.
- The product development, which includes flexibility, problem solving and value-creation.

  Product development process is an integrated system of information creation and transmission, in which data related to opportunities of the market and technical possibilities are transformed into commercial product (Clark & Fujimoto, 1991).
- The product performance focusing on current and future market attractiveness and current and future competitive strength.

It is true that, as Wind argued, in terms of product planning no single model can be proposed; however, some key elements that must not be overlooked can be pointed out. Another interesting point is that situations can be analysed and questions regarding the current position of the firm and its product can be determined as well as desired position and the ability of the firm to go there (Wind,1982). Within the framework, the international organizations can review and assess their existing legal instrument mix regularly, to know how well they are doing and which instruments require what specific actions. They can have the whole picture quickly and accurately, which will facilitate the product decisions. This will help avoid loss of resources both, financial and human. More importantly, the results will be greater, the experience more fulfilling and enjoyable.

As a matter of fact, Clark and Fujimoto (1991) explained that product planning translates the product concept into specifics for product design; it is the first opportunity to interpret the product concept in physical form, and product engineering transforms planning information into detailed product designs. This step is admitted to be critical and should be considered at the outset of the project and includes technical choices, major specifications, and so on. This part is very important since the technical choices can affect the future of the product. The previous analysis of ILO Convention 143 illustrates clearly the relevance of product planning in general and product design and technical choices in particular.

Clark and Fujimoto (1991) recognized that the biggest problem raised during this step is how to reconcile competing requirements and objectives. Indeed, this has been the enduring challenge of international law-making mainly when it comes to human rights. We have seen how legal and extra-legal forces interact and how the result is very often a weakened product with limited chance of success. Boyle and Chinkin (2007) noted that, when they enter international law-making process, states might seek an effective regulatory regime, while individual states might as well participate in the process to achieve certain goals

whether they intend to become party to the treaty or not. For instance, they might just want to ensure the best regime possible for themselves as non-parties to the treaty (Boyle & Chinkin, 2007). Henkin (1979) noted that process and politics have a different place and dimension in the law of human rights in particular. On the other side the willingness of other states to make concessions in order to persuade dissident or recalcitrant states to join the treaty might generate a weakened compromise text that is not to the satisfaction of many (Boyle & Chinkin, 2007). All these show that product planning is not to be underestimated. As Clark and Fujimoto put it, product concept should be consistent, distinctive, and attractively articulated to be successful in the market.

However, product concepts are often equivocal and elusive. Depending on what the concept means to the project participants, it will be reflected in one aspect of the product, the product character (Clark & Fujimoto, 1991). A powerful product concept is multifaceted; it includes the interpretation of the product concept as what the product means to customers (which focuses on feel and image and character of the product), whom it serves (which describes targeted customers), what it is (which reflects on configuration), choice of main component, and what it does (which emphasizes performance and technical functions) (Clark & Fujimoto, 1991).

Concept development is critical to product competitiveness and developing an effective one requires an effective management of inputs to the product concept and the process of concept creation. To manage the inputs to the product concept it is important to keep a subtle balance between people in charge of the product conception, and sources of insight and information critical to the product. For Clark and Fujimoto, while it is important in product management to look at the market research as input they maintain direct contact with customers. With particularly complex products and dynamic customer preferences, they need to remember that the mission is not to look back to see what was sold but to look

forward in search of emerging trends, and ways to shape the future (Clark and Fujimoto, 1991).

Furthermore, as explained by Little (1982) for product management in general, the legal instrument committee can perform a regular product review procedure. Indeed, he suggested that, they first establish criteria to review the products, and then examine them periodically in the light of such criteria in order to determine which one is in failure position or about to fail to finally decide on the course to follow, without forgetting to monitor the progress. If this technique is applied with the legal instruments, when international organizations undertake surveys to evaluate states or consumer satisfaction or complaints about existing products, they will not get comments like, “the product is too similar with another one, there is no added value” or else. They will also have some clues on how to add value to their product, and differentiate it from other ones that are internal to the company or pertaining to other rival firms. They will be able to detect and be aware of competitive threats which at first sight do not seem obvious. They can identify early the vulnerability of their product compared to the competition, and explore ways to modify their offerings to appeal to the customers more, changing their experience with the legal instruments.

Clark and Fujimoto (1991) explained that product begins as a concept, part of a strategy for attracting and satisfying customers and they insisted on the point that to turn a concept into a product, designers and product planners must make choices about the content of the product. Choices about the content of the product, its different parts and related suppliers can influence greatly the performance of the product project. They reported that, in the case of product development, “all roads may not lead to Rome”. In the automobile firms, decisions that are made regarding variety and innovation can deeply affect the complexity of the product, the involvement of the supplier, the scope of the project, and so on. The choices

made determine the complexity of the project which in turn influences the total product quality, the lead time and overall productivity (Clark & Fujimoto, 1991).

Their research led them to conclude that technical expertise in a variety of disciplines was essential if one company was to develop an outstanding product efficiently and rapidly. Moreover, what is crucial is the way expertise is applied and integrated. They noted that firms faced variegated choices about structure, procedure, assignments, and communication, and that effectiveness, apparently, was a function of consistency and balance in managing the critical linkages throughout the product development stages. Their in-depth analysis led them to realize that effective development is not a specialized task in the R & D organization, but a cross-functional activity requiring the best of strategy, planning, engineering, finance, marketing and production.

Clark and Fujimoto (1991) discovered also that the sources of superior performance development and the policies and practices that hide behind outstanding performance include the ability to manage complexity, manufacturing capabilities, organization and leadership, as well as integrated problem-solving skills. They emphasized the fact that these themes did not constitute "four steps to successful product development" but more a mechanism enabling the exploration of effective management in greater depth. Thus, they concluded that high performance product development required balanced excellence in several areas, in addition to coherence and integrity across the entire range of product development activities (Clark & Fujimoto, 1991). Exploring ways to manage complexities efficiently, they found that performance in planning and engineering was partly determined by the amount and difficulty of trade-offs related to the design and the character of coordination requirements. They argued that product and project complexity seemed to be the root of important difficulties; therefore, managing complexity constituted an important issue in the performance of product development.

As for manufacturing capability, Clark and Fujimoto (1991) said that "design-building-test" cycles are at the heart of the development process. They added that "build and test" portions of the cycle involved the application of manufacturing capability, excellent performance in building tools, dies, and the like getting the product into commercial production depended on skills in manufacturing. They explained that the automobile industry, in product engineering, still has to face several conflicts and trade-offs; however, it has the advantage of design-building-test cycles to meet the challenge it faces. Indeed, companies base their product decisions on them. For major systems and for each component, detailed blueprints are developed. They build prototype components of vehicles from preliminary drawings, they test them in the light of established targets, and then they evaluate and modify design as needed. They repeat the cycle until they reach the level of performance acceptable. For Clark and Fujimoto, the hallmarks of world-class manufacturing include: simplicity, clarity of purpose, and discipline. They seem to be crucial to effective product development.

Concerning integrated problem solving, Clark and Fujimoto said that "product complexity and time pressure make parallel engineering essential". They added, however, that effective development requires more than parallel operations; it relies on joint problem solving between engineering groups both upstream and downstream. Moreover, in order to foster the integration of their efforts, it is also important to look at patterns of communication, attitudes, and skills (Clark & Fujimoto, 1991).

Regarding organization and leadership, Clark and Fujimoto (1991) mentioned that product integrity, internal consistency in technical operation, and external consistency between product experience and customer expectations constituted the essence, the core of high performance development. Their research revealed that management direction and the organization of development apparently play critical roles in providing integrated effort and

leadership needed to achieve product integrity and move more efficiently and quicker to the market.

Clark and Fujimoto (1991) explained that decisions about how and by whom product concepts will be realized are strategic in nature because they reflect fundamental capabilities of the firm and might directly influence the competitive position of the firm. Therefore, project strategy is defined by choices about project scope, variety, and innovation. Their analysis of project strategy and its impact on development led to the conclusion that greater project complexity (mainly project greater in scope), increases product quality even though it increases engineering hours and lead time. Finally, they discovered that effective project strategy in product development is a matter of balance in managing trade-offs.

As far as product performance is concerned, the OTF allows a learning experience from the automobile industry, which similarly to the international conventions "industry" denotes some peculiarities. Indeed, looking at the characteristics of the car sector as described by Clark and Fujimoto (1991), they are striking. For instance, they depicted a car as a complex "fabricated-assembled" product with many components, functions, and process steps and involving important performance dimensions including buyers' perspectives. In spite of the length of automobile history and the experience of the customer in the matter, buying a car is each time quite a complicated issue where evaluation criteria are highly subjective, subtle, multifaceted, unpredictable, changing over time, and so on (Clark & Fujimoto, 1991). Moreover, Clark and Fujimoto (1991) painted the markets as dynamic, large, and more and more global with an environment increasingly competitive and turbulent. They concluded that all these, among other things, made the auto industry a rich and fascinating arena to understand performance in product development. Gaining insights from such a complex world can be more than fruitful to the world of international conventions in general, and the legal instrument related to human rights and labour migration in particular.

In short, this model is important and useful for international human rights law; there are many proofs to it. It adds something to the existing theories of international law and can help improve the situation. First, it complements previous theories for which we can get feedback and the outcomes contribute to reinforce them. Second, with optimum treaty management, international lawyers acquire additional tools to empower them in their work and the fulfilment of their mission, which is to protect the weak at all levels. It gives them the hope that when cases are brought to the court they will have the legal foundations to make their claims since the states would have ratified the key instruments. The work of the international organizations and policy makers is made easier. The states will feel at least that they are understood; their experience with the international legal instruments will become better, and more interesting. They will see that international human rights law is not only about shaming, blaming, and coercion. Effective product development, as indicated by Clark and Fujimoto (1991), lies in the ability of a product design to create a positive experience with the product. The information will flow smoothly following a cycle and integrating all key elements crucial to the success of the operation.

With the OTF, the international lawyers can add to their skills those of an effective product manager. As Koh (1996) suggested: “a lens of transnational legal process calls upon lawyers to exercise all of their interdisciplinary tools, without asking them to forsake their traditional lawyerly skills”. Like outstanding heavyweight product managers, in top-performing companies in the auto industry, they will be able to develop the characteristics that make the difference. For instance, they can develop coordination responsibility for the entire project from concept to market; maintain contact with the customers; possess multilingual and multidiscipline abilities to communicate efficiently with designers, marketers, engineers, controllers, and so on; have unbeatable conflict management talents to prevent product designs or plans from deviation from the original product concept; and possess market

imagination as well as the ability to forecast customer expectations in the future from equivocal and ambiguous information of the present market (Clark & Fujimoto,1991). They can develop the combined roles of product managers that achieve high product integrity and market success: the role of internal integrators who realize effective cross-functional coordination and the role of concept champions who integrate expectations, and insights of customers in the details of product development (Clark & Fujimoto, 1991). Finally, they will be able to match more efficiently the product development and consumer processes.

Since international law is struggling with several international instruments on several aspects, criteria for success in product management can clearly empower it. For example, it is true that most international organizations, key in the law-making process, maintain direct contact with the states, which are their major customers and have lots of data about them but they failed to create a product concept that is powerful enough to stimulate the imagination. Sometimes, they focus on strategies that are only short-term in orientation while success in product management call for long-term orientation, as Clark and Fujimoto (1991) explained it. Moreover, they have information from market survey, gathered directly or not, that they do not exploit enough, not to their fullest. It is not that they are doing all wrong; some of their practices can be counted as elements of successful product management but it is not really well captured as such in the literature.

Another key point that is really underdeveloped in international human rights law is multilingual translation, which required the product managers to be able to communicate the message and the product concept better. During planning and the development of prototypes, they must be able to assess and communicate what the design choice will mean for different people both internally and externally, to customer experience as well as marketing. To make this path easier it is important that the international lawyers develop also the skills of coordination and conflict resolution. It will be really important to help them maintain the

conceptual and technical integrity of the product designs. Clark and Fujimoto see the relationship between product managers and the engineers working at the design level as a focus point of concept-design integrity. That is why they said that the heavyweight product managers should be in motion, meaning in direct contact with different categories of people, from product designers and marketers to customers since among other things product concepts have the tendency to decay quickly in the minds of the engineers and continual refreshment is required.

Product managers are then in the best position to make sure that the information on critical aspects of design flows smoothly and naturally, to review the total product integrity, and crucial components details (Clark & Fujimoto, 1991). They should be as Clark and Fujimoto called them: concept infuser and concept guardian. Product managers deal with imperfect products in an organization that usually considers the product as its baby, and think that this baby is very beautiful. They specify the problems in the product design for the designers to go away and solve it in a creative way (Busuttil, 2015). Great product managers, although they have to face challenges and varieties, show business acumen that leads to profitable products (Lawley & Schure, 2017).

Indeed, business acumen requires, among other things, that they pay attention not to give too much away to partners and customers and also to be aware when their interests are not considered in a product-related negotiation with internal and external organizations or people. As effective product managers, international lawyers will be empowered to consider a bigger picture, paying attention to the whole and the parts of problem solving in the product development and management. They will be able to work more harmoniously, with more consistency in the system and the process, key elements to effective and successful product development, as Clark and Fujimoto (1991) explained it. They reported that one former heavyweight product manager said that “product managers are like conductors. The orchestra

can create so-so music even without a baton. It is very difficult however, to turn such music into a really good piece".

2.3 Considerations about product management and international law

Product management is in the centre of all company departments as well as external entities, said Lawley and Schure (2017), and it is challenging, interesting, and difficult. As the function in the company that is ultimately responsible for ensuring that each product the company offers to the market is as successful as possible, it is very important in the market industry (Lawley & Schure, 2017). It is responsible for every aspect of the product offering as well as the overall success and failure of the product (Lawley and Schure, 2017). It tells the company not to make available a product if any part of the whole product offering might be a hindrance to its success. Product management is the best choice for driving products strategically in order to ensure that the customers are happy and the company is doing well.

As explained by Lawley and Schure (2017), the benefits of having a great product management organization are tremendous. For instance, it helps deliver products that better meet the needs of the customer, and it creates delighted customers, who will serve as referrals through word-of mouth. Moreover, because it includes product strategy, product management helps to drive the efforts of the company through a solid product strategy, leading to the ability to capture and own markets for the long-term. In the end, it contributes to more profitability. The experts noted however, that product managers usually do not have any authority; they must lead and influence in subtle and effective ways. This reminds one so much of international law in general and international human rights in particular where efficiency is required but real authority is not always there.

Several studies show that international law is not at its best, and the number of issues it has to deal with is increasing. International migration in particular will still be under debate in the future, as well as the concerns related to human rights protection. If the adequate instruments are not ratified and complied with, it will raise a lot of problems. International migration has long been a key component of population growth for many countries, mostly the very developed ones but also less developed ones. Even though, what the experts call the volatility of international flows does not allow an absolutely accurate projection, no change in the foreseeable future is expected since birth rate is still very low.

Indeed, the Department of Economic and Social Affairs of the United Nations (2004), in their world economic and social survey about international migration, revealed that the population projections to 2050 showed the possibility for the population in developed countries to decline from 1.2 billion to 1 billion between 2000 and 2050 without migration. In Northern America, population is expected to decline by 2 million but with migration it could gain 134 million. Without migration, Europe would be affected by the decline of its population which would reach 139 million. Many countries are considering filling this gap in their population and work force with robots and automation. However, whether they bring robots in to the points we have to deal with robots rights or human versus robots' rights, the international instruments will still be relevant and human rights will require even more protection.

International law has seen the creation of many treaties related to one matter or another, to one vulnerable group or another. They will probably come up with some more treaties besides the bilateral and multilateral ones. They cannot do so in a vacuum and keep complaining that states refuse to give them attention, and other related concerns. Instead of managing treaties anyhow, it would be useful to feed international law with product

management expertise to empower it, and develop its capabilities to deal with states and international instruments.

Schwartz, CEO of one company called General Assembly, in the foreword to the book titled: A Practitioner's Guide to Product Management, argued that when product management is done well it is a great and inspiring thing to behold since it helps a product team to march in the same direction, toward building an experience or features that serves the customer better. Many hard skills are involved, he explained, including communication, project management, analytics, and technical understanding. In international law, more particularly, technical understanding is important; because as Henkin argued in How Nation Behave there are reasons why nations make laws and conclude agreements and why they make particular laws. He added that similarly to national societies, international law derived from the complex interplay of several forces in international politics.

In any case, effective product management is not easy, as said Clark and Fujimoto (1991). In all industries, there are some products that are not easy to market or that fail to meet the performance objectives of the firms that launched them. Achieving excellent product development consistently requires consistency in the total development system including organizational structure, processes, strategy, and technical skills (Clark and Fujimoto, 1991). Moreover, the product planning, which bridges the concept and product design requires specific considerations (Clark & Fujimoto, 1991).

Product concept refers to a statement about what will be attractive to the customers and to achieve external consistency the product planners need to match the product concept with the product plans; internal consistency refers to the compatibility of specifications, component choices styling and so on (Clark & Fujimoto, 1991). Neither internal nor external consistency is easy, so product planning involves a complicated set of trade-offs among

concept, specification, cost targets, and component choice (Clark & Fujimoto, 1991). For instance, “planning a new car is like trying to solve a huge simultaneous equation system”. Difficult negotiations and organizational conflicts, more particularly, are unavoidable.

Indeed, the height of the engine hood in the family sedan was a major battlefield; designers and concept leaders could not agree since some wanted it low and others wanted to push it up. In addition, in many other areas there were conflicts involving engineers, designers, product managers, testers, controllers, and so on. Close coordination and communication are therefore central to a high level of internal and external consistency at the end of product planning (Clark & Fujimoto, 1991). Although the network of trade-offs and web coordination among all the different aspects of a vehicle are complex, car makers have to face the challenge of achieving total vehicle integrity, internal and external. They have to optimize simultaneously specifications, targets, component choices, and so on. Clark and Fujimoto (1991) concluded that effectiveness at this stage requires product-customer orientation, leadership, intensive coordination, concept leadership, and intensive communication.

The problem explored below is not far from the complexities international law has to deal with on a regular basis. Indeed, Henkin (1979) noted that since the end of the Second World War it has been hard to come up with new law and old law has been unmade. Moreover, many questions that used to be decided by law, fall now under national policy matters and are decided unilaterally. He added that international adjudication is not an important force in international life and nations tend to promote their interest by political accommodation, influence, compromise, and negotiation. Relations among nations became the domain of diplomacy between representatives of nations promoting national policies (Henkin, 1979).

Law, force, and diplomacy have coexisted in international history, fluctuating depending on times, contexts, and so on (Henkin, 1979). Boyle and Chinkin (2007) argued that the use of consensus negotiating techniques advances considerably the formation of new law and international conferences; what they see as a strange way to law-making, is usually about compromises and negotiation. Such consensus negotiating procedures generate an important need for engaging in diplomacy, listening and bargaining, etc. Consensus law-making, however, is said to have some drawbacks in spite of its benefits. Indeed, on one side, the UNCLOS III demonstrated the fact that consensus can work favourably for complex, inclusive, and comprehensive agreements that will stand the test of time, and widely produce new law acceptable for both parties and non-parties (Boyle & Chinkin, 2007). On the other side, issues such as the stalemate in WTO negotiations in 2006 shows that consensus requires compromise that might not be able to be granted or might lead to a weaker and more ambiguous text than what the states and NGOs expected (Boyle & Chinkin, 2007).

Moreover, certain topics such as those related to human rights and humanitarian treaties might not be suitable for such a consensus negotiating process since they cannot suffer the package deal approach offered by WTO or UNCLOS III (Boyle & Chinkin, 2007). That is why, concluded Boyle and Chinkin (2007), the former UNCHR and the ICRC kept the most favoured model by the ILC, which is based on majority voting with the possibility to make reservations in their negotiation practices (Boyle & Chinkin, 2007). Still this model is not without problems since some states might use reservations to debilitate the human rights treaties they adhere to, while others might adopt them as an aspirational ideal even though other states did not accept it (Boyle & Chinkin, 2007). In the end, according to Boyle and Chinkin, it would not be beneficial to negotiators of human rights to adopt the consensus negotiations practice which produce what they called a “set menu for everyone, a gourmet menu, they would opt more for a “a la carte” enabling them to “eat different meals”.

In addition, Henkin argued that cynical realism about international law is not realistic in that it does not reflect the facts of international life. He explained that law is an important force in international affairs; nations rely on it, refer to it, and observe it; they are also influenced by it in all aspect of their foreign relations. He also wants to encourage international lawyers to think beyond the substantive rules of law to the function of law, the nature of its influence, the opportunities it offers, and the limitations its imposes. He urged them to understand the limits of its influence in the international arena constituted by sovereign nations. He added that law that is made is a force in international affairs but its influence could be understood only in the context of other forces governing nations and governments behaviours.

Moreover, Henkin (1979) noted that the motivations of governmental behaviour were complex and at times not clear for the actors themselves. That is why in product management it is usually said that more than focusing on what people say they might want, it is even more important to go deep into the problems people need to solve and why. In fact, although not everything, understanding the customer is very important. According to Busuttil, this is a very important skill product managers need to develop; they need to know the customers more than they know themselves. Indeed, from the product management perspective, that is the focus when considering customers. It is also about grouping them in market segments based on their similarities. To understand them more efficiently, Lawley and Schure suggested to divide them in two groups, the ones who want or need the products and the ones who may buy the products of the firm. As they say, market research is important in gathering the relevant information related to the needs of the customers as well as the market drivers. It is worthy of note that in product management the information gathered takes a different and more comprehensive meaning of the customer and its behaviour than in international law, for example. Therefore, lessons from product management would be more than useful.

As a matter of fact, states behaviour abound in the literature review; however, not only do theorists not agree on many things but also they only focus on why states behave a certain way and how to make them change behaviour, sometimes by the most dramatic strategies which are not all the time efficient. Indeed, Chayes and Chayes (1995) reported that like the ILO some human rights bodies made public a list of non-reporting states and that the Committee on Economic, Social, and Cultural Rights adopted specific decisions where they identified "serious delinquents" by name; however, these expedients were not successful, and they did not improve the situation. They reported that many countries were not internally equipped to address the reporting requirement seriously. Non-reporting, according to the complaints of the chairperson of the secretary general in some cases, was deliberate and should be regarded as a refusal to take even small steps toward compliance with treaty obligations. They thus concluded that reporting under a variety of international agreements shows that even the first step toward transparency was not easy and that even routine reports on routine matters were not a priority on the bureaucratic agendas both at the domestic and at the international level.

Chayes and Chayes (1995) argued that against the enforcement model of compliance, an alternative managerial one could be develop relying primarily on the cooperation and problem-solving approach. The managerial model of Chayes and Chayes includes 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 as designed by Chayes and Chayes. They explained that compliance involved assisting and organizing the efforts of non-recalcitrant parties to move toward increasingly complete fulfilment of their obligations. They argued that the treaty and the regime in which a "re-conception" of the compliance problem is embedded are best seen as institutions for the management of an issue area over time.

Chayes and Chayes (1995) noted that a potentially powerful but emerging process for performing more active functions, in modifying preferences and generating new options, persuading parties to move toward compliance, is a systematic review and assessment of individual members' performance, in relation to treaty obligations, including definite steps to improve performance where it is lagging. They argued that since it was the least intrusive method for achieving transparency and so on, it was worth the investment of financial and human resources. Country reports, independent secretariats, NGOs, and scholarly studies provide data for such review and assessment (Chayes & Chayes, 1995).

Falk (1981) also saw the issuing by the OAS of reports, for instance, about systematic patterns of human rights violations in some countries in the hemisphere as another breakthrough in the relatively secure protection of human rights at the regional level, besides the fact that the European Convention on Human Rights and the European Court of Human Rights provided a solid institutional foundation to human rights, where most of the governments accepted the compulsory jurisdiction of disputes, opening the path for individuals to submit their complaints regarding eventual abuses by their own governments or others, with the possibility for aliens as well as nationals that would be victims of human rights abuse to find remedies (Falk, 1981).

The review and assessment process 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. It engages all state parties to the treaty as well as non-states actors in a comprehensive dialogue where the states would be the main actors and the non-state actors would play a major role in review and assessment. Indeed, mastering the art of persuasion is important in product management because an excellent work to create a product strategy can be done, a credible plan can be conceived, but if the others cannot be convinced to support the efforts, there will be no success (Lawley & Schure, 2017).

As Busuttil (2015) asserted, people need a strong motivation to buy a product and the value of a product varies according to how much people need it. However, people's needs change overtime. At times, customers might not be aware of the need identified; it is necessary to reveal it to them with diplomacy and gentleness. Ability to influence and sell ideas is thus critical to build confidence and gain support; however, not only it is not all, the quality of the product is important also for the long term. Thus, the managerial approach of Chayes and Chayes has many things in common with the OTF. If Chayes and Chayes brought the what, the OTF brought the how and why. They complement each other. For instance, the reporting system, as an effective means of compliance mostly highlighted by Chayes and Chayes, revealed apparently few major flaws that the Optimal Treaty Framework could help address. They themselves recognized that reporting was not easy although useful, but the OTF, as shall be seen in Optimal Treaty Framework in Action, (which is the chapter 4 of this thesis), explored paths for optimization of the reporting system among other things.

Reflecting upon the reporting system for the European Social Charter, in order to consider what lessons it might have for the reporting systems that operate under UN human rights treaties, Harris (2000) found that it was a well-established system overall. It is not perfect for sure, and faces a few problems such as states submitting reports late, not several years late like other UN human rights treaties, but late anyway, and at times incomplete. It is also worth considering, according to Harris, that they are also better equipped financially as well as administratively to deal with reports more efficiently than their counterparts in other regions. However, when the states fail to change their law or practice in response to an adverse finding, the Committee of Ministers and the Committee of Independent Experts (CIE) are only able to record and comment adversely on it in subsequent reporting cycles and repeat the previous recommendations and determinations (Harris, 2000).

Harris concluded regarding this that the lesson of the European Social Charter (ESC) reporting system is that a system of supervision that does not result in a legally binding decision can suffer problem of compliance. He lamented that unfortunately states were not prepared within the Council of Europe as well as the UN to agree to a reporting system that results in legally binding decisions; but that the reason given for this situation, underlining the fact that a system is to achieve improvement through constructive dialogue rather than confrontation, was not a convincing argument. Indeed, seeking legally binding agreements does not mean cutting short constructive dialogue and communication. Harris also does not mean resorting to force or violence. It simply means aiming for the best possible option and working to achieve it.

Furthermore, Andrew Clapham (2000), in analysing the UN human rights reporting procedures from the perspective of a non-governmental organization (NGO), Amnesty International, said that the treaty bodies are seen as the heart of the human rights system, and they consider themselves as the hub around which other bodies should circle but in reality they seem to become increasingly peripheral to the UN system, and it is important for them to establish new links. Specialist bodies were established at the universal level in 1966 for the oversight of the treaty performance (Crawford, 2000). For the NGOs, the treaty bodies keep shining by their isolation and disconnection from the mainstream activities and discussions about human rights in the world (Clapham, 2000). Clapham argued that NGOs could provide the bridge to a larger world; however, it is necessary to convince them about the relevance of time and money investment in the preparation of briefs and in the participation in the work of the treaty bodies. He noted that the more fundamental issue is the time spent by committee members in human rights work, since they work either as pro bono or with a low honorarium and are required to spend only half or one third of their time in Geneva or New York while the report examination task is becoming more overwhelming.

Clapham (2000) found that a way to solve some problems would be to create a professional treaty body with the mission of examining states' reports under the different treaties. Such reports should be consolidated ones in some cases. He also advised the creation of cross-treaty-body working groups to examine cross-cutting themes in the context of state party reports. This reorganization would benefit the system in that it would increase the level of expertise and commitment of experts. The creation of one treaty body would enhance the visibility of the treaty body work and attract greater press interest.

According to Clapham, for that treaty body to work more efficiently and in a more integrative way with the rest of the UN work on human rights, the officials should be full-time and able to travel and meet those involved in other related programs. However, the thesis argues that if they do not work seriously on many product management-related aspects, their efforts will be in vain. Not only do they need internal organizational readjustments but they also need to build a real optimal treaty management, they need an optimal treaty management team for optimal treaty recovery and development, they need to work also on improving states-customer experience, and so on.

In her preliminary evaluation of treaty bodies in general based on her 20 years of experience in training programs conducted in Africa, Europe, and Latin America, Gallagher (2000) concluded that recommendations for action often revealed weaknesses and gaps in the committees' source of information. She explained that the recommendations sometimes were not formulated in a way specific enough to allow follow-up measurement and evaluation; they were broad and verged on the platitudinous, to repeat her own words. For instance, the proposals and suggestions made to states or about them would urge them to ensure that their public officials are trained in human rights, law reforms are undertaken, that effective monitoring mechanisms should be introduced, and that activities related to education and public information about human rights should be reinforced or strengthened (Gallagher, 2000).

Gallagher (2000) also found that another major problem was that the treaty bodies' pronouncements related to national structures empowerment revealed some basic misconceptions about the nature of technical cooperation and the capacity of the United Nations more specifically of the UNHCHR, to deliver. She also found misconceptions in the way in which national mechanisms should be reinforced to enhance their ability to promote and defend protected rights. She cited, to illustrate this case, the fact that treaty bodies frequently suggest that technical assistance is provided to agencies in charge of law enforcement. Such assistance is usually limited to training and sensitization of police officials in international human rights standards. She argued that such suggestions reflect the basic error of assuming that human rights violations by police officials are due to ignorance, and that teaching them the relevant standards would prevent violations in the future. She commented that her experienced in the field taught her that the majority of the officials of law enforcement agencies are well aware of the basic rules enacted both internationally and nationally regarding individual rights and freedom—what is missing is the capacity or willingness to transform the theory into practice and what would be required is more than a lecture in human rights norms; it is specialized training, adequate equipment, and principled leadership.

Gallagher (2000) concluded that human rights must become an integrated part of law enforcement organizations' functioning and structure in operations as well as in training. She added that if the treaty bodies want to make positive contribution in the elimination of state violence and the related violations, they must learn how the relevant forces are organized and operate, and they must understand law enforcement organization and practice. They must know enough to ask the right questions to the right persons and make recommendations that can be translated into identifiable, quantifiable actions (Gallagher, 2000). She argued that one

of the numerous ways in which the treaty bodies could enhance their impact on the functioning of the national structures they identified as their key partners would be to improve the quality of their own recommendations for future actions; they need to improve their information base, which is focused only on NGOs, by including other sources. She noted that the real intelligence on police behaviour, for example, could not be captured through the state reports and that treaty bodies should explore the possibility to request the presence of officials in government delegations and even the submission of detailed reports from different agencies and departments of the states (Gallagher, 2000).

Gallagher (2000) also reminded that what the states needed was not just an opinion stipulating law reforms but also the tools to achieve such reform. Even if they are not able to fulfil all needs they could at least ensure the quality of the required assistance and make sure that it is well channelled. Sometimes, technical cooperation programs operate in a human rights vacuum or in total ignorance of the structures and characteristics as well as capacities of the programs and specific activities and projects. She also raised the problems of the composition of human rights treaty bodies, which include mostly male lawyers and diplomats. She lamented that the membership conditions established for the treaty bodies, although they emphasize equitable distribution on the basis of civilizations, geography, and legal systems, do mention professional background or occupation as well as gender.

Finally, Gallagher (2000) noted that the treaty bodies might reach the conclusion that in order to attain their basic objective, which is to encourage and facilitate national implementation of and compliance with international human rights standards, a fundamental change in philosophy and approach would be required. She noted that, although there is ample evidence on the low return on investment of such strategies, most discussions on reform kept focusing on enhancing the capacity of the international human rights treaty system to deal with recalcitrant states, instead of leaving them to the investigating and political components

of the system, and focusing the expertise on working on a practical level with cooperative governments and other key national partners to strengthen human rights protection from within (Gallagher, 2000). Thus, this shows in short that the situation as described by Gallagher is quite complicated and gave reason to Chayes and Chayes in many ways mainly in that there is a need for capacity building and assistance, persuasion and problem solving, and so on; however for all these to be achieved an efficient framework is not an option but a must.

Indeed, if high performance is to be achieved in international law, product development is a must. When customers are demanding, competition is intense, and so on, such as is usually the case in the auto industry as well as in many others, product development requires emphasis on some specific themes in order to lead to outstanding product development, including among other things integrating customers and products. It is important to emphasize this point over and over again due to its relevance; it is about creating products that are internally coherent and which function well as a system, and creating experiences that delight customers (Clark & Fujimoto, 1991). Integrating customer needs and interests into the design and the development process consistently and intimately—and in a world in which those needs and interests are not explicit and change constantly—calls for linking design, production, and market in an integral system (Clark & Fujimoto, 1991).

Chapter 3

A study of human rights and labour migration issues in the Optimal Treaty Framework

Human rights and labour migration form a set of two controversial matters. The title of Graziano Battistella's (2009) articl, "Migration and Human Rights: the Uneasy but Essential Relationship", says a lot about the relationship between migration and human rights. Indeed, as he explained in detail, advocacy movements fight for the integration of human rights into the migration policies and management, but states, for the most part, lack enthusiasm. In this chapter, some human rights and labour migration issues will be considered and we will try to capture the particularities of the states as consumers, underlying the paradox that it shows. We will also make some considerations that the framework makes possible. It contains three sections. The first one (3.1) deals with some issues and challenges in the framework, the second one (3.2) turns around states as consumers, and the last one (3.3) raises some considerations to get ready for the future.

3.1. Some issues and challenges analysed in the framework

Battistella, among many authors, mentioned that there are limited expectations from the conventions mainly because of the "ineffectiveness and tiredness" of the human rights discourse, which has almost disappeared from the agenda of the international society; the limited power of the UN; and the fear of the countries to lose competitiveness in the international labour market if they increase protection (Battistella, 2009). Battistella also mentioned that some characteristics inherent to migrant status have led to the unsuccessful experience of countries of origin to win better common conditions for migrants from

destination countries. In short, human rights and labour migration issues constitute a combination whose intricacy did not start yesterday, and will not eventually disappear if no efficient solutions are found since each one of them taken alone already has its small batch of problems. The following lines will examine the major issues related to ratification (3.1.1) and compliance (3.1.2) of the key instruments to protect the rights of labour migrants.

3.1.1. Issues related to ratification

According to the Article 2 (b) of the Vienna Convention on the Law of Treaties concluded at Vienna on 23 May 1969, "ratification", "acceptance", "approval", and "accession" mean in each case the international act establishing on the international plane the consent of a state to be bound by a treaty, which itself is defined in 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 fulfilment of all the relevant steps they still need to deposit the instruments of ratification or accession at the United Nations. In the details provided by the International Steering Committee for the Campaign for Ratification (2009), in order to achieve ratification, the state' representative, whether the executives or a national authority, sign the treaty, usually without prior authorization of the national legislative. The Convention of 1990, for instance, is permanently open to signature, as stipulated in its article 86, and the

instruments of ratification shall be deposited with the Secretary General of the United Nations. This signature shows merely the intention of the states to be bound by the treaty, and as stated by the Vienna Convention on the Law of Treaties, they are obligated to avoid any action that could affect the object and the purpose of the convention. However, they are not yet under obligation to comply with its principles.

The international steering committee noted that, sometimes, for some state executives, signature is simply an initial step in the consideration of the convention, which usually requires for ratification that both the executive and the legislative branches get involved in the steps. For instance, in the case of international labour standards and other related instruments whether for nationals or migrant workers, the ministry of labour and employment might be the one to initiate consideration. Such consideration includes, still according to the experts of the international steering committee, a study of existing legislation and implications of ratification and discussion with other departments, relevant entities, ministries, and executive branch. The results of such consideration might be to sign the convention and follow up with ratification. The executive branch that agrees for the ratification after consideration sends a proposal to the national legislature including content of the convention incorporated into the national convention, or the approval of ratification might be submitted as a distinct act, separately, but together with the commitment to incorporate the standards of the convention into national law. The experts noted that to be valid the last step should not be overlooked; sending the ratification or accession instruments to the United Nations relevant body.

Ratification is an important step toward rights protection and lack of declaration and all reservations do not have a positive impact. For instance, the Convention on the Protection of the Rights of Migrant Workers empowers the Committee on Migrant Workers in its activities. Indeed, this committee has the ability to oversee the implementation of the Convention of 1990 on migrant workers. It considers state reports and complaints, and

prepares general comments, discussions, and so on. The International Justice Resource Center explained that only 47 states were parties to this convention in June 2014, and that very few of them made the required declarations to enable the individual complaints mechanisms and the inter-state complaint mechanisms to work efficiently. Indeed, Article 72 (1) of the Convention of 1990 establishes the committee with the purpose of reviewing the application of the convention. Article 76 (1) allows interstate complaints and provides related details. However, Article 76 (2) states that for the provisions of paragraph 76 (1) to be applicable ten states parties have to make the related declaration. According to the International Justice Resource Center, the interstate complaints procedure has never been used so far. As for individual complaints, it is guaranteed by article 77(1); however, it requires also that ten states make the related declaration. According to International Justice Resource Center, only three states have made the expected declaration as of August 2015.

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 policies 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 and international cooperation; to reinforce the prerogative of state sovereignty to determine labour 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 labour 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. The Department of Economic and Social Affairs of the United Nations averred that it is in the interests of the states also to ratify existing international conventions specific to migrants since international migration is not about to decrease anytime soon and bilateral and multilateral agreements that have been increasing recently have their own limitations. Therefore, it would be more beneficial, more effective and they would achieve more (Department of Economic and Social Affairs, United Nations, 2004).

Nevertheless, many argue that even if the number of ratifications of international conventions related to migrant workers is low, this does not constitute a problem since first of all it does not guarantee real change in the human rights situation in the ratifying countries. Hathaway (2002), in her analysis on the ability of treaties to make a difference, concluded that they could in fact serve to offset pressures for real change in human rights practice; there are even instances in which ratification seemed to have no impact. She found it striking that those treaties sometimes, even though they do not make practices worse, do not make them better either. Hathaway (2002), in her empirical study, concluded that states opt for ratification sometimes only to remove the external pressure. Since it helps states to show their commitment to human rights norms, they engage in expressive behaviour of ratifying human rights treaties; however, since the monitoring and enforcement system is rather weak, there is no incentive for ratifying countries to make the actual changes in their policies to meet the requirements of the treaties (Hathaway, 2002).

Emilie Hafner-Burton and Kiyoteru Tsutsui (2005) noticed that there is something called the “paradox of empty promises,” meaning that some governments often ratify human rights treaties as a matter of window dressing. They added that such governments radically decouple policy from practice and often exacerbate negative human right practices. They argued that this tendency was quite expanded and that it challenged the efficacy of

international law and questioned the authenticity of the state's legal commitment. They posit the argument that institutionalization of human rights was a double-edged sword. On one side, "global human rights treaties supply weak institutional mechanisms to monitor and enforce regime norms, offering governments strong incentives to ratify human rights treaties as a matter of window dressing rather than a real commitment to implement them in practice". On the other side "the human rights advocates regularly mobilize around these treaties, leveraging the emergent legitimacy of human rights as a global norm of appropriate state behaviour to pressure states to improve actual human rights practices."

Ruhs (2013) argued that the main reason behind the failure of existing international conventions to obtain ratification in order to more effectively protect migrants' rights resides in the instrumental roles of rights in shaping the impacts of migration for the receiving countries. He contended that the key factor widely accepted among the analysts was the one of national interests perceived and politics of states. Empirical studies showed that the perceived cost of granting specific rights to migrant workers was a major impediment to the ratification of the Convention on the Rights of Migrant Workers of 1990, for example. Ruhs explained that national policy makers decide on the regulation of the admission and rights of migrants in order to achieve their national policy objectives, considering a series of domestic as well as international legal constraints. They also show a preference for high-skilled migrant workers, because they are expected to bring more complementarities with the capital and the skills of the current population, because of eventual long-term economic growth implications, and because skilled migrants employed in high-skilled jobs pay more taxes and are eligible for fewer welfare benefits than low-skilled migrants in low-skilled jobs (Ruhs, 2013).

Ruhs' study shows that in Europe, in Asia, in most high-income countries, the migration policy makers are more open to skilled migrant workers than to low-skilled ones; the exceptions are countries of the Gulf Cooperation Council and Sweden. Indeed, Germany,

for instance, transformed its labour immigration policies, in order to attract more high-skilled workers. The immigration act of 2005 states clearly that the admission of migrant workers must fit the German economy, the need of the labour market, and so on (Ruhs, 2013). The debate in Germany has been, among other things, about the need to operate open and attractive policies for highly-skilled workers in order to be more competitive in the global race for talent. Canada and Australia, according to Ruhs, can be cited as examples of countries where more openness to skilled workers has long been related to the use of migration as a nation-building tool. Ruhs noted also that, in many South East Asian countries, the greater openness to skilled migrant workers seems to be the key characteristic of labour immigration policies. In Singapore, for instance, there is a clear distinction between the attraction of foreign talent and the regulation of temporary employment of low-skilled migrant workers. Therefore, selectivity based on skills has always been a major dimension of the country's labour immigration policies (Ruhs, 2013). Hong Kong also pursues the same politics, a tightly regulated low-skilled immigration program, but a more open program to attract high-skilled migrant workers (Ruhs, 2013). The Republic of Korea, which started to import migrant workers in the 1990s does not hide either its preference for skilled migrant workers over the low-skilled ones (Ruhs, 2013). There, the employment permit system for the low-skilled is limited by a quota while high-skilled policies do not have numerical limits (Ruhs, 2013).

Some other authors argue on their side that ratification does not matter because the international standards can serve as a reference to influence nonbinding legal processes, to codify the human rights discourse, and to contribute to the development of best practices (Ruhs, 2013). However, despite these positive impacts of the conventions whether or not they are ratified, non- ratification is an impediment to the applicability and the effectiveness of the Convention on the Protection of the Rights of Migrant Workers (Ruhs, 2013). It is true that

there is no international police force able to enforce the observance of laws by states and no international court that has compulsory jurisdiction over states, but compliance with the principles and rules of conduct of international law whose existence are accepted by states is accepted as obligatory (Jayawickrama, 2002). Moreover, Article 38 of the statute of the International Court of Justice requires that to settle the dispute submit to it; this applies to, among other thing, international conventions, generally or in particular establishing the rules expressly recognized by the contesting parties.

However, to become formal sources of contemporary international law the treaties or international conventions have to be recognized officially by the states, which means that they have to have previously expressed their consent to be bound by the treaty whose terms should be performed in good faith. For the court to have a prima facie case, the parties should have previously ratified the convention and its protocol authorizing the competence of the court to settle the dispute. Most of the countries that have ratified the UN Convention on Migrant Workers of 1990 made reservations and excluded mostly Article 92 (1) (Ruhs, 2013). Article 92 (1) states that any dispute between state parties regarding interpretation or application of the present convention that cannot be resolved by negotiations shall be submitted to the arbitration, and if arbitration does not work they shall submit the dispute to the International Court of Justice in conformity with the court statute. Unfortunately, paragraph 2 of the same article gives them the possibility to make reservation on paragraph 1. The result is that most of the states did not hesitate to exercise this reservation prerogative and Article 92.1 was the one to suffer the most from it.

The practice according to Poirat (2000), does not demand any formalism regarding the conclusion of treaties and states commitment; however, she wondered whether the case of the North Sea continental shelf of 1969 was an exception to that rule. Indeed, the rulings of the International Court of Justice found that since the Federal Republic of Germany signed but

did not ratify the Geneva Convention of 1958 it was not party to it since ratification was required by the final clauses of that convention. Another example on how ratification is useful in rights protection is that, a few years ago, there was criticism of Japan's refusal to ratify the Optional Protocol to the Civil and Political Rights Covenant, which would enable residents in Japan to appeal to the United Nations Human Rights Committee if they are victims of violations of rights established in the covenant (Goodman & Neary, 1996). Japan is not the only country or the first one to make reservation when they do not particularly appreciate a provision of an international instrument. In fact, it is a right guarantee by the Vienna Convention on the Law of Treaties in its Article 19; and Article 21 states that the effect of such reservation is to modify the provisions of the treaty, or to ensure that the provision subject of the reservation does not apply for the reserving states. Even if the convention warned states that reservations affecting the purpose or the object of the convention were not allowed, this does not prevent states from eschewing key provisions necessary to the effective protection of rights or to merely discard the convention.

In fact, 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, conflicts, poverty, inequality, and lack of decent work push thousands of people to leave their home in search of better circumstances. Multifarious factors entice individuals to uproot, leave their homelands and migrate elsewhere and Taran (2000) warned us that this could not be explained only by rational choices made by people who assess the costs and benefits of an eventual relocation and choose the option that would best fulfil their needs. Macro factors also should be considered, and they include positive and negative factors that encourage and compel migration: the ease of travel; family and ethnic ties; widespread awareness of options and conditions in other countries; and opportunities in

particular for international experience to advance in business, career, and professions (Taran, 2000).

The UN (Department of Economic and Social Affairs, 2016) found that migration was not only good for migrants themselves and their families but also for the host and the country of origin. Sometimes, migration is associated with many bad outcomes and negative image such as criminality, ethnic conflict, and so on. Some see in immigration more problems than opportunities, brain drain, invasion, tax raise, wage fluctuations and job loss (Goldin et al., 2011). Indeed, Goldin et al. explained that brain drain statistics in developing countries offer a devastating picture; families are divided, and there are also social costs that remittances are not able to compensate. The UN study shows however that it could have some good sides. For instance, the UN study denoted that between 2000 and 2015 positive net migration contributed to 42% of the population growth in Northern America, 32% in Oceania, and that the European population would decrease dramatically without the contribution of this positive net migration. In their clarification of such a subject open to so many debates, Goldin et al. (2011) on their side depicted several impacts of migration on receiving countries, sending countries, and migrants and societies.

Indeed, Goldin et al. (2011) contended that in receiving countries, migrant workers are usually perceived as a drag on the economy and additional competition for scarce jobs, but to the contrary, studies show that immigration stimulates growth in the receiving countries at an aggregate level. They added that economists usually agree on that fact—the debate is more on how to measure the benefits and the effects. Low-skilled workers take jobs that natives do not find desirable; or by providing services such as child and home care, they allow skilled workers to enter the labour market. They also argued that skilled migrant workers on their side usually work in growing sectors of the economy that are experiencing a labour shortage such as information technology, education, healthcare, etc.

Some countries like the Gulf Cooperation Council nations rely heavily on migrant workers, who constitute more than 90% of the work force (Goldin et al., 2011). Migrant workers offer the advantage of being more flexible and willing to move depending on the labour market demands than native workers. This helps to stabilize economies, according to Goldin et al. They also make notable contribution to the economy through innovation as well as the creation of new products, concepts, and businesses. For instance, two reliable ways to foster innovation and generate ideas in an economy, according to Goldin et al., are to increase the number of highly educated workers and to introduce diversity in the workplace. Moreover, ethnic diversity plays a key role in cities, attracting and retaining talented people; diverse societies are more creative, open, dynamic, and cosmopolitan (Goldin et al., 2011).

For home countries, if brain drain is compensated by brain circulation and if members of a country's diaspora can connect their home countries with foreign expertise, contacts, and finance, then brain drain becomes more brain circulation and the negative effects can be limited. In addition, since they left because of unemployment, they can contribute to the economies of the developing countries. Indeed, remittances constitute an important part of the GDP, they directly reduce poverty, sustaining communities, helping children with their education, and improving their health (Goldin et al, 2011). Finally, for the migrants themselves, they are economically better off and also, depending on their access to facilities they can improve their education and so on (Goldin et al., 2011).

Nevertheless, migrant rights are not respected, for the most vulnerable categories of the society, mainly the low-skilled migrant workers, women, and children. Migrant workers experienced xenophobia, hostility, and discrimination, factors which affect their integration in the society, their participation in social life, and their earnings (Taran, 2000; Goldin et al., 2011). They face exclusion, anti-foreigner actions and behaviours, and discrimination in housing, healthcare, employment, and other aspects of interaction in civil society (Taran,

2000). Low-skilled migrant workers, more particularly, work at risk of inadequate workplace protection and limited rights, no access to healthcare due to lack of insurance, and unawareness of and inability to access health facilities. Together with undocumented migrants they are usually vulnerable to abuses and exploitation from employers without adequate legal protection and opportunity to unionize; and when they live in isolated places or forced confinement they cannot escape and seek legal redress (Goldin et al., 2011). If the United Nations Declaration of Human Rights of 1948, a milestone documents related to the protection of human rights, was highly applauded by many nations, many of the specific instruments related to rights protection went unheeded while restrictions of migrant rights continue to proliferate (Ruhs, 2013). Several national and international organizations as well as key UN agencies concerned with this ominous development have tried to convince states that migrant rights are human rights and are therefore, indivisible, inalienable, universal, and deriving from common humanity, and as such they must be protected no matter the citizenship (Ruhs, 2013).

Rawls (1999) argued that immigration problems would be eliminated in a realistic utopia since the causes would disappear. For example, people would not be fleeing starvation or poverty since those are due to political failures, and the absence of decent government. The latter would be the effective agent representative of the people politically organized taking responsibility to maintain assets, prevent deterioration, and so on. Taran (2000) noticed that with globalization and increasing migration, all states tend to become more multi-ethnic, multi-cultural, multi-lingual, multi-racial, and multi-religious; hence, addressing the realities of increasing diversity equates to finding ways to mediate relations across differences and ensure mutual respect. Rawls (1999) suggested that persecution of religious and ethnic minorities, the denial of human rights, and so on would in fact disappear in the society of liberal and decent peoples or more specifically democratic peoples. His hope is that, in the

future, there would be a society of liberal and decent peoples all around the world that would respect the principles of the law of peoples, which is an extension of a liberal conception of justice for a domestic regime to a society of peoples, developed within political liberalism.

The principles of the laws of people state, among other things, that free and democratic peoples are to observe treaties and undertakings, they are to honour human rights, and that they have a duty to assist other people living under unfavourable conditions. Such principles, Rawls (1999) added, make room for several forms of cooperative associations and federations among peoples, and also for different kinds of organizations like the United Nations, which is in charge of regulating cooperation among nations and meeting certain recognized duties. They would express their condemnation of injustice in countries, and violation of human rights, recurring to economic sanctions in some grave cases or even military intervention. To Rawls' view, the first step required is to work out the laws of peoples and he set up some conceptual, political, and moral aspects of those laws; however, he noted that it was beyond the philosophical scope to account for how to concretely make this a reality but belongs to expert knowledge.

Nagel (1991), although he recognized the relevance to try to imagine the next step, warned of the importance to avoid utopianism as well as hard-nosed realism, two diametrical opposites. He then suggested solving the conflicts in human beings first, before trying anything else, since the problems stem from conflicts between the claims of the individual and those of the group. There is a need to accommodate the impersonal motives and the personal ones; and the first step is to go to the roots, which means within the individual himself, to reconcile those two standpoints, the impersonal and the personal. If this cannot be done, Nagel argued that problems related to toleration, equality, and international justice will be hard to resolve. Looking at the states back then, and disappointed by the execution of Socrates, Plato (Arora, 1983), who was kind of concerned about a just government, a perfect

government able to deliver happiness to the whole, (although he was not so much a lover of brotherhood of men since, like many Greeks of his time he considered slaves as lower beings to be maintained in subjugation), concluded that troubles would never cease in the nations of men until some true and genuine philosophers enter the political office or by divine ordinance the rulers come to truly pursue philosophy.

The fact is that those problems are so complex that they cannot be captured easily, and surely not, from one standpoint. Sometimes, the theories and the practices just do not match well and the gap keeps increasing. However, philosophers and legal and political theorists were not the only ones to study those thousand issues disturbing human life. Indeed, the international system has been facing many problems for quite a long time and all sectors, philosophers, political theorists, economists, and international lawyers, have long been puzzled by them. Particularly in the field of human rights, international organizations and human rights activists, have also tried their best, to the point that David Kennedy looking at those international movements found that, in the end, they might be part of the problem. He asserted that the generation that has created the human rights movement, conceived it to find a way to identify evil people in evil societies and restrain them. However, he concluded, now what is required is understanding of how good or well-intentioned people can go wrong and support things that they were taught to denounce; human rights have long been a subject of devotion rather than calculation but that goal would require reassessment of our humanitarian commitments, tactics, and tools (Kennedy, 2012).

Falk (1981) noted that human rights realities can be deeply influenced by thousands of policies undertaken for geopolitical reasons and so on; however, he found that substantial realization of human rights was compatible with the state system provided that structural transformation occurs to realize human rights on a global scale. He mentioned that the struggle for human rights was bound to ebb and flow and that the disappointing record of

observance and implementation was a signal that the means required reconsiderations. He came to wonder what could be expected to happen over various periods of time in relation to the multifarious proposed human rights initiatives, and also what steps were required in order to meet particular human rights goals. Falk concluded that these are enormously complex questions. As could be seen, when it comes to concepts like human rights, ratification, international instruments, and migration the opinions and research results abound and opinions diverge. Even the ILO sends mixed message. It is to the point that we risk losing track of what to do.

Indeed, ILO does not make it mandatory for states to ratify the international instruments, and suggests that if they adhere to the terms of the international instruments it would fill the void (ILO, 2009). In the Declaration on Fundamental Principles and Rights at Work of June 1998, the ILO declares, in Article 2, that even if member states have not ratified the conventions in question, they have an obligation due to their membership in the organization to promote and realize in good faith the principles related to the fundamental rights subject of those conventions, mainly those related to the effective abolition of child labour, the elimination of discrimination in respect to employment and occupation, the elimination of all forms of compulsory or forced labour, and the freedom of association and collective bargaining.

This declaration was an attempt to bring compliance with core conventions that were not ratified with the hope that ratification would follow (Hepple, 2002). Indeed, in Article 3 of the same declaration, the ILO recognizes its obligation to support other organizations with which they are in relations, and who pursue similar goals so that together they can assist ILO member states in order to attain the objectives previously expressed by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental conventions and by assisting also the members not yet able to ratify the

conventions in their efforts to promote, respect, and realize the principles protecting fundamental rights stated in the conventions. In addition, in most of their report they conclude that it would be very helpful for effective rights protection. Furthermore, they never stop promoting the ratification of their instruments and Rogers et al. (2009) mentioned that by 2009 they reached 7500 ratifications of 188 conventions. This implies that it is important for them in their quest for social justice.

The ILO adopts two kinds of standards: conventions and recommendations. The recommendations are not binding; they supplement conventions and can sometimes set even higher standards (Boockmann, 2000). The constitution of the ILO states, in its Article 20, that any ratified convention shall be binding only upon the members that ratified it. The conventions themselves are binding on member states and require ratification in full. Moreover, it is not allowed to amend it at the national level and states must effectively implement the specified provisions which require very often revision of national labour laws and introduction of new legislation (Boockmann, 2000). Member states have the possibility to denounce conventions they have previously ratified within the timeframe provided in the conventions. Ratification also implies reporting on a regular basis, on the application of the convention both in legislation and in practice. As Rogers et al. (2009) stated, in terms of indicator of impact, ratification is not enough, but it has led to significant legislative conformity with conventions.

In any case, ratification is an important formal step toward real rights protection. Indeed, Article 20 of the ILO constitution made it clear that conventions were binding only on states that ratified them. Article 24 allows industrial associations of employers and workers to make a representation of non-observance of the ratified conventions to the ILO; and its governing body will follow up with the state concerned. Article 26 of the ILO constitution, related to complaints of non-observance, states that any member shall have the right to file a

complaint with the ILO in case any other member does not satisfactorily secure effective observance of any convention that both of them have ratified. The governing body may appoint a commission of inquiry to consider the complaints; and if no positive results come out, the report and findings of the commission might be used to constitute a case transferred to the ICJ whose decision according to the Article 31 is final. To conclude, the OTF does not diminish the importance of ratification; it calls for the paradigm shift that it is equivalent to buying, and clearly emphasizes the need to support and encourage ratification.

The OTF states that ratification is important; it equates it to buying and argues that to bring about ratification the first thing is not to minimize its value. It is important, even if the states use it as window dressing sometimes, or even if it is difficult to achieve for one reason or another. First, it has to be set as a serious goal worth fighting for, and the voice supporting it should be raised in harmony. In considering ratification, just like buying many elements enter into account; and if there is a problem with ratification, from the product management perspective, we need to look at the product offering, the strategies promoting ratification or compromising it, the customer-states, and also the organization itself. The tendency these days is to focus on the strategies of persuasion, coercion, acculturation, and so on, but the focus never stays long on the instruments themselves. At times, they mention the fact that maybe the cause was due to the lack of legitimacy of the text, and so on; but it rarely goes any further.

In fact, many legal scholars are trying to keep the legal process movement alive. The optimal treaty OTF shares their view that the legitimacy of the law does not rest only on the process but also on the normative content. As they argued, law-making is “not merely the rubberstamping of a pluralistic political process but a process of value-creation in which courts, agencies, and the people engage in a process of democratic dialogue” (Koh, 1996). Indeed, the legal process scholars could not have been so right; the normative content is of

prime importance, and law-making is a process of value creation, but it involves much more than mere dialogues leading sometimes to empty promises. It is justly one of the objectives of the framework to foster this value creation and to draw attention to the eventual negative impacts of some strategies developed by the law-makers.

Thomke Stephan (2007) mentioned that, generally, product and service development could contribute to the integration of customers and new technologies into the product development processes; it could lead to innovation and value creation. Fujimoto on his side explained that effective product development lies in a product design's ability to create a positive experience with the product. To achieve this, it is important to translate product information from customers to engineers to production to sales and then back to customers (Clark & Fujimoto, 1991). Fujimoto added that product development creates value-carrying messages that production transforms into the actual product that marketing delivers to the customers targeted; such customers then interpret and generate experience of satisfaction or non-satisfaction from the product-embodied information. The expressive theory of international law developed by Geisinger and Stein (2007) partly captured this fact when it underlined that ratification could provide information on what most of the people in a country believe. However, they emphasized only the flow of information on one side: the consumer behaviour after buying and the buying effects.

Indeed, they explained that ratification provided information that could be used to change preferences of citizens. They said, more specifically, that the international process and ratification produced information, that information might influence preference and in turn perceptions of the subjective norm. Apparently, this indicates that they focus on the customer environment and they are trying to frame and solve problems at the working level like many designers, engineers, and marketers do, overlooking the big picture (Clark & Fujimoto, 1991). In the light of the information perspective, developed by Clark and Fujimoto, it can be

assumed that they focus on the information flow from the consumer to the marketing function and then back to the consumer. The information flow, as Geisinger and Stein took it, did not seem to go back to product development, then to production, then to marketing, and finally to the consumer as Clark and Fujimoto explained it should, in successful product development.

Attention to the whole and the parts is necessary for the product development to be successful and effective managers should pay attention to the total development system and detailed activities at the same time if they want to produce successful products (Clark & Fujimoto, 1991). Of course, persons who did not develop product management skills would not notice those kinds of details; and worse they would make many mistakes, and they would spend their life looking for the reasons of their failure in the wrong place. For instance, it would be difficult for them to realize that existence of substitutes, weak brand power, no anticipation of future scenarios, failure to appeal consumers, and no value added, among other things, could eventually cause the failure of products in their field, as is the case in others. They would not find it valuable either to create positive product experience or to consider branding, co-branding, and multilevel learning. These are elements that are studied more specifically in product analysis. Thus, by bringing product management to the actual debates in international human rights law, many of its methods and mechanisms can be upgraded for better results.

In short, the right goal, the right vision for the international instruments is to have them ratified. They should not minimize its relevance, and make it optional. If they do not believe in it, the state will not believe in it either. Instead they should work on it to make it possible. Busuttil (2015) contended that product management involved not only developing a vision for the product, but also understanding the product's market and target customers and then working with the product team to make the product more alluring. The product managers, in that sense, plan how to execute that vision through product iterations, design, and roadmaps

(Busuttil, 2015). After that they have to zoom from the broad plan to the fine detail and so on (Busuttil, 2015). That is why the product managers are at the centre of what Busuttil called "the three rings" constituted by the user's experience or UX, the needs and aspirations of the organization (also called the demands of the business), and what happens to be possible due to the technology available (Busuttil, 2015). He averred that there is an inevitable push-and-pull movement between them and that the product managers should be able to negotiate and find the balance.

Busuttil (2015) argued that the role of product managers is to provide three things: context, perspective, and vision. To repeat his words, the context is "a portrait of people in the market who have a particular problem or need, and describes the environment in which they experience it". Perspective gives an honest appraisal of how effective are the organization, and its products, in solving the problem identified. The last element seems to be the most important according to Busuttil; it has to do with the vision, and is used to motivate and align everyone involved in creating a product by describing the potential of the product. If the product management is not strong, the vision might be corrupted by organizations; because the people at the company stopped empathizing, they forgot the real-benefits of their products or they stopped dreaming.

3.1.2. Issues related to compliance

Another major problem is that, when the states 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 behavioural change (Alston & 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 were not violations a few decades ago. The scholarly discourse within international law has also evolved throughout the years. It reached its peak after World War II, with the rise of the United Nations and international organizations, the international human rights movement and so on; back then, the international system was designed by international lawyers who believed not in power but in the rule of law, international affairs and the willingness of states to cooperate (Koh,1996). International law and international relations were good sisters at that time.

However, with the Cold War issues they started to set apart from each other. Although they covered the same territory, they worked independently, and pursued different missions in their analysis related to the influence and functions of law; they also reached different conclusions (Koh, 1996). By the 1980s those two disciplines were completely estranged. On issues like how and why nations obey international law, the international lawyers were extremely positive, with Henkin for example, saying that "almost all nations observe almost all principles of international law and almost all of their obligations most of the time" (Koh,1996). The theorists of international relations, on their side, drew opposite conclusions, qualifying the legal conclusions as naïve and utopian since for them international law could not be enforced, and always fails in the big cases (Koh, 1996). Critical legal studies led left wingers to similar conclusions. Thus, at the international level, the view was divided between the international lawyers on one side and the political realists, the scholars of the critical legal studies, on the other, leading to several theories.

Consequently, 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, 2000). Realism, neorealism, neoliberal

institutionalism, and social constructivism differ essentially in their views on states. For realists and institutionalists, on the other hand, states are unitary actors, and their choices as well as their behaviours can be studied and captured in terms of choices available to states and also the incentives at stakes (Shelton, 2000). To the contrary, social theorists do not 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. For Falk, the bureaucratic character of the modern state, a variety of competing pressure groups representing different parts of the government tend to dominate political leadership in organizational settings and pragmatic calculus, pressure, and perceptions of interest partly shape public policy. In such situation, he said, a government seems to have a high propensity to use the rhetoric of high ideals while in practice they completely ignore them (Falk, 1981).

As for the realists, their view originated from Hobbes and their main arguments is that states comply with international law because someone else makes them through the use of power or coercion (Koh, 1999). The classical realists assert that the main concern and goal of states is to protect their territorial integrity; compliance therefore varies depending on whether or not it is threatened and the exercise of power or leadership from a dominant country through rewards or sanctions contributes to enforce compliance and dissuades non-compliance (Hepple, 2002). Neorealists suggest that all states comply only if they are obliged to do so and out of anticipation that free-riding states usually abhor cooperation (Hepple, 2002). Koh (1999), in his theoretical analysis of why nations obeyed international law of any kind, pointed out that the most effective form of law enforcement is the inculcation of internal obedience and not the imposition of external sanction. He argued that true compliance can result only from a move from external to internal factors and from coercive to constitutive

behaviour, which at the international level corresponds to the process by which norms and rules become internal normative rules to produce new nations.

For one group of theorists, self- interests explain why states comply with international law. In fact, according to Falk, liberal internationalists believe in soft power and realists in the pursuit of material interests (Falk, 2009). For instance, for the school of rational choice theory, whose major adherents are, among others, the international relations scholar Robert Keohane and the international law scholar Kenneth Abbott, nations decide to follow certain rules out of self-interests (Koh, 1999). As for Abbott (1989), rational actor assumptions have already given its proof in many fields of inquiry and if they are used with caution and in their proper domain, they can lead to compelling explanation on international norms creation and compliance behaviour. He argues that, in spite of its unavoidable difficulties, it presents stimulating opportunities for the study of international rules, regimes, and institutions, illuminating the phenomena surrounding them and interpreting them more richly. Abbott averred that rational choice theory, economics, and game theory carry powerful tools that could benefit international law scholarship; and he made a clear distinction between the traditional realists and the modern realists. The traditional realists are the ones concerned with power; modern international relations theorists differ from structural realist theories of international politics in that they put more emphasis on the role of international rules and institutions, looking for causal factors of states interactions, and the interplay of their goals and strategies.

Abbott (1989) explained that modern theory could help better understand the creation or supply of international norms, regimes and institutions in three ways: by the study of the structural conditions that facilitate cooperation, by the study of the techniques employed by states to reach compliance and cooperation under existing conditions, and by the study of the strategies states use to modify conditions and increase the possibilities for cooperation,

changing payoffs, increasing the quality of available information, and linking regimes. Abbott deplored how the rational choice approach influenced by economics has been harshly criticized by many scholars of international law in spite of its creative upheaval to the legal studies (Abbott, 1989). Koh (1996), on his side, found that in international affairs, law intersects with power but power is not always the only concern. In global issues such as international human rights, states are not the only important actors and do not always behave rationally. As for the Neoliberal institutionalists, they pointed out that states are always willing to comply; their initial inclination to cooperation only needs to be indulged through reinforcement (Hepple, 2002). They concluded that institutions eliminate barriers to self-interested compliance and encourage compliance.

Koh (1999) complained that rationalist theories considered compliance as an instrumental computation, and that self-interest explanations do not consider the important factor of vertical internationalization of international norms into domestic legal systems. For Chayes and Chayes (1993), the analysis of the realists based on the arguments related to military and economic power maintenance are not really helpful in improving compliance, which becomes a matter of manipulation of burdens and benefits, implying the application of military and economic sanctions. For them, decisions are not free good because policy analysis and decision making are costly and in short supply; for the sake of efficiency, states seek policy continuity, so even standard economic analysis does not support the idea of a continuous recalculation of cost and benefits, except in the case of serious changes of circumstances. Chayes and Chayes agreed that the incentives at the negotiating stage of a treaty might differ at the compliance stage, and therefore states might have reason to escape their obligations, but the treaty that comes into force does not remain static and unchanging, it can be amended or modified by a protocol. Their assumption does not exclude the fact that it may occur that states enter into treaties without intending to comply with them in order to

appease domestic or international constituencies but generally noncomplying behaviours are not premeditated and deliberate (Chayes & Chayes, 1993). They concluded that, often, compliance problems do not result from a calculation of interests and that there are other reasons that could lead states to veer off their obligations. They found three: ambiguity and indeterminacy in the treaty, limitations on the capacity deficit of the parties, and social and economic changes. These causes of noncompliance, thus, required de-emphasis of formal enforcement measures and coercive informal sanctions in favour of more interactive, less costly and less intrusive measures such as assistance and persuasion (Chayes & Chayes, 1993).

As a matter of fact, Chayes and Chayes (1995) reported that foreign policy practitioners assumed that states had a general propensity to comply with their international obligations on the basis that diplomats, leaders of government, and foreign ministers spend a lot of time and energy in the preparation, the drafting, the negotiation, and the monitoring of treaty obligations; it is hard to believe that they could do so if they did not accept the possibility to comply with the agreements, and to be exposed to their binding effect. Three sorts of considerations, according to Chayes and Chayes, could explain such assumptions of the propensity to comply: efficiency, interests and norms. Efficiency, as explained before— in the sense that decisions are not free goods since governmental resources for policy analysis are in short supply and costly, states cannot afford continuous recalculation of cost and benefits without serious reasons to do so.

Chayes and Chayes assumed that it is a fair assumption that the interests of the parties were met when they entered into the treaty in the first place. They noted that modern treaty making could be seen as a creative enterprise within which the parties weigh the benefits and burdens of commitments, define, explore, and rediscover their interests. The norm according to Chayes and Chayes is also in itself a reason for action and therefore an independent basis for conforming behaviour. Based on the fundamental norm of international law “pacta sunt

servanda", treaties are to be obeyed. Whether as a result of socialization or else, most of actors in most situations, recognized the fact that it is an obligation to obey the law in the existence of a legal obligation (Chayes & Chayes, 1995).

At the opposite of these perspectives focusing more on persuasion, there are theories emphasizing the necessity for coercion or at least a coexistence of the two. For instance, Hafner-Burton (2005) avers that hard laws are essential in the area of human rights, and enforceable legally binding obligations necessary to change the behaviours of repressive states. Indeed, Hafner-Burton argues that human rights agreements are soft and supply weak obligations, influencing states by persuasion would take too long and require the development of convincing argumentation, and so on, but the hard standards of preferences trade agreements (PTAs) could be more effective in changing state behaviours to protect human rights. According to Hafner-Burton (2005), international institutions influence states' compliance the most when they offer substantial gains coupled with coercive incentives; some strategies of persuasion could be added also to the mixture in order to change the costs and benefits considerations of states. She added that the WTO would play a crucial role in that matter if it would agree to link human rights clause to trade. It would give some leverage and empower human rights advocates in their fight for reform, and protection of human rights (Hafner-Burton, 2005).

However, Hafner-Burton (2005) noted with disappointments that the WTO was not yet willing to do so since all past attempts have failed, and faced some states hostilities. She argued that the PTAs were not the ideal forms of human rights governance, and could surely not replace them; however, she viewed in them the only existing international institutions able to enforce compliance effectively, although partially, implementing into practice for example the most basic human rights values. She contended that a growing numbers of PTAs with material and political rewards were becoming quite effective in supporting initial stage of

compliance where human rights agreements could not. She, therefore, argued that these agreements could reinforce human rights mandates, and influence some states to take some actions to improve certain of their human rights behaviours. Hafner-Burton made a difference between soft PTAs and hard ones; and she noticed that in the case studies undertaken with European countries hard PTAs proved to be more efficient than soft ones.

By the same token, Hepple (2002) also deplored the lack of hard law, and the growth of soft law. Indeed, he noticed that social rights which sometimes were expressed in binding legal instruments were more and more taking the form of non-binding recommendations, codes of practices, and guidelines. An example of soft law is the transnational code of conduct issued by transnational corporations in order to respect certain standards related to the conduct of business including employment and labour rights, OECD's Guidelines for Multinational Enterprises 1976, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy of 1977, the ILO's Declaration on Fundamental Principles and Rights at Work adopted in June 1998 in an attempt to strengthen compliance with non-ratified core conventions. There was an explosion of charters and declarations both at the European and international level besides national codes and new individual rights; however, they expressed the paradox that they lack effective enforcement procedures and sanctions (Hepple, 2002).

Hepple (2002) explained that many reasons could justify the popularity of soft law and one might be useful for effective enforcement; it is the amplification of legally binding standards and the recommendation of voluntary action that goes further than the strict requirements, like the ILO recommendations in supplementing conventions. However, he found it less acceptable to use soft law to justify non-provision of binding sanctions in the case of non-compliance, and to use codes of conducts as alternatives to binding instruments. Hepple argued that there must be a gradual escalation of sanctions with sufficiently strong

sanctions at the top in case low sanctions fail to dissuade persistent offenders, for instance. He illustrated this point with an example of purely voluntary approach that failed: The Race Relations Act 1968 in the United Kingdom. This law related to racial discrimination in employment was left to be enforced by voluntary bodies in 40 industries; however, due to the lack of pressure on management to change strongly rooted practices, it had to be superseded by a new one in 1976 (Hepple, 2002).

Goodman and Jinks (2004) agreed that institutions and other states might influence the behaviour of other states by two conventional mechanisms: persuasion and coercion; however, acculturation could lead to behavioural changes through pressure to assimilate. Geisinger and Stein (2007) contended that Koh did not provide sufficient guidance on how the process of internalization worked. They developed a theory of expressive international law, which they claimed aimed to provide a more comprehensive understanding of the forces behind treaty creation and compliance. This theory explains how normative pressure influences rational actors to alter their behaviour and beliefs while seeking esteem from other group members. It maintains that failure to identify with a group can lead states to behave as rebels and gain utility from not following the norms. Geisinger and Stein (2007) said that this implied that states must be involved in other cooperative relationships that are meaningful, such as trade or any other interaction. However, for Lipsett et al. (2014) the impacts of trade agreements on human rights may be positive or negative. They view a rights-based approach to trade as actions and processes which ensure that strategies for sustainable development do not harm human rights. As a matter of fact, they maintain that states have the obligations to protect and respect human rights in the context of trade; they have the obligation to ensure that their policies are coherent with human rights obligation and that their resources are maximized in order to realize social, economic, and cultural rights.

In short, when it comes to compliance authors usually talk about questions of self-interests, coercion, and persuasion, rationality or bounded rationality, a long debate that goes and come back again and again. Finnemore and Sikkink (1998) noted 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 contended that rationality cannot be separated from any politically significant episode of normative influence, and norms and rationality are intimately connected. Furthermore, going back to history would lead to Bentham's (1931) contribution to the debate:

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

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). Bentham 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 noted that since their true names rebuked many, they called it by several other terms such as honour, decorum, reputation, and self-esteem; under those titles they were better received and even applauded. Pains and pleasures are related to sanctions and attached to rules of conduct under the character of punishments and rewards (Bentham, 1931). Bentham's views on rights were not particularly positive. Maybe bringing in his arguments would require mentioning also other views criticizing him, without forgetting the counterarguments to those criticisms and so on, but this would lead far away from the thesis topic. Therefore, the debate will stop here otherwise it will lead to old and long-controversial issues. The purpose of this work is not to stir up controversy or spark things off but to move to the next level.

In fact, both in international law and international relations, the theories on compliance abound; 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. Analysing all of them would lead to an endless story going back in time, further and further in old history. In addition, behavioural studies constitute a complex field of study. For instance, the analysis of individuals in consumer behaviour 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 along with insights and ideas gathered from marketing experience (Peter & Olson, 1994). Moreover, the fact that one single approach cannot explain fully the consumer behaviour since they focus each time on one element of the wheel of three, it is 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. To grasp more, Peter and Olson (1994) developed a general model, a wheel of consumer analysis which contains three parts (Peter & Olson, 1994):

1. Behaviour: refers to the acts of the consumers, what they do.
2. Environment: refers to all the social and physical characteristics of the external world of the consumer. Part of this environment is created by marketing strategies including promotion, products created to influence the consumers.
3. Affect and cognition: refer to psychological reactions which can be of two types. Affect which involves feelings and cognition which concerns thinking. Many cognitive processes can be unconscious and automatic. It also includes processes related to noticing and understanding aspects of the environment, forming attitudes and purchase decision making.

All those three components explained Peter and Olson influence one another and interact with one another. Moreover, when each element is taken alone for a description of consumer behaviours it is said to be ineffective, and will lead to an incomplete study and analysis. On the other hand, the study can start with either of them, there is no starting order. An important point that they mentioned is that consumer behaviours are seen as dynamic, a dynamic process that changes continuously. For instance, a marketing strategy might be well designed based on good description of consumers and on meticulous analysis of the elements of the wheel of consumer analysis at a certain moment in time, and still it might not lead to the expected results due to the constant changes of any part of the wheel (Peter & Olson, 1994). This ability to change suddenly requires an immediate and quick response or change in the initial strategy; thus, there should be room for certain flexibility. However, they argue that it can be a powerful tool that can be used by managers and officials in the design of public policies, and can be applied to analyse and monitor an individual consumer, an industry, a market segment or an entire society.

Many theories of states' behaviour only concentrate on just one aspects of the 3 cited before. Sometimes they focus only on the behaviour and some other times on the environment or on the affect and cognition only. For instance, theories on how nations behave focus on the behaviour, those about trading human rights or attaching it to preference trade agreements focus on the strategies, and those related to acculturation, internalization focus on affect and cognition. The theory of expressive international law seems to have captured the most elements. Indeed, the theory talked about how states behave, thus behaviour, it included the environment when it referred to the influence of international actors and their concerns about esteem of the international community, and it slightly talked about affect when it discussed about the influence of ratification on normative belief.

However, it is important to note that, considered through the OTF these theories among others seem to have almost or completely ignored the legal instruments, or the 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 behaviour to the product policy. This approach considers among other things state behaviour/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 glitches along the way can deeply damage the final product and compromise its future. For instance, product decisions, mainly when it comes to development and marketing, depend to a very large extent on the behaviour of five groups (Wind et al (eds), 1977): the consumer; the decision makers; top management and other members of the organization involved in the product decisions whether directly or indirectly; the intermediate marketing organizations; and members of external organizations that have influence on the product decisions. This last category includes consumer groups, government agencies, labour unions, etc. The attitudes of those people, according to Wind and Tyebjee (1977), can and should provide useful input for product design and policy. Their attitudes affect the decisions related to the introduction of new products both in the generation of new ideas or their evaluation and also in the management of the existing products indicating whether the firm should think of modifying or withdrawing completely a product from the market. However, it happens quite often that they have different, conflicting interests and diverging problems. These make the product decisions more complicated and affect the final product. To illustrate those arguments, it would be useful to look at the situation in a real-life organization. The ILO is very suitable for such

considerations since it is usually placed among the most prolific of the treaty negotiating bodies. The ILO, according to Boyle and Chinkin (2007), is unique in the history of international organizations. It is provided with a tripartite membership of governments, trade unions and employers; it is characterized by a coordinated and systematic procedure for conventions adoption and a really well-developed system of compliance monitoring (Boyle & Chinkin, 2007).

The ILO committee of experts, which has been working for over 85 years on the application of conventions by member states, asserts that it maintains constant dialogue with governments, taking into consideration the information provided by organizations of workers and employers and including them into their recommendations, court decisions, international instruments, and national legislation (ILO,2016). This is excellent from a legal instrument management point of view but to get better results and bring long-term success, more steps are required. As Clark and Fujimoto (1991) put it, a powerful way to organize research and thinking about product development consists of the product of the company with its customers; however, it is very challenging to actually identify key needs of such customers, and then translate them into product concepts and designs that are attractive (Clark & Fujimoto, 1991). No need to say how it can be even more complicated when it comes to states which are not ordinary customers, and denote particularities of their own. They will be analysed in the following section.

3.2. Some considerations about the states as customers: The interesting paradox

The OTF highlights an interesting paradox related to customer and product. For instance, Thomke (2007) asserts that customers are rarely able to express their needs with specificity, due to the uncertainty they face; they will have to experiment before they reach

the point where they can make recommendations. Clark and Fujimoto (1991) reached similar conclusions in their studies of the automobile industry. Indeed, they argued that very often consumers of cars are not able to express their future expectations, but when they actually see the cars they can easily tell which one they like. They agreed, with other authors like Marsh, Collet, Holbrook, Hirschman, and Levy that such facts are due to the fact that criteria identified have the propensity to be emotional and subjective, involving fantasy and symbolism, so their technical specifications are difficult to articulate.

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 & 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 in the expected direction, but it would be arguable to say bluntly that states lack imagination, considering facts about window dressing (Hafner-Burton & Tsutsui, 2005), Olympic citizenship (Shachar, 2011), and other strategies that are developed and explored by them when dealing with international agreements. The work of Meritt and Meritt (1985) shows also a lot about innovation in the public sector. All

these illustrate how states can innovate and get breathtakingly creative when they face challenging situations.

Thomke Stephan (2007) suggested that generally product and service development could contribute to the integration of customers and new technologies into the product development processes; it could lead to innovation and value creation. He added that one approach to product management is that the customers are encouraged to "dream up their own variations, their own custom products". Some of them, the lead users ahead of market trends are interested in solutions to problems that the other users are not even aware of yet. The Olympic citizenship is a perfect illustration of how states can innovate and create value even when they are not directly encouraged to do so; a loophole in the law is enough for them to make it possible.

Indeed, Shachar (2011) explained how states could get really creative when it comes to picking winners for Olympic Games. According to her, it is in the last decades, one of the most significant innovation in the citizenship practice. The International Olympic Committee defined the rules related to the requirements regarding eligibility and nationality for the games in the Olympic charter (Shachar, 2011). In so doing, they determine only under what conditions a player can represent a country in the games, and do not intervene in the citizenship laws definition of member states at the national level (Shachar, 2011). As a result, while states refuse even mere entrance to many categories of people, and even limit the ability to stay, in their desire to strengthen their national team and gain medals, states grant citizenship as they and when they wish, no matter the national obstacles, transforming migration laws into a multilevel game for national policymakers (Shachar, 2011). This reveals many things regarding the profile of the state as a customer and should not be taken lightly. Effective product management requires that we know the customers really well. In order to do so we need to capture their profile and understand their real needs.

As for Bentham (1931), he argued that the state was not a person and that identifiable individuals and their interests were not always the proper basis for the discussion of international affairs. However, Rosenblum, (1978) held that states do have interests different from those of its citizens; they have honour, property, and so on; they have individualism as their ethical basis; they have a higher rationality requiring loyalty and support of their subjects. In his book "Law of Peoples", Rawls (1999) used the concept of the law of peoples to refer to the "political conception of right and justice that applies to the principles and norms in international law and practice". He used the term not in its usual sense "jus gentium" but as a particular political principle aiming at the regulation of political relations between peoples. He chose peoples and not states because the basic features of the peoples in the law of peoples are different than those of the states. States are usually seen in international politics as rational, and guided on their basic interests. Rawls grounded his position on Gilpin's analysis, which led to the conclusion that the study of state behaviour in the modern day could still be made in the light of the history of Thucydides, since the nature of international relations remained unchanged; the states are fundamentally the same as they were in the era of Thucydides; they still struggle for power, prestige, and wealth in a condition of global anarchy.

Rawls noted that the difference between states and peoples was enormous if rationality, interests, and concern with power were taken as criteria since liberal peoples limit their basic interests as required by reasonable needs. States, on the other hand, due to the content of their interests including among other things protecting territory, citizens and reasons of state are not able to firmly accept and act upon a just law of peoples. Rawls added that a "liberal people" assure reasonable justice for all peoples in general and its citizens in particular; they can live with other peoples of similar character maintaining peace and justice. He explained the features of the liberal peoples as follows: they are united by a common sympathy which goes beyond common language, history, and political culture; the liberal peoples have a

certain moral character and a firm political attachment to a moral political conception of right and justice. Furthermore, since they are the ones in control of the constitutional democratic government, that one is reasonably just though not necessarily fully just.

As a consequence of this way of proceeding within a reasonably just liberal or decent polity, the problem of immigration is eliminated and it will be possible to deal with many other cases; cultural interests and needs of groups with diverse ethnic and national background would be satisfied. The law of peoples worked out would reflect the necessary common sympathy and its first principles would be those of justice for domestic society. Chayes and Chayes (1995) on their side asserted that states act by and on behalf of human beings, and at times the principal agent problem aroused. They noted, however, that domestic and international law treats states as if they were "artificial persons" with legal rights and obligations, and students of state behaviour whether in public life, the press or the academy surmise that states similarly to individuals respond to incentives, penalties, and interests.

In any case, states behave mainly regarding policies about skilled workers, Olympic citizenship and so on exactly like normal human being toward brands. Indeed, they are sensitive to brand charisma. This assumption is confirmed by many historical facts where many authors, in their analysis of the theory of states, identified that the group acting on behalf of the state is formed from the elite group, which means high income. When the customers belong to a high-income group, they are usually function-oriented, and value brand more than anything. In addition, the findings of Ruhs about labour migration policies in 46 countries reinforced such assumption. In the following lines, we will first make an overview of the case study realized by Ruhs underlining the factors he considered, the context, and the results; and then we will analysed them in light of the framework.

Indeed, Ruhs (1981) undertook an empirical study of labour immigration programs in 46 countries, in order to capture the key features in high-and middle-income countries, constructing and scrutinizing two indexes that measure the openness of labour immigration programs to the admission of migrant workers and the legal rights conferred to these migrant workers after their admission under the program considered. Ruhs used the term "labour immigration program" to talk about a set of policies established to regulate the admission, employment and rights of migrant workers (Ruhs, 2013). The unit of analysis is labour immigration programs and the period considered is 2009. The study included in total 103 labour immigration programs.

To measure the openness to labour immigration, Ruhs used an index that contains a set of indicators that allow for different modes of immigration control, since different countries having different welfare states, industrial relations systems, and production structures are expected to use different kinds of restrictions on labour migration (Ruhs, 2013). The indicators are quotas, demand-side restrictions, and supply-side restrictions. Quotas are the most direct way of restricting labour migration; they can take various form and represent the limits in numbers of migrant stocks or annual immigration flows established by the governments (Ruhs, 2013). In his analysis, Ruhs considered three types of quotas—the hard ones, the soft ones, and no quotas—which constitute the most open policy.

In the demand-side restrictions, he considered job offer, labour market tests, economic work permit fee, sectorial and occupational restrictions, wage restrictions, and trade union involvements. The job offer is required under certain programs to migrants as a condition of admission in the host country. Labour market tests aim to make sure that the employers made several unsuccessful job-offers to recruit local workers before turning to labour migration. The sectorial/occupational restrictions increasingly common in labour migration programs restrict them to specific sectors such as agriculture. The economic work permits fees that the

employers have to pay for each migrant worker that was admitted under a job offer. Wage restrictions refer to the restrictions put on wages and other employment conditions and, finally, the trade union involvement is about the implications of trade unions in the work permit application process of individuals to ensure that immigration does not affect wages and employment conditions of domestic workers. The trade union indicator shows how strong they are in the work permit application process and how much they influence it. On the supply-side restrictions indicators, Ruhs considered nationality and age restrictions, gender and marital status restrictions, skills requirements, language skill requirements, and self-sufficiency.

The indicator capturing restrictions based on nationality and ages helps explore how personal characteristics of migrants can influence and limit their admission under labour migration programs. It distinguishes four types of restrictions: programs that restrict admission based on both age and nationality, programs that limit admission by one of them, which means by age or nationality, programs where none of them affect admission and programs where admission is influenced but not restricted to either age or nationality, or both of them. The restrictions related to gender and marital status include restriction indicators similar to those related to age and nationality. Language skill is a requirement of many countries where at least some knowledge of the host country's language is required. For the self-sufficiency requirement it is related to the ability of the migrants to prove before admission that they will be able to support themselves after admission in the host country.

As for the indicators measuring migrant rights, they seek to measure the existence or non-existence as well as the scope of legal rights. They refer to the rights granted by the states in their national laws under a certain program; however, they do not measure the rights in practice. Ruhs considered these matters: five civil and political rights, five economic rights, five social rights, five residency rights, and three family rights. In fact, the index developed

contains a total of 23 different rights selected from the Convention of Migrant Workers of 1990. For civil and political rights, two indicators were used to capture the right to vote and the one to stand for elections in regional elections. Ruhs noted that the right to vote in national elections required in all countries the status of citizen. The index related to civil and political rights also included the right to form trade unions and other associations, the right to equal treatment and protections before criminal courts and tribunals, and also the right not to have one's identification papers confiscated by anyone except by public officials authorized by laws.

For the measurement of the economic rights, Ruhs considered the right to free employment in the labour market of the host country. He found that migrants with permanent work and residence permits could fully enjoy this right; however, some countries imposed geographic restrictions. Economic rights also included in the analysis equal access to the protections and benefits of the laws related to employment in the host country, encompassing hours of work, overtime, paid holiday and sick pay, health and safety at work, protection against dismissal, and right to redress in case of rights violation.

For the social rights Ruhs considered rights to equality of access to benefits in case of unemployment, public educational services and institutions, public retirement pension systems, and public housing and all that relates to it such as social housing plans, and public health services. For the residency rights, Ruhs analysed four common possibilities related to the regulation of the right to residence with the most restrictive one consisting of temporary residence with no possibility to upgrade to a permanence residence status, such as the one common in the Gulf States, and the less restrictive one consisting of the policy that grants a temporary residence permit with the opportunity to obtain permanent residence after certain years.

Three additional indicators help measure the security of the rights of a migrant to legal residence and the conditionality. An indicator allows also capturing whether or not the right to legal residence is affected by loss of employment. The last indicator in the residence rights category concerns access to citizenship; it is based on the number of years required for naturalization. The last set of indicators relate to the rights to family reunion. It contains three indicators: two measuring the right to family reunion in terms of which programs allow it, and how extensive is it regarding the family members that qualify as such. The third one has to do with the right of the spouse to work in the receiving country without a work permit.

Ruhs explained that a team of five researchers participated in the index construction during March—August 2009, for the period of early 2008 and early 2009. The sources included a desk-based analysis of national laws and regulations, labour laws, and constitutional laws. The limitations include conceptual complexities as well as methodological challenges. There are some potential error possibilities in the measurement due to the nature of the project, which sometimes required a degree of judgment, and also the fact that sometimes the score was based on English translation. Indeed, this analysis of more than 100 labour immigration programs in 46 countries led to the following findings:

Ruhs (2013) found that the majority of labour migration programs, in both countries of middle-and high-income countries, are temporary migration programs, which do not confer permanent residence on arrival, and that all permanent immigration programs considered were targeting high-skilled workers. He also found that upper-high-income countries had fewer open immigration programs than the lower-income ones; the openness to labour immigration depended on the skill level targeted by the program. The programs targeting the low-skilled migrants had more restrictions than those targeting high skilled workers. He discovered that legal rights granted under different programs varied across countries and across regions. Indeed, countries of the Gulf Cooperation Council and Southeast Asia had more restrictions in

place than Europe, North America and Latin America. However, temporary programs had more restrictions imposed on the rights of migrant workers than permanent immigration programs. He also noted that there was trade-off between openness and some specific rights, and the most restricted rights were: the rights to stand for election, the right to vote, the right of the spouse to work, direct access to citizenship, the time limit on and security of residence, rights related to unemployment benefits and social housing, and the right to free choice of employment (Ruhs, 2013).

In fact, these findings can help capture and schematize the markets. In the cases of the OTF, those findings are important since they provide useful insights and explore the main features of labour migration programs in middle-and high-income countries. What can be noted is that the receiving countries including high-income and middle-income countries were both targeting in their labour policies, high-skilled workers. They want temporary programs and the freedom of exclusion. The more they protect rights the more restrictive their migration policies. They also try to restrict the right to direct access to citizenship, the right that usually gives rise to many problems and controversies mainly when it comes to illegal migrants.

Indeed, many human rights treaties guarantee the rights of all human being to have a nationality, not to be deprived of it, and so on. However, the cases of violations in several countries challenge this basic human right. Cases of denationalization or refusal to attribute nationality to a certain category of people have nurtured debates everywhere. Bauder (2006) even argued that citizenship was a strategy of inclusion and exclusion to achieve political aims. He said that it has always played this role throughout history. Shachar explained how when it came to athlete or high-profile migrants, the migration policy-makers entered into a multilevel game at the national level, designing migration laws to meet their needs.

In fact, they do not see the migrants—they see what they can get from them whether it is medals, prestigious prizes, or even economic gains, in the case of investors, for example. Therefore, like the laws of the Olympic Games which "sell dream" in a certain way, and give the states the sovereign rights to decide a 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, they need to infuse some elements. In that case the pyramid of value of Almquist et al., which will be discussed in more details later, could be very useful, and also the programs for prototyping or simulation could be really helpful for them to design the international instruments capturing as many values as possible from all level of the pyramid. The modelling techniques developed by Thomke and Fujimoto would help solve several problems in less time. They would not need several years to develop the legal instruments and their impacts would be better.

Indeed, Thomke and Fujimoto see product development project as a group of problem-solving cycles that are interdependent. This bundle includes modelling and testing via computers or physical prototypes as central activities (Thomke & Fujimoto, 2000). Lead time, productivity, and product quality are three indicators of performance of the development process. They are closely related and change in one can affect the others in unpredictable ways. Lead time is how quickly firms can move a product from concept to market, productivity refers to the resources necessary to achieve this goal and quality is the extent to which the product in its complexity meets the expectations of customers. Still according to Thomke and Fujimoto, the technique of front-loading problem solving helps improve development performance by shifting the identification and solving of problems in design early in the product development process.

Front loading problem solving has but is not limited to two main approaches: project-to-project knowledge transfer and rapid problem solving (Thomke & Fujimoto, 2000). The first approach consists of the effective transfer of problem-and solution-specific information between projects in order to reduce the total number of problems to be solved. The second approach, which is the rapid problem solving, uses advanced technologies and methods such as computer-aided engineering (CAE) tools to increase the rate at which problems are found and solved, mainly at the early phases of the product development process (Thomke & Fujimoto, 2000).

The timing and the fidelity of test models play an important role in effective development strategy (Thomke & Fujimoto, 2000). Thomke and Fujimoto asserted that the information generated helps identify and find solutions to design and manufacturing problems. When producers build and test models late in the development process, they will suffer from the high cost required to solve problems identified. The automotive development sector knows this very well since a late design change can cost millions of dollars and take months to be carry out.

Firms often do not give much attention to project-to-project learning and information transfer; as a result, old problems are often rediscovered in new projects or they are not able to predict the subtle chain of cause and effect that leads, according to Thomke and Fujimoto, to a design problem. There should, then, be a process that allows problem identification and solving at the beginning of the projects. Advanced technologies such as three-dimensional computer aided design (CAD), computer simulation and rapid prototyping offer opportunities that are becoming more and more obvious; combined with traditional hardware prototyping they facilitate rapid problem-solving and make possible considerable development time reductions (Thomke & Fujimoto, 2000). To illustrate effective transfer practice, Thomke and Fujimoto explained the use of post-mortems in the development of computer software. Good

post-mortems, they said, are detailed records of a project's history including information related on specific problems of product and process that are discovered at certain stages of software development. It also contains details about the severity of the problems, the number, and solutions explored or adopted. The preparation, discussion and revision of such post-mortems was proved to be instrumental in reporting information from current and past projects (Thomke & Fujimoto, 2000).

As has been the case for several firms and companies with complex products, virtual approaches utilizing computer models can help reduce the lead time, and avoid many errors and process changes or solutions to problems quicker (Thomke & Fujimoto, 2000). For instance, Chrysler Corporation could experience the benefits of advanced technology using three-dimensional CAD mock-ups to identify interference problems much earlier than usual in the automotive development. Indeed, Thomke and Fujimoto explained how in 1993 when Chrysler was developing the Chrysler Concorde and Dodge Intrepid models, decking took them more than 3 weeks and required many attempts to finally insert the powertrain successfully, but in 1998, in the Concorde and Intrepid models, they used digital mock-ups to simulate the decking before it took place physically. As a result, the real and physical decking took only 15 minutes because they could solve all the interference and decking problems virtually.

Boeing management did the same thing when they wanted to solve the interference problem identification and correction related to the new 777 aircraft (Thomke & Fujimoto, 2000). Using the benefits of the three-dimensional CAD system and other in-house software making it possible for engineers to assemble and test digital mock-ups for interference problems, they tested 20 pieces of the 777 flaps. With the software, they realized a total of 207,601 checks and they found 251 interference problems (Thomke & Fujimoto, 2000). They

concluded it would have been more difficult to detect such imperfections at the final assembly stage and it would have been costlier, time consuming and complicated to deal with.

Thomke and Fujimoto noted that the interaction between people changed also; designers relied on others to track necessary changes with the help of new computer technology, and they were more likely to bring required changes earlier. Thus, the impact of functionality testing with the help of computer simulation is immeasurable on automotive development processes whether to cars or airplane structures or crashes (Thomke & Fujimoto, 2000). Computer-assisted experimentation is even integrated in acoustics, vibration, aerodynamics and thermodynamics, complex metal-transforming such as stamping and so on (Thomke & Fujimoto, 2000). Moreover, faster and less costly problem-solving via simulation can generate learning and design innovation as well as product performance (Thomke & Fujimoto, 2000).

For instance, Thomke and Fujimoto explained that Toyota Motor Corporation, mirroring other automotive companies in their efforts to accelerate the product development process, decided to invest in Computer-assisted design and computer-assisted experimentation (CAD/CAE) and rapid prototyping to increase their capabilities and solve design problems early in the process. This helped them reduce time between styling approval and production, increasing the possibility that chosen auto concepts would fit with in a rapidly changing market. When they compared their results with the ones prior to front-loading initiatives the improvements were remarkable (Thomke & Fujimoto, 2000). According to Toyota managers many of the development process improvements they realized recently were the result of project-to-project knowledge transfer, and the effective use of computer and rapid prototyping technologies; they are trying now to apply the lessons learned to other development areas in order to identify potential problems both in engineering and production early in the concept phase (Thomke & Fujimoto, 2000).

In fact, many lessons can be learned from here. Like cars international instruments are complex products. Therefore, they would lose nothing to try to solve their problems using similar techniques adapted of course to their particular reality. It happens a lot in international law to have conflicts between treaties; or as the ILO convention analysed previously illustrated, there could be conflicts within the provisions of one treaty. The product concept might be diluted, and integral obligations might be incrusted in removable part of treaties, damaging the image or the brand of the international instrument in itself and the organization as a whole. The brand is a living memory, the future of the products, said Kapferer (1992), revealing the meaning, and the direction of former products as well as future ones, deciding characteristics they will share, and so on.

Thus, this could help international organizations on one side to protect the core values, the key principles of the international instruments so that they do not get altered later on due to market or internal turbulence or else, so that the brand might not be affected. On the other side, they could try to capture ways to create more values, allowing the states to work in a more harmonized way at the national level, because also there is a work to be done at the national levels. However, those groups also have different interests like states have different interests and concerns at the international level, requiring negotiation, compromise, and consensus. In fact, the legal instrument should unite them not divide them and give them a reason to join their forces, to share dreams and goals, just like the laws related to international games. It is true that even there, they still have a few conflicts because when they design their national laws to make it easier for them to give citizenship to high-profile athletes and give them considerable financial gains, for example; they still have to confront national organizations promoting national athletes.

Nevertheless, the idea is to build a brand identity for international laws related to migration so that it unites more than it divides, so that it enhances the experience of everyone

and motivates them. Identity building, said Upshaw (1995) is loyalty building. When there is brand power there is also price premium. High incomes are sensitive to brand, that is something to harness. According to Upshaw, there are four proven ways to build brand identity even in a tumultuous marketplace. The first one is to make sure that the product or the service meets or (better) exceeds customer's expectations. The second is to build innovation into existing products or services, or to introduce innovative entries as often, and as much as possible. The third one is to design loyalty-building programs into activities. The fourth way is to invest in marketing support to strengthen brand identity.

Consequently, in the light of Upshaw's brand strategy, if the international organizations could build or strengthen a brand identity for the international instruments, the perceived value of the brand to states as customers could be enhanced and better equipped to face the negative and adversarial forces in the marketplace. The states customers would have a compelling reason to prefer, adopt and stay loyal to the brand. In an hostile marketplace, brand identity strategy helps; and it involves, among other things, conducting analyses to see where the brand stands which means being honest regarding the assets and liabilities the brand carries, learning where there is an opportunity for the brand by studying the customers and prospects as individuals, driving the brand's identity through all possible contact points, and also learning from successful brands and looking for opportunities to capitalize their strengths (Upshaw, 1995).

In short, the brand has the power to help products succeed in a hostile market-place and the international instruments are in a hostile marketplace. Therefore, the international organizations should try to harness brand strategy in order to change the positioning of the legal instruments related to the protection of migrant workers' rights. Branding builds emotional links with the products for years; it presells them. It adds to the features and attributes of the products. Finding positioning that fit the brand and the customers is not easy,

that is why it is important to do their profiling and try to know them deeply. Ruhs' empirical study, added to historical analysis of states in general, which was not mentioned here, gives us a glimpse of what they stand for and helps us understand their real need. It led us to realize that positioning is important, and that if the international organizations want more results with the international instruments, since they are legal instruments in a challenging marketplace, they should mind the brand, among other things, and get ready for the future.

3.3. Getting ready for the future

In generating new product ideas, three sets of consumers' attitudes are considered (Wind et al., 1977) their current problems and dissatisfaction with existing products and services, their needs that are not fulfilled, and their current and expected value. The ability to anticipate future needs and values, and changes in the environment, is crucial to avoid failure. Also of prime importance are the changing attitudes of the several groups; they provide useful input in the construction of future scenarios and the generation of new product ideas. According to Wind and Tyebjee (1977), an essential element to consider in the product design is the need to create a product today that will be introduced in a few years from now under different environmental considerations; the success of the product depends among other things on its propensity to deliver the features necessary to satisfy the consumers' motives and goals.

The OTF not only explores the issues or problems that the society is facing now, but helps anticipate problems that might occur in the near and far future, to make sure that the product designed not only fits the current changes in the legal instrument environment, but will not be outdated by the time it gets ready for ratification and implementation. Indeed, fundamentally, the product and process development "creates the future and that future is

often several years away" (Wheelwright & Clark, 1992). If an organization cannot foresee the future with some degree of accuracy and cannot react quickly to the world-changing conditions, its fate is extinction (Hanke & Reitsch, 1998). As Hanke and Reitsch argued, in order to meet effectively the conditions of a future about which no perfect information is available, forecasting is necessary to all type of organizations; depending on the cost, the type of decision to be made and so on, the decisions makers can choose among a wide range of methods.

The findings of Makridakis (1986) revealed that no method was superior to another but people preferred judgmental forecasts. However, they also noted humans had the tendency to underestimate future uncertainty and to be too optimistic. Hanke and Reitsch, as well as Makridakis, suggested the combination of both quantitative forecasting, and good judgment, avoiding relying too much on either. They warned us however, against the improper use of forecasting techniques since they can lead to bad decisions. Nevertheless, forecasting is useful to improve planning, decision making, and strategy (Makridakis, 1986).

Governments often resort to forecasting in economic policy to measure and do projections of gross national product, unemployment rate, the total amount of people employed in the country etc. (Hanke & Reitsch, 1998). Moreover, factors that can help explain the variation in sales unit, a plant manager who wants to forecast the number of workers needed for months later, all these, argued Hanke and Reitsch, require some forecasting procedures. There is a high possibility that the factors that explain variation in ratification can be, to a certain extent, captured by forecasting also. The process of forecasting turns around the analysis of historical data with the aim of discovering their underlying tendencies and patterns. The data are projected into the future as forecasts based on this knowledge. The Optimal Treaty Framework, therefore, considers observation, research, and warnings of experts to upgrade its actual product and design better ones.

For instance, at an annual meeting of the American Association for the Advancement of Science (AAAS), the computer science expert Moshe Vardi warned that, by 2045, machines will be able to do much of the work that man performs now, and that job disappearance will bring inequality (Pascual, 2016) ; (Ford, 2015). With the increase speed of innovation in the robotic industries, scientists agree that job security might be threatened and that AI machines might raise ethical and legal concerns. They insist on the fact that there might be what is called "job polarization" where jobs in the middle, in terms of skill requirements and cost efficiency, will be the easiest target for automation" (Pascual, 2016). Passary (2016) reported that it might not be the case since it happens that people are called back to replace robots.

Indeed, Passary averred that Mercedes-Benz has replaced several assembly line robots with skilled workers because the robots could not deal with the individualization and variants that they had. The luxury automaker's manufacturing revealed that they could not cope with the changes, and work with all the different options, since humans are more flexible and have more dexterity, and since it would cost Mercedes-Benz more to reprogram the robots so they preferred to hire humans (Passary, 2016). She expressed the concern that this did not mean that production lines would not have robots anymore, but that they would be performing the most repetitive tasks and that the most complicated ones would be left to humans. She corroborated that assertion with the conclusion of a study undertaken by the International Federation of Robotics (IFR), which disclosed that by 2018 nearly 1.3 million industrial robots will be operational to replace rigid, traditional production processes with flexible structures. Joe Gemma the IFR's president assured that "robotic workers will in the future be found working hand-in-hand with human staff" (Passary, 2016); such has been the ideal since earlier ages (Andelin, 1983).

This is the debate of the future, but a look at the past shows clearly that it did not begin yesterday, and that it has never been properly addressed in labour migration particularly. Robots are only one component of a wide set of programmable, automated technologies (Andelin, 1983). The fear of a jobless future due to advance in technology dates back to Britain's Luddites in 1812, but the concern became more acute in the 1950s and 1960s in the United States (Ford, 2015). In the 1970s, with the OPEC oil embargo, and the stagflation period, the focus shifted away from the impact of machines and computers on unemployment, and economists who tried to drive attention to those issues again were labelled neo-Luddites (Ford, 2015). Given the fact that their prediction did not come to pass, many argued that they were wrong, but Ford asserted that their report might have come too soon and that probably they were talking about a later time.

As for Jesuthasan and Boudreau (2017), many jobs will continue to exist as traditional in organizations but they will become more fluid with automation. There are three types of automation that can be supported by AI: robotic process automation (RPA), cognitive automation and social robotics. Social robotics refers to robots that can move autonomously and interact with humans or collaborate with them; they will require some supervision. Many routine and administrative processes of white collar tasks as well as aspects of blue ones are already being increasingly overtaken by AI and robotics. They concluded that this is challenging the essence of human work as it was previously understood in organizations and that the deconstruction and reconfiguration of non-routine activities will lead to new and different types of jobs but human will still play an important role.

An important point to notice is that the group that will be the most affected is the less-skilled workers. Automation is spreading more or less fast depending on the wages in the countries and other labour regulations (Chui and al, HBR 2017). Chui et al. added that all regions will be touched. In their research on 46 countries representing 80% of the global

workforce, they discovered that four economies have great automation potential: China, India, Japan, and the United States, with the greatest impact on India and China due to the size of their labour force. Europe also has an automation potential for the activities of 60 million full-time employees in the five largest economies of France, Germany, Italy, Spain, and the United Kingdom. The extent and the pace of such automation are expected to vary depending on the country and the benefits they expect from it, as well as the regulatory environment and the social acceptance.

Moreover, some countries with declining birth rates and aging trends like China, Germany, Japan, Italy, South Korea, Australia, Canada, France, and the United Kingdom might turn to automation to gain the productivity required to meet economic projections (Chui et al., 2017). Still according to Chui et al.' analysis, the expected decline in the share of the working age population is expected to lead to an economic gap that automation has the potential to fill. On the assumption that people are replaced by automation, rejoin the workforce, and remain as productive as in 2014, such automation is estimated to increase the GDP growth by 0.8% to 1.4% annually. Considering the effect of labour substitution essentially, Chui et al. concluded after calculation that by 2065, the productivity growth that automation could bring to the world's largest economies was the equivalent of an additional 1.1 billion to 2.2 billion full-time workers (Chui et.al, 2017).

Robertson (2014), reported how since 2007, the government in Japan has been promoting a "robot-dependent society and lifestyle", unveiling in a document called Innovation 2025 their vision to develop the appropriate robots to revitalize the economy, the society, and the household by 2025. She stated that in Japan more particularly, human rights will be facing robots' rights sometime in the future. This leads one to wonder how ready is Japan to face such issues, and how well protected human rights are in the country already.

Human rights institutions in Japan, according to Koike (2014), consist of the Human Rights Bureau of the Ministry of Justice and the Human Rights Volunteer. Such volunteers are appointed by the Ministry of Justice under the recommendation of the mayor of a local government, who submits a list of potential candidates; they are posted in each municipality to promote and protect human rights; they engage in activities in order to raise public awareness on human rights and provide counselling (Koike, 2014). There are 8 regional legal affairs bureaus, 42 legal affairs bureaus, and 287 local branch offices (Koike, 2014). The UN Human Rights Committee criticized the human rights volunteers for not being independent; critics said that the volunteers were over 60, and that women were underrepresented (Koike, 2014). In reaction to such allegations, the government created the Advisory Council on the Promotion of Human Rights.

As for the Human Rights Bureau, in 2011 it received 1275 cases of infringement of workers' rights, 753 cases of discriminatory treatment, and 3306 cases of child bullying (Koike, 2014). However, Koike did not specify the percentage of foreigners among the victims. A look at the website of the Ministry of Justice revealed that the counselling services were available in the most common foreign languages. The cabinet drafted in September 2012 a bill to reform the national human rights institution, and to establish an independent human rights commission in order to deal more efficiently with increasing cases of rights infringement targeting children, women, the elderly, and cases of discrimination (Koike, 2014). Professor Koike noted that it was not enough to create institutions, however; horizontal cooperation among all stakeholders, rather than the usual top-down structure of the Japanese bureaucracy, would be more effective, as would accountability, transparency, and good governance of human rights institutions. There is no focus on migrant workers in this study; however, other research revealed that there is a lot to do in that field. It is to be noted that Japanese labour laws are applicable to all workers no matter their nationality and their status

of residence. However, according to a study related to gender and migration in Japan, undocumented males and women were in vulnerable situation. Another research project revealed that although the employment climate in Japan was worsening, new debate regarding foreign workers was not a current priority, and it might remain of low interest for the years to come (Hayakawa, 2009).

Robertson (2014) reported the fact that Paro, a "mental commitment robot", was granted citizenship on 12 November 2010, and that between 2004 and 2012 nine robots were granted special residency permits, which she argued, humans do not receive so easily, and when they do it is limited for example to foreigners facing persecution or death in a country that is not on good terms with Japan. The Japanese Constitution in its Article 98 (2) states that treaties concluded by Japan and established laws of nations shall be faithfully observed (Iwasawa, 2000). In Japan, concluded treaties and customary international law have the force of law and are considered lower than the Japanese constitution but higher than statutes (Iwasawa, 2000).

As a matter of fact, norm-creating acts of international organizations have no binding force under international law. Therefore, they are not legally binding in Japanese law. Japanese courts reject arguments directly based on them because of that (Iwasawa, 2000). Nevertheless, when there is a need for interpretation of human rights treaties and domestic law, they can be used and have some effects. For instance, in one case the Japanese Supreme Court used UDHR as an aid in interpretation of the constitution although they usually reject arguments based on it. It was in a judgment of 18 November 1964, to broaden the scope of human rights protection under the constitution of 1946, which provides in its Article 14 that all nationals are equal under the law; and there shall be no discrimination in political, economic or social relations because of race, sex, social status, creed or family origin. The Supreme Court held that even though Article 14 targets directly Japanese nationals, its content

should also be applied, by analogy, to foreigners, in the light of Article 7 of the UDHR, which states that all are equal before the law. Reports of international supervisory organs are used before the courts very often. Iwasawa explained that the reports and views of the ILO, which has an elaborate supervisory mechanism system for its conventions and recommendations, are often invoked before Japanese courts.

Regarding the impact of comments and the views of human rights committees in Japan, in some cases, they have been invoked before the courts. In a notable judgment in 1994, the Osaka High Court amply referred to decisions of international bodies in interpreting the ICCPR in the case of a Korean arrested for refusing to be fingerprinted, and who filed a lawsuit in 1986 for damages. The Osaka High Court held that the arrest was not necessary and therefore illegal. The court also found that the fingerprint requirement for foreign residents violated Article 7 prohibiting degrading treatment and Article 26 related to non-discrimination of the ICCPR. Fingerprinting was abandoned for permanent residents in 1994 probably among other things because of protests mounted inside and outside Japan; it was completely abandoned in 2000. What does all this mean in the OTF?

Many conclusions can be drawn relating to legal instrument planning; such information should not be considered platitudinous, but carefully analysed and integrated into decisions regarding the design or the readjustment of existing legal instruments offering to protect more effectively migrant workers' rights. In the exploration to create products, it is important to have detailed information about the characteristics, and the tendencies of the market in which they are going to be launched (Leduc, 1969). The deep investigation preceding the conception should therefore aim to undertake both a qualitative and quantitative study of the markets (Leduc, 1969). Considering the actual offer, which refers to the other existing products in the markets, it can allow foreseeing the obstacles that the new product will face due to the presence of competitive products (Leduc, 1969) and other alternatives.

The demand analysis itself, considering the future of the markets, allows, on one side, the estimation of the development perspective of the product. On the other side, it provides useful information for marketing decisions regarding product adaptation and the like. This is because a precise idea of the major developments, the tendencies of the market, can be the major causes of the constant changes in the conditions of the markets and the consumers' attitudes (Leduc, 1969). Those facts can be illustrated by the ratification issues of the ILO conventions.

Indeed, if the statistics emanated from the International Federation of Robotics from 1973 to 1995 are analysed, an increase can be noted in the number of robots produced and sold around the globe, mostly in developed countries. During the period from 1975 to 1995 Bookman (2003) in his experimental study noted a decrease in ratification of the ILO conventions. Concerning Europe more specifically, Hepple (1999) still noted a decline of the ILO ratification rate in 1999, which he explained by several other factors, among them the unwillingness of governments to accept the related commitments due to global competition, their lack of resources to undertake eventual complicated administrative tasks of reporting and compliance, federalism, and EU membership.

In any case, the statistics of the IFR revealed that in 1973 operational robots were estimated at 3.000 units, in 1983 it became 66.000, in 1990 it was 454.000, and in 1995 it reached 605.000 and the estimated stock in 2019 lies between 2.589 million and 2.6 million. Regarding the service robots for professional use the statistics also revealed a slight increase in the units' sales, between 2014 and 2015, but between 2016 and 2019, the sales are expected to increase drastically (IFR, World Robotics 2016). All this information gives an image of the market profile in the past and the eventual impacts it seems to have had. It also gives some ideas on what to expect in the near future based on those trends analyses.

The ILO experts (2016) noted that employment was the principal driver of migration and that about 74.7% of the world's migrant workers were concentrated in High-income countries. Migrant workers tend to be in higher proportion in some specific economic sectors. For instance, the ILO data revealed that in 2013, 106.8 million were in services, 26.7 million were in industry, more specifically manufacturing and construction, 11.5 million were in the domestic sector; and 16.7 million were in agriculture. Many authors have argued that it might not have negative impacts since it might lead to improvement in job quality. For instance, a previous ILO report in 2014 showed that in some developing countries the structural transformation of a sector like agriculture can increase job quality which is measured through three indicators: working poor, vulnerability, and productivity.

The ILO study explained that structural changes in the agricultural sector have led to changes in agricultural jobs, making them less dangerous, and better paying; higher salary in turn led to higher education and better health. Such quality of job improvement led also to a decrease in vulnerable employment since the workers moved to a different job or a different sector. This ILO study illustrated the fact with the example of three countries: Peru, Senegal, and Vietnam. In Peru, the structural transformation of the 2000's is said to have decreased the share of employment in agriculture, where the rate dropped from 35% in 1991 to 26% in 2013. During that same period of time the share of wage and salaried workers increased from 34% to 49%. For Senegal, it was also pointed out that an increase occurred in the share of wage and salaried workers from 12% in 1991 to 26% in 2013; a decrease took place in the share of working poor, an increase happened in the productivity per worker, while the overall agriculture-based employment decreased from 54% in 1991 to 35% in 2013. For Vietnam, a similar phenomenon was observed. Indeed, the 76% agriculture-based employment in 1991 dropped to 46% in 2013 while the employment share in manufacturing grew from 8% in 1996 to 12% in 2004. What should be noted here, however, is that if a structural transformation due

to automation in one sector leads to a movement of workers to another sector, what will happen if it occurs in all or almost all of the sectors and moreover at an unexpected speed? Imagining a future like this, the hope is that there will still be places or sectors to move to; otherwise, serious problems might need to be address in the long term.

It is certainly true that job quality is a good indicator of labour market progress, and a compelling determinant of higher per capita incomes, as the authors of the ILO study averred However, possible and major labour market changes should be anticipated and accounted for, and over-optimism avoided. Job quality, as in anything, is a constant fight and surely not something to be taken for granted. The ILO study authors seem to have had an insight that things might go wrong when they mentioned the importance of maximizing the rate of labour movement from agriculture to other sectors. Indeed, the report noted that the exploitation of opportunities presented by the difference between the traditional agricultural sector and the modern sectors of mining, manufacturing, plantations, or high-end services has contributed greatly to the transformation of the emerging economies of East and South-East Asia, and could therefore be profitable to other countries, developing or emerging. However, a warning from a different study showed that the risk of too-slow reallocation or too-limited in scope and proportion might lead the poor or underemployed rural workers to a move to the low-productivity urban informal sector.

They suggested, therefore, policies to increase growth, productivity, and labour demand in agriculture and not to rely only on the growth of modern sector employment. However, a high-speed structural transformation based on automation not only in agriculture but also in manufactures, high-end service sectors and industries where those workers hope to move will forcibly affect the less-skilled workers and will not only push them into informal sectors but might simply put them in an unemployment situation. This is the picture for workers in developing and emerging countries. The point is to have a balanced view on the

effect of such changes to the long term and plan for it. It is important to remember that the diversities as well as the uncertainties of the environment might affect the competitiveness of the product development and, therefore, in order to maintain or improve their performance product decision makers in general must adapt their management and organization to the patterns of the market environment (Clark & Fujimoto, 1991). The legal instrument producers in particular are not exempt.

Chapter 4

The Optimal Treaty Framework in action

The OTF, 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 legal instruments, they face similar issues as many other complex products and are therefore subject to many advanced techniques of product policy and management. Why are some legal instruments successful and others a failure? How can new products be managed in order to succeed? What to do with a problem child 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 OTF; it is a though-provoking structure. Section 4.1 presents the management of the legal instrument portfolio in action. Section 4.2 deals with consumer complaints and section 4.3 tries to understand the options available for a problem child.

4.1. 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 behaviours. Their compliance strategy is cooperative-oriented, and treats issues of non-compliance more as problems to be solved than wrong behaviours deserving punishment; and the methods used tend to be more verbal, interactive, and consensual (Chayes & 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 the 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 & Chayes, 1995). The more active management of compliance starts with the identification of the reprehensible behaviour, 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, Chayes and Chayes said that the relevant entities should refer to the mechanisms established to settle the eventual problems or disputes. Such mechanisms constitute, according to them, an essential part of their compliance management strategy.

However, Chayes and Chayes 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 & Chayes, 1995). They added that it might be the case that the interactive process for dealing with compliance reveals 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 scepticism 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 OTF 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 them anymore because they lose hope on its feasibility. It can help in addressing the scepticism 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 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, the arising of new circumstances that challenge the validity of basic assumptions, and so on. These factors increase the complexity of product development and make the product design and development very challenging but dealing with them efficiently can provide competitive advantage. A look at the actual labour migration policies environment and states behaviours 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"; surveying their satisfaction with the products and services; knowing and anticipating their needs and their wants; focusing on creating customer value; and so on.

The first three commandments can be illustrated by a 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 also maintains constant dialogue with government, taking into consideration the information provided by organizations of workers and employers, and trying to include them in 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 & 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 ideas 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 one to envision the product life as similar to that 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 aspects 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 it 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 direct or indirect competitors might make the offerings of an organization look outdated, and 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 thesis, the Mc Kinsey/ General

Electric matrix will be used to illustrate the current situation of the legal instruments, in terms of competitive strength and market attractiveness as well as their future trends (Figure 3). 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 country reports, reports of the Policy Department of the European Parliament, ILO reports, and databases. However, it is useful in the sense that it helps provide a visual picture of the legal instruments' positioning and gives the insight on what further action is required, whether it is further research or something else.

Fig. 3: Mc Kinsey/ GE Matrix

The tables illustrating the details can be found in the annex.

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

Figure 3 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 used the Boston

consulting Group (BCG) 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 for companies to have several question marks, according to Little (1984), but they usually can only support a few of them. Little 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 of or outsmart the leading product (Little, 1984). However, he noted that they have great potential to become the stars of tomorrow.

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

- Market attractiveness: market size (number of ratifications), 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 compared 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 contexts, the OTF found that with the interactions of the different kind of political actors, a long decade of public opinion nurtured with all kind of conflicting ideas is involved in the shaping of immigration policies (Sassen, 1995). Added to this, the lobbying of interest 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 spheres of influence,

organizational fragmentation, and a complex network of transnational social, cultural, and economic forces would be a hindrance to rights promotion.

Indeed, Falk 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 refuse to protect migrant rights in order to keep the freedom of expulsion while the sending countries themselves want to ensure protection of 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 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, considering the national circumstances, the ILO made room for flexibility in the structure and the requirements of the Conventions 97 and 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, and uncertainty about the benefits. Those comments were made for all the three conventions. As a result, they diminish considerably the product's 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. As has been noted before, 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 to optimize the operations in order to reach success while saving costs.

4.2. Managing the customers' complaints

This subsection optimizes the managerial approach in so many ways. More specifically, it can be very useful 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, and managing consumer complaints efficiently, which is very important for successful product development. 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 (Clark & Fujimoto, 1991). This will generate an experience of satisfaction or to the opposite one of non-satisfaction (Clark & 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. (2016) admitted the complexity to clearly determine what customer truly value, but 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 of 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.

Almquist et al.'s 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 judiciously add

elements to expand the proposed values, sometimes without revising their products or services. At 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 modelling 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 and 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., 2016).

Figure 4 presents some of the elements that seem to be important to influence customers' loyalty in four types of businesses, selected from the results of the research of Almquist et al. on ten 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. 4: 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

Figure 4 provides an idea of what consumers mostly value when choosing among alternatives in several industries. Now, if this consumer value model is applied to human rights and labour 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. Remembering that, Leduc (1969) underlined 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, their review can therefore be very useful for news product ideas or product modification. That information can provide an idea on what the states mostly value and, referring to the elements of value models, the critical value elements for the states can be figured out. Figures 5 and 6 summarize the main reasons why some states in Europe and Asia did not ratify the International Convention on Migrant Workers of 1990 (ICRMW).

Fig. 5: 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. 6: Product/Consumer Profile in Asia-Pacific Region (Seven 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 becomes 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 & Iredale, 2003), shows that states, both in Europe and the Asia-Pacific region, 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, and 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 which can find their places in the pyramid. The right of migrant workers, explained Ruhs (2013), has intrinsic value and plays an important role in shaping the effects of labour 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 of 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) argued that human rights are not merely a 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 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 fundamental that life, dignity, and other human values depend on them. One of the two major theories of rights called the "will" theory, supports 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-fulfilment (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 no matter the sacrifice for the power, as Kant so wished it (De Raymond, 1998). However, this does not seem to be the case. Why?

Several authors share the view that some rights had inherently contestable or conflicting value, while 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 a complex rather than unitary idea. They suggested 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 reflects 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, in order to motivate and inspire again.

With reference to the motivation of states, Pierre Arsac (De Raymond, 1988) averred that the respect of human rights was a matter of attitude, a state of mind besides the acquisition of the related necessary knowledge. He noted that it was 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 reached 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 to customer loyalty, word-of-mouth advertising, profits, price premium, and so on, leading to a more prosperous organization (Bradley & Wood, 1994). Bradley and Wood argued that customers choose one product or service over another because they believe that they will get better value than they could expect from other alternatives. 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 case of high-speed citizenship granted to high-skilled and talented migrants is the glory of sports and scientific achievement (Shachar, 2011). Nobel Prizes and Olympic Medals, which are as described by Shachar the most prestigious and globally recognized trademarks 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 OTF, and then we follow the model of value developed by Almquist et al (2016), we can see that it offers 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, more specifically the ones dealing with the Olympic movement, the gap in the elements of value combination 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 (2010) seemed to share a similar view; they explained how in 2009 more countries were members of the International Olympic Movement (205) than of the United Nations (192) (Mitten &Opie, 2010).

Along with Nelson Mandela and the Laureus Sport for Good Foundation, they believed that sports 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 increase national legal protection of human rights.

To reach such results, they are convinced that states' ability to host Olympic Games or the 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 to improve the "positioning" or the "brand" involving image and symbolism. It aims at increasing the visibility of a product and reinforcing its image, it 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 & Boad, 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 & Boad,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, and communicate quality and price premium; it can also help attract consumer interest, add distinctiveness and brand value to diluted products, and finally but not all, allow the assimilation of positive values from the brand of the partner (Blackett & Boad ,1999). For the pitfalls that littered the path of co-branding strategy, it is worth noticing the failure to meet the goals and projections, incompatibilities, the rapid changes in customers' attitudes and so on (Blackett & Boad,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.

4.3. Dealing with the problem child

First, it is worth noting that we use the Mc Kinsey method for the analysis, but we use the concept of "problem child" to facilitate the analysis since the concept of "product in difficulty" or else might raise controversies. The problem child analysed here is the UN Convention of 1990; however, has seen in previous chapters it is not the only product facing difficulties. This section has three subsections. The first one is an attempt to capture the concept of problem child, and to understand the UN Convention of 1990 as a problem child. The second subsection analyses the causes and the consequences of such problems. And the third explore ways to manage it referring to the Mc Kinsey model again, exploring some successful examples and drawing the implications.

4.3.1. The concept of problem child in marketing and product management, and the UN convention as a "sick product" or a new product that failed.

A problem child is a child that is difficult to train or guide. It is common in marketing to qualify a product that raises difficulties as a problem child or question mark. It refers more specifically to a product or a business whose future is uncertain and may remain as such for a number of years. As for the concept of "problem play", it belongs to the field of literature, and means dealing with difficult choices. We could have called it a "can of worms" as well, which means a source of unpredictable trouble and complexity, but since we are in product management, the concept of problem child is totally appropriate. According to the product management experts, it is the category of products that poses the biggest challenge; however, many successful companies as well as successful products started as problem children.

Wind (1982) argued that consumer acceptance of new products in general was kind of slow, and "the newer the product the greater marketing effort required to create demand for it". This means it might not be successful right away. In addition, a clear distinction shall be made between products categories in the portfolio because it will affect the decision making. For instance, attention shall be paid to distinguish "growing pains" of new products from serious disorders of a product that has reached its maturation state and is declining (Alexander, 1964). When can a product be considered as having problems and does this simple fact makes it a failed one? What kind of problem does it have exactly? Is it a problem of positioning? Several alternative bases are available for developing and communicating a positioning strategy (Wind, 1982). They include, according to Wind, positioning on specific product features, positioning on benefits, needs or problem solution, positioning for user category, and positioning against another product, and so on. Is it a problem of market share? It is also an important measure of the competitive strength of any given product (Wind, 1982). It is, therefore, important to clearly define what is really going on with the product.

A problem child is one that does not meet the objectives of the firm in terms of success expected. It is one that does not generate any meaningful profit and that the customers refuse to buy or do not accept fully for one reason or another. Authors agree that a product can face problems at any stage of its life cycle, and once problems start, the product tends to decline faster. In fact, product failure is quite common in the business world. Indeed, Little (1982) argued that, due to the high risk associated with product development, many products do not make it to the end; and many products that have been marketed, had to be withdrawn from the market because they failed to meet customer needs, or because they did not fulfil the sine qua non, the indispensable conditions for success.

The UN Convention of 1990 could be considered as a new product that failed because since its introduction it has not received the success the organization expected for a product that was conceived for and with the states. Indeed, they were involved since the beginning. It is also a problem child because it cannot thrive; it is in a difficult situation with an uncertain future. What is important to point out is that even if it is commonly said that getting it right the first time is the key to success, there should be tolerance for getting it wrong the first time since it can be useful if people iterate rapidly and learn quickly from the failure (Thomke & Reinertsen, 2012). Previous bad options can then be eliminated quickly, and the focus can be put on more promising alternatives; however, those failures should occur early enough in the process, when few resources have been committed, and designs are still very flexible (Thomke & Reinertsen, 2012). Based on this perspective, the UN Convention of 1990 could be considered not as a failed experiment but as an experiment that resulted in some failures, a product in difficulty, or maybe a “sick” product.

The Office of the United Nations High Commissioner for Human rights (2005) explained that the International Convention on the Protection of The Rights of all Migrant Workers And Members of their Families is the fruit of many years of discussions about a problem which

was first detected in 1972, related to exploitation of migrant workers from some African countries and illegal labour to some European countries. It continued to say that in 1979 a resolution was adopted by the General Assembly and in 1980 a big working group, constituted of relevant organizations among which were the International Labour Organization, United Nations Educational Scientific and Cultural Organization, World Health Organization, the Commission on Human Rights, the Commission for Social Development, and all member states willing to participate, was established to write a convention.

The drafting ended in 1990; with no vote, it was adopted by the General Assembly and opened for signature. By 1998 only nine states had ratified it; it entered into force in 2003 and by 2004 the ratification number had increased to 18 states. According to the office, there has since been a global campaign to foster ratification, to raise awareness on the situation of migrants and the political issues involved, and to bring states to incorporate the standards highlighted by the convention in national laws. However, the latest survey showed that receiving countries have not ratified the convention. The United Nations treaty collection accessed on 30 August 2017 noted that 38 states have signed it and 51 are parties. The National Network for Immigrant and Refugee Rights based in the US estimated that 49 have ratified it and 17 have signed it. What is to be noted is that although it was responding to a need, it has been facing difficulties since its planning.

Boyle and Chinkin (2007) argued that each treaty-making process is distinctive, and has different timetables, agendas, and outcomes, requiring the participation of different institutions and participants. They explained that since the agendas of international law-making served political purposes, it was natural that they had to address without delay dramatic events and critical political needs. When law-making is driven by crisis it is sporadic, selective, and call for processes leading to quick results This is very different than the regular international law-making processes, which are longer, characterized by more prolonged

deliberations, and in search of more systematic coherence, such as the one usually performed by the ILC and the General Assembly (Boyle & Chinkin, 2007). The Security Council usually legislates in such emergency issues and its role in contemporary international law has increased. However, international law-making is not all the time dictated by disaster; it is more policy driven and reflects the concerns of the international community in general, or those of the NGOs or states in particular (Boyle & Chinkin, 2007).

In fact, the difficulty to bring ratification as well as the length of time it takes, in spite of the consensus to respect human rights and the existence of an international network, is a major problem. In international law, this is quite common. Boyle and Chinkin (2007) reported that in the case of the adoption of the genocide convention, Raphael Lemkin formulated the concept of genocide and brought documentary evidence of the atrocities of the Nazis against the Jews to the US at the beginning of the 1940s. He explained how he conducted seminars and lobbying activities to foster the project in order to lead the UN to adopt a resolution and, urgently, a treaty to see the result of his efforts only after 15 years.

Indeed, the Genocide Convention was adopted in 1948. Boyle and Chinkin (2007) argued that once an issue has reached the international agenda, preparatory work only could take many years. For instance, it took 10 years to negotiate the draft of the protocol to the torture convention and about 50 years for the Rome Statute of the International Criminal Court (ICC) to be adopted after the General Assembly put the subject on the table of the International Law Commission (ILC) (Boyle & Chinkin, 2007). In the case of the UN Convention of 1990 related to migrant workers' rights, it has been more than 20 years that they are fighting for its formal acceptance by the states. Chayes and Chayes (1995) asserted that the effort to protect human rights by international agreements might be seen as an extreme case of time lag between undertaking and performance. They explained that although they are accepted almost universally, they are slow to establish mainly in places where local

customs, systems of government, and culture are different, and even if the major human rights treaties are widely ratified, compliance poses serious problems (Chayes & Chayes, 1995). However, from a product management point of view this is a major issue. It is as if the product was stuck at the introductory phase and then died.

4.3.2. The causes and consequences of a problem child: Quid de convention under study?

Busuttil (2015) argued that a product might fall well below the required standard in many ways. Going pathway in solving the desired problem is one of them; design that confuses the customers is another. Another fact is that sometimes even extensive market research and product testing can lead astray because they forget to appreciate the bigger picture of consumer devotion to the brand (Busuttil, 2015). Briefly stated, Busuttil warned that every product manager should bear in mind that even with the best product concept and engineering failure is a possibility.

Indeed, a product can face problems for many reasons. For example, it can be due to competition, both internal and external. At the internal level, the problem can be inherent to the product itself. In addition, many new products sometimes face fierce competition from existing products of the firm itself as well as from other new products from other firms (Wind, 1982). Another problem can result from the complexity of the product and the production process, where uncertainties lead to different views regarding the appropriate actions to be taken (Wheelwright & Clark, 1992). The cause of the problems might also be unforeseen problems, or any changes of circumstances that changes the validity of basic assumptions (Wheelwright & Clark, 1992). Moreover, at the external level, problems might come from the

market itself, which is also quite complex with customers who have different sets of criteria to evaluate a product, and value its attributes in different ways (Wheelwright & Clark, 1992).

Regarding competition, there are many important points to mention, mainly concerning product development. First, some products developed by direct or indirect competitors might make the offerings of an organization look outdated, and also cost issues might 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 developments in the marketplace, and that a product has reached the end of its life cycle (Barnes et al., 1997).

Some “myths of product development” can also lead to failure or problems. Indeed, Thomke and Reinertsen (2012) argued that they could actually hurt the development of a product. Among the most common, can be cited, the one that supports the idea that the more features that are added to a product the more it will be appreciated by customers. They explained that this attitude leads to over-sophistication of products, which become too complicated for customers to use. Thomke and Reinertsen argued that, in fact, less is more and suggested to focus more on defining the problem because the quality of the problem increases the ability of the team to find features that are more accurate. Instead of adding more features, the best option would be to look for ways to provide great “customer experience”.

The answer to this question of course requires the company’s team to involve itself in deep and detaiedl research and it also take some time. Definition of the needs of customers is another activity that is hard in the product development project since it is not even easy for the customers to specify their needs for solutions that do not exist yet with much accuracy

(Thomke & Reinertsen, 2012). In addition, their familiarity with the attributes of existing products can prevent them from expressing clearly their need for a new product and their preferences can change dramatically during the product development process, mainly if competitors come with new offerings (Thomke & Reinertsen, 2012).

Wheelwright and Clark (1992) averred that some product projects and processes could be problematic, and lead to disastrous consequences. For instance, one example would be focusing on current customers and forgetting completely about the future ones; as a consequence, the organization will have to face later mismatch between market and products, surprises and disappointments. Another problematic example they mentioned is multiple and ambiguous objectives or different functional agendas. The consequence is of course a planning stage that is quite long and the project turns into a vehicle for achieving consensus and late conflicts.

As for the UN Convention of 1990 on the Protection of Migrant Workers, its situation illustrates many of those facts that lead to failure or that put products in difficult positions. Indeed, surveys realized by several organizations to ask states why they did not ratify the convention, or why they failed to comply in case they have ratified it, revealed that many states were not satisfied with the conventions (Policy Department of the European Parliament, 2013; Pipper & Iredale, 2003). Some of them argued that it was similar to previous conventions and that since they have already ratified them no need to ratify this specific one. States, both in Europe and the Asia-Pacific region, 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, and so on. What exactly is the case? All these points can be explored in the following management section.

In any case, effective new product design and development have tremendous impacts on quality, cost, customers, and competitive advantage (Clark & Fujimoto, 2007). The future growth of the firm or even its very survival depends on it, so it is paramount for a firm to have a dynamic product development policy (Littler, 1984). Indeed, a problem child affects the firm in many ways; it can be costly, time consuming, and take investment that could be used on a more promising project. It might also call for special care, and require a lot of managerial executive attention, as Alexander (1964) noted, sick products similarly to sick people need lots of care.

4.3.3. Managing the problem child

Product decisions as well as the related marketing strategies are more efficient if they are based on a deep understanding of the buying process (Wind, 1982). In the case of the UN convention, it has to be based on the ratification process. 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 & Olson, 1994). When buying and using products, perceived risks such as financial and psychological risks are the negative consequences that consumers seek to avoid (Peter & Olson, 1994). The psychological risks concern what other people will think, and how the product will make them feel (Peter & Olson, 1994). Peter and Olson also explained that consumers have knowledge about the symbolic values that products and brands help them to satisfy. This being said, how well is the UN convention doing exactly? How can it perform better?

4.3.3.1- The Mc Kinsey/ GE Matrix

It is worth reminding that Mc Kinsey/General Electric matrix is an important tool used to emphasize conditions under which a product or a business can be successful; it is also helpful in the projection of performance, and the establishment of priorities for investment (Wind, 1982). The analysis is made possible by certain factors which facilitate the assessment of the competitive strength of the convention and the attractiveness of the sector. Figure 7 presents the situation of the UN Convention of 1990.

Fig. 7: The Convention of 1990 in the Mc Kinsey/GE Matrix

Receiving countries

Sending countries

		Competitive strength		
		High/ strong	**Medium**	**Low/ weak**
Market attractiveness	**High**			
	Medium			**UNCMW of 1990**
	Low			

In the Boston consulting group (BCG) model, the convention would be considered as a question mark. A question mark, also called a problem child, is a product, which means it would have low market share in a fast-growing market (Little, 1984). It has growth potential but requires heavy investment. If it had been a “dog” meaning that the product has low market share and a low market growth, then the only option, according the BCG model (Little, 1984),

would have been to withdraw it not only from the market but also from the product portfolio because the market has no potential and the effort to sustain its position would be too high.

The Mc Kinsey/GE matrix reveals that the competitive strength of the UN Convention of 1990 is weak, but the market has growth potential. There is the need for the convention; it came to solve many problems in labour migration between migrants and their host and destination countries. It can bring benefits such as peace and international order maintenance. The Office of the United Nations High Commissioner said that it promotes sound, equitable, humane, and lawful conditions, decent work, and the fight against discrimination. Not only does it establish the obligations, but also there is a feature which enhances the product, the monitoring system that brings together many entities for maximum implementation. It is said to be the most comprehensive international instruments protecting the rights of migrant workers and their families. Indeed, in its preamble it is said that it considers the principles and standards established in the basic instruments of the United Nations concerning human rights, and also the principles and standards set by the International Labour Organization. The convention says that it reaffirmed them. The preamble also mentions that the convention is to be applied universally. In that sense, they go for an undifferentiated marketing strategy, one product for the market in its totality.

However, international organizations recognized two groups, which could be identified as two segments, the receiving and sending countries. The international organizations exhort the two groups to cooperation, and a shared responsibility to protect the right of migrant workers (ILO, 2010). Both of them face issues related to migration but sometimes in different ways, and with different expectations. The sending countries want the rights of their workers to be protected abroad and they are therefore more prone to ratify the convention. The developed countries, for several reasons, want increasingly to avoid receiving migrants, mainly the low-skilled ones, so some tend to turn to automation and so on.

Most of the countries that have ratified the convention are sending countries but the number is still below 50.

The convention definitely, is not at its best in any of the market segments. One of its goals was to remind of key principles of other important international instruments and inspire national laws regarding migration. However, it ended up being in competition with them, and now they are a hindrance to its ratification. States have cited them as substitutes. Indeed, many other products, some of the same type, like other international or national conventions, are claimed to be even better by their owners. Some products of different types, like automation alternatives available mostly to receiving countries, tend to reduce their need for migrant workers, mainly the low-skilled ones, and push them to avoid ratifying the convention. It is also said to be costly mainly for the sending developing countries. The positioning of the convention requires some consideration if its future is not to be compromised.

Positioning consists of designing the product and services so that they occupy a valued, different, and distinct place in the mind of the consumers (Barnes et al., 1997). Since the position of the product is a set of impressions, feelings, and perceptions that induce the consumers when facing competing products, it is crucial for the development of the product and success in the market (Barnes et al., 1997). Product design, performance, brand strategy, and marketing communication play key roles in positioning (Barnes et al., 1997). Many authors did case studies on several products that have been repositioned successfully. All these can be part of the organizational capability building process.

The competitive strength of the convention is weak due to many factors. It does not have a brand power. The promotional efforts are not sufficient or need some readjustments in order to be more effective because some states argued that they do not capture well its

relevance, they have some fears. In the eyes of the states, the redundancy of the content is a problem, which means quality and attractiveness is affected, and the convention is in competition with other products of the same line, with no differentiation. However, for the law makers it is a reminder to reinforce core human rights principles. For instance, Article 7 related to non-discrimination is supposed to remind them of the convention against discrimination; Article 10 related to protection against torture is there to remind and reinforce the convention against torture; Article 11 to remind of the convention against forced labour and so on. Is there a problem with this and can it justify the refusal of ratification as the states want to argue?

Two considerations need to be made at this point. First, it is important to note that sometimes discrepancies occur between products' appeal to owners and to prospective buyers (Fujimoto, 2003). Second, this redundancy problem reminds of a case study in a different sector, the automobile industry. Indeed, Fujimoto (2003) argued that the automobile industry grew and developed in incremental capability building without a revolutionary change in the basic design concept of the automobile. He added that both in computers and cars, the selection of core component technologies was the same. Moreover, they have the same packaging—steel—and Fujimoto argued that this reliance on steel as the main material in the automobile industry definitely shaped the industry since focus could be put elsewhere such as on productivity.

Thus, in product development there are always core elements; this does not have much effect on the quality and the appeal of the products. In that sense, the states should be happy since it could mean less hassle to implement and comply with. If the principle is one of a convention already ratified, then they can ensure that it is still efficient and focus on the others that are less well implemented. Besides, there is always room for improvement. It is true, however, to consider that in every sector, customers are getting more and more demanding,

with innovation going on in other sectors they have more choices and are getting more sophisticated and more difficult to satisfy; therefore, competitiveness of individual products depends heavily on a sound combination of appeals in order to last (Fujimoto, 2003). Companies need to always try to increase their capability building to strengthen their product offerings to fortify their competitiveness and that of their products (Fujimoto, 2003).

4.3.3.2- Honda, an example of successful product development: Simple comparisons and lessons that can be learned

As Wheelwright and Clark (1992) wondered in their book in search of the secret to "revolutionizing product development": What are the critical ideas, concepts, processes and practices that lie behind truly outstanding performance of new product development? And what can be learned from their experience for the improvement of the performance in the development of international conventions in general and the UN Convention of 1990 on the Protection of the Rights of Migrant Workers and their Families in particular? In fact, they found several elements that explain product success. The first one is that new product and process development require a complex set of activities but the fundamental point was to design and develop a product that will continue to be effective in the market place seven to eight years after it is conceived (Wheelwright & Clark, 1992). The second is a set of characteristics of effective product development and the third is a set of characteristics of an outstanding product. All these points are results of serious researches and have been tested in interaction with hundreds of executives; they are supposed to provide great benefit to the company, which should then have a life-changing experience both in terms of product development, process improvement, and internal organization.

In the characteristic of effective product development, they include strong leadership to integrate the needs of the customers into the product design, clear objectives, shared understanding of the intent of the product throughout the organization, internal integration, and team work. Indeed, the process of product development can be very complex and therefore requires the participation of several functions of an organization which can give rise to tremendous organizational problems (Little, 1984). Outstanding product development includes, among other things, anticipating the needs of future customers and making continuity in offerings, conceiving a product that will be effective in the market place several years later, strong leadership, internal integration and customer needs integration, strong collaborative relationship, shared-responsibility for the performance of the product and an appreciation of the added-value by each group (Wheelwright & Clark, 1992).

Honda is usually cited as a great example of product development strategy that is coherent and which can inspire. Honda had to face in the 1990s the challenge to meet different demands in distinctive and diverse markets segments and regions, to develop products that should be at the same time suitable for the local and the global market facing fierce competition in terms of cost and quality. However, they found ways to move from niche player to full line producer (Wheelwright & Clark, 1992). Their experience illustrates the fact that continuous success in product development can be reached by giving more attention to the pre-project planning, linking technical strategy to the aggregate plan of the product project, and adopting a leadership and organizational approach that facilitate the fulfilment of the market needs. This calls for innovative, distinctive product offerings that can lead to the creation of an attractive and coherent image (Wheelwright & Clark, 1992). One last thing to note is that not all the Honda's products development has been successful but they learned quickly from each of them. This is also a significant aspect of successful product development.

Many authors and companies have successful product success stories. However, the example of Honda seems more appropriate for analysis and comparison because like others in the auto industry, they have complex products: cars. Indeed, few products are as complicated in structure, adversities, and the uncertainties they face in the market. Thousands of functional components involving many production steps compose an automobile and the project of car development is long lived and requires the participation of thousands of people over several months (Clark & Fujimoto, 1991). In addition, changing markets, multiplicity of choices, competing objectives, and inherent ambiguity in products evaluation by customers and so on, all these complicate planning, design and development of cars in the automobile industries (Clark & Fujimoto, 1991).

The UN Convention of 1990 on Migrant Workers and their Families is also a complex product, targeting distinctive market segments in a complicated and adversarial environment. Its customers are very complex and sophisticated in the same ways as cars in a global and competitive world. On one side there are the receiving countries, and on the other, the sending countries; two segments with different needs and wants or priorities. It is worth noting however that a UN study mentioned in 2016 that international migration started to touch all the corners of the earth, since modern transportation made it easier and cheaper to move, making this distinction between countries of origin, transit, and destination obsolete (UN, 2016). In any case, they indicated that more than two thirds of the world's migrants lived in High-income countries representing as of 2015 about 71% of the worldwide migrant stock. It is, therefore, a complex market that the international organizations have to handle.

4.3.3.3- Implications

New product failure is a common event in the life of even the most successful companies. Indeed, many successful firms face it too, and it surely can lead to disillusionment and disappointment; however, understanding the causes can open the eyes to which corrective actions should be taken (Wheelwright & Clark, 1992). Moreover, exploring and learning from some successful cases even if they are not in the same sector of activities, can provide many learning opportunities.

Generally, when a product shines by its poor performance, the available options are withdrawal from the market, modification, repositioning, and deletion. Which one of these choices is the most appropriate in the case of the UN Convention of 1990 on the Rights of Migrant Workers and their Families? As explained before, the choice depends on a series of analyses and considerations. Product development includes many complex activities demanding careful coordination, and attention to detail, even the smallest (Thomke & Reinertsen, 2012). Moreover, product change decisions, suggested Wind, should be based not on past performance but on expected performance in the future, and variables explaining the bad past performance.

Indeed, to assess whether it is necessary to bring changes of any kind to any product, it is required to monitor constantly the market demand, competitive activities such as introduction of new competitive products that affect the positioning of the product, technological changes affecting its life expectancy, and so on, plus insights from the analysis of successful versus unsuccessful products (Wind, 1982). Finally, the decision must be taken in the light of the objectives and situation of the firm because sometimes profit is not the ultimate goal of some of them, but rather other short- to-long term goals (Alexander, 1964).

Deletion is not the only solution when the market is declining or when the profit performance is below the standard (Alexander, 1964). Indeed, it is usually the last resort. Alexander (1964) explained that before deleting a product firms usually consider many other options such as eliminating unnecessary features, examining methods to marketing it, dressing it up by remodelling it.

What would be great is that prototyping and simulation assisted by computer could become available to test such complex products; just like advances in technology made it possible for many companies to develop better products in less time and at a lower cost. Also as Thomke and Reinertsen (2012) argued it, the opportunity to improve the product development would also increase, as advances continue in information technology. Wheelwright and Clark (1992) averred that Honda gave a central place to advanced technology in its development strategy and its competition approach. However, Honda was not the only one; other Japanese automakers have been using for a long time the latest technology of computer-aided design to be more efficient in their product development.

As a result, they were faster than the Americans and Europeans in every phase of product development and they gained in international competitiveness (Fujimoto, 2003). A survey realized by Harvard University researchers (including Fujimoto), in the 1980s revealed a significant gap in the lead time from product planning to showroom launch. The results showed that for the Japanese automakers the lead time last four years whereas for the American automakers it took five years. Moreover, the cost on research and development was less for the Japanese, and they could develop more new models (70) than the US (20) and the Europeans (40) during the same length of time (from 1982 to 1987). The same study also revealed that the Americans and the Europeans, upon discovering the secret of the speed and productivity of the Japanese automakers, spent the 1990s trying to fill the gap by replicating the Japanese model; this apparently brought them success.

The lesson to be taken from this case study is that a firm should not neglect any opportunities that can help it build or reinforce its capabilities and become more efficient. The era is becoming one of really advanced technology that helps save time while getting more results at less cost—it should be harnessed. In this sense, the medical field took a big step forward by making the most of cutting edge technology. For instance, augmented and virtual reality has entered the medical world to train surgeons around the world and to educate students. Dr. Shafi Ahmed, a surgeon from Royal London Hospital in the UK, cofounded in 2015 a new educational platform for surgeons training remotely, after 9 months of work (Ergürel, 2016).

The medical simulation software was developed by the Canadian software company Conquer Mobile and it allows the practice of operations on a virtual patient while experiencing the reactions as if they were real (Ergürel, 2016). Another virtual reality simulator, the Neuro Touch, was developed by the National Research Council Canada to debulk tumours in the brain (Ergürel, 2016). Moreover, with the use of a mixed reality headset, the Microsoft HoloLens, holograms are aimed to remove cadavers from the classrooms by 2020 (medicalrealities.com). In the same way, special software could help the international organizations to address, for instance, the problem of reports that some states find bothersome to prepare and send.

Indeed, when they send them sometimes they are incomplete (ILO, 2016). Alston and Crawford (2000), explaining how the UN treaty system was in crisis, said that the first and most obvious problem was the huge backlog in state reports due under several treaties. There is no provision establishing ways to censure delinquent states. All the committees can do is note the delays in their annual reports; the General Assembly can also recur to calls, which are not always effective. There is also another problem in the delay within the committees, between the date of submission of reports and their consideration. Crawford explained that

they face a dilemma: they have to pay attention to both individual reports and communications, wherever they come from, while the number of state parties and of communication is increasing.

The committees do not receive any increase of the regular meeting time. Those delays occur while many reports are overdue. Crawford estimated that if all states were reporting on time the delays in managing both reports and individual communications would have been really considerable. He added that the system for its continued functioning in overseeing state compliance depended on a high level of state default. This was in 2000 and Crawford said that it was a situation that was noted also around 1996 or so. They also have financial constraints where lack of funds is a hindrance for field visits to member states, for example, for the missions related to the conventions on elimination of all kind of discrimination. Sometimes this has led to the cancellation of sessions.

Crawford also noted that the technology was very limited at the United Nations because even though they have a good website, it's not up to date and not all UN human rights material is available electronically. Better use of the database would be beneficial, and could redress the lack of corporate memory within committees. The convention is the last of the seven core international treaties related to human rights, and all involve mandatory reporting activities; the Office of the United Nations High Commissioner for Human Rights (2005) recognized that it was a burden for states parties to submit all those reports in due time and has long been in search of a more efficient treaty system.

Reflecting upon the reporting system for the European Social Charter in order to consider what lessons it may have for the reporting systems that operate under UN human rights treaties, Harris (2000) found that although not perfect it is a well-established system developed along different lines from those of UN reporting systems, and that many of its

features could be transferable to the universal system. He noted that although states submit reports some months late, with the worst case two years late, and that the information provided is not always complete, the system was working rather well, in the sense that it has never faced the problems the UN treaty monitoring is facing with reports being many years overdue. According to Harris (2000), the good reporting system can be explained by the fact that the European states concerned are better equipped financially and administratively, and they have more experience in preparing national reports than the developing countries. In addition, the Council of Europe is composed of a small and relatively homogeneous group of states. As a result, there is a strong collegiate sense of obligation to comply with the undertakings of the Council membership (Harris, 2000).

Special software could be conceived to input key information and could take less time for the countries to prepare and for the organizations to analyse. Software could also help in the training and monitoring as well as in the simulation and the conception of prototypes that included more values, ameliorating the states experience. The ILO, for instance, has several databases related to national legislation about labour and social laws called NATLEX; they have also a global database on occupational safety and health legislation, LEGOSH, and one related to legislation regarding employment. Although they have all the submitted reports in PDF format, calendar on the expected ones, and so on, they do not have anything that could reduce or facilitate the report related tasks. It would be just wonderful for international organizations to possess such a tool to help them with the international instruments. This could bear fruit because effectiveness in product development lies in the ability of the product design to create a positive product experience (Clark & Fujimoto, 1991).

Conclusion: Findings and perspectives

As stated clearly at the outset of this work, the problem under consideration is the ratification and compliance issues related to the international instruments for the protection of the rights of migrant workers. Many key legal instruments important for the protection of the rights of migrant workers are not ratified. 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. The literature is very abundant regarding compliance more particularly both in international law and international relations; however, ratification and compliance remain a big concern in international law.

All the theories put the emphasis on why states do not comply and how to influence them, almost or completely ignoring the legal instruments, or legal instruments portfolio. This allowed the OTF to contribute to fill a gap in the literature. Indeed, it went a step further in integrating those works in the product itself, and in exploring more aspects of the problem related to ratification and compliance. More specifically, it harmonizes well, optimizes, and completes the works of Koh (1999), Goodman and Jinks (2004), Geisinger and Stein (2007) and Chayes and Chayes (1995) to empower international law by providing it with an optimal treaty framework.

Chayes and Chayes (1995) argued that if in the international treaty making system the agreement 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 said that for the treaty regime to endure and stand over time it must be adaptable with inevitable changes in technology, environment, and so on. 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. Reporting, however, is a big challenge for international organizations.

The OTF intervenes in different ways to meet the issues raised. It adds to the managerial approach of Chayes and Chayes, tools for optimum treaty recovery, well-designed treaties, increasing state-customer experience with reporting, and also for optimum treaty development which includes flexibility, reinforced problem solving and value-creation. This also enables an integrated system of information creation and transmission, the performance of legal instruments focusing on current and future market attractiveness, and current and future competitive strength.

Moreover, the law-making system, according to Boyle and Chinkin (2007), is eclectic, overlapping, poorly coordinated, and unsystematic, with many sectors creating laws. This can affect the law created in several ways. Therefore, there is a need for legal instrument management including planning, and tools for a better protection of the product concept. In addition, many authors argued that international law is disorganized with so many people involved in the law-making process which causes it to be in conflict and even controversial sometimes. Therefore, the framework explored the possibility to have computer-aided optimum design in international law to construct a kind of prototyping, enabling the protection of the concept of the international instruments, and preventing conflict not only within the treaty itself but also with other treaties.

It would help to protect the product concept and integrity from being diluted with so much intervention from various sources. It would help not only to optimize the legal instruments which are crucial to rights protection of migrant workers, but also to uphold international law in general, making it more efficient in its ability to deal with thousands of issues arising with globalization. Computer-assisted optimum design, Fujimoto asserted, is possible but requires that the concerned people give the details for that. This part unfortunately has not been developed too much in this thesis but is an open path to further research.

Koh (1999) advocated 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 consistently instead of complying depending on their convenience. He argued that his theory captures 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, which is the intervention of "transnational norms entrepreneurs". 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.

Koh called for lawyers to develop interdisciplinary tools to be more efficient to address issues raised. The OTF offers lessons from product managers, among other things, to provide lawyers, and transnational actors with skills that can bring efficiency to their work. It adds the possibility to check the internal structure of the international instruments, and reminds them to protect the product concept, its integrity, and the brand. It draws their attention to existing tools to create more value to the states, to work on their experience with the treaties and the reports, and so on.

Goodman and Jinks (2004) in their process noted some commonalities to Koh since he also discussed about mechanisms that were similar to acculturation, mainly at the latest phase of norm implementation. However, they complained that he emphasized only persuasion. In fact, they asserted that when it comes to the study of influence on states behaviour the two conventional mechanisms, persuasion and coercion, were incomplete to grasp the whole issue because the first approach does not grasp all the ways through which the diffusion of legal and social norms takes place; the second approach does not capture adequately the complexity of the social environment in which states act.

Therefore, they added a third one, acculturation which refers to the process by which the states adopt the behavioural patterns of surrounding culture and their beliefs (Goodman & Jinks, 2004). They argued that this mechanism could lead to behavioural changes through pressure to assimilate through micro-processes such as status maximization, mimicry, and identification. They then called for a more inclusive framework that could capture more things. Besides product management, there is no other tool, to our knowledge, that can offer such a holistic view of situations allowing an exploration of the whole as well as the details. It would be a major mistake for international law to ignore it or belittle its potentiality.

As for Geisinger and Stein (2007), they developed a theory of expressive international law which, they claimed, aimed 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 behaviour 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 lies in the creation of objectively verifiable provisions, which reflect goals that each state of the treaty regime can realize. For them, one implication of their theory is that states must be involved in other

cooperative relationships that are meaningful such as trade or any other interaction. They think that strategies for human rights protection must therefore be drawn beyond the human rights institutions; and the pursuit of cooperation must be more aggressive. The OTF adds to this theory the possibility to explore value creation; and put it into the wheel of customer behaviour so that it can capture much more.

In fact, the Optimal Treaty Framework (OTF), more inclusive, integrates the studies on consumer or state behaviour to the product policy. It complements previous theories for which we can get feedback, and the outcomes contribute to reinforce them. With this framework many things change, we can get more explanations about why countries ratify or comply. As if it was from the MRI, we can get an accurate picture of the internal structure of the legal instruments, and this enables us to detect clearly a few abnormalities in the product design. We can explore their impacts on the product concept, its branding, and its future.

The brand of the legal instruments, among many things, requires a particular attention. Indeed, Henkin (1979) explained that officials and governments have the propensity to categorize international human rights law related-matters as unsophisticated, officious, unrealistic, diversionary or disruptive of real international politics, and detrimental to friendly relations among nations. Thus, the image they have of matters related to human rights in general is not particularly flattering. However, repositioning the international instruments requires a lot of work including checking the product itself, the legal instruments structure.

Thus, since if we use the framework we can get some more insights and improve the status quo, using the OTF the Convention of ILO on Migrant Workers of 1975, no 143 could be scanned and analysed. It revealed some issues in the internal structure of the convention which affect it seriously. The analysis showed that the product concept was diluted and the product integrity not protected. It seemed apparently designed to be an open modular product

where either of the two main parts might be removed freely by the states. The OTF found that such parts contain core components, implying integral obligations, and if they were removed they could affect the effectiveness of the product. Therefore, the law-makers should be careful when designing the legal instrument, otherwise the image and the brand of the legal instruments will be affected and damage, and non-ratification and non-compliance will be the final result.

This is reinforced by the additional scanning of some legal instruments and court decisions which also revealed a lack of conformity in the preservation of the legal instrument concept. On one side some courts are preaching for an integrated vision of human rights and of mechanisms among regional as well as universal courts. On the other, some law-making institutions are promoting instruments whose internal structures are affected by dispositions diluting the product concept; the desire to increase acceptance of the international conventions by states had pushed some international organizations to put the possibility to exclude some core elements essential to the overall value of the instruments.

As Busuttil asserted, without a strong product management in organizations, it would be very difficult to achieve alignment to a common goal because there would be no consistency and no harmony in the voice evangelizing the product vision (Busuttil, 2015). A product vision should be dreamlike he said, worthy to pursue because it enables people to anticipate their future sense of achievement and give them motivation to fight for it. Therefore, the OTF can be useful to international law in general and protection of migrant workers' rights in particular.

The fact that some findings of the OTF are similar to the results of other theories reveals that it works well and does not in any sense affect its relevance. It was conceived, among other things, with the purpose of assessing theories, to clarify confusions or

contradictions. Moreover, instead of having thousands of separate theories which are incomplete, it is more efficient to have one framework that allows all conclusions and analyses. This way, it is less likely that we will focus on one too much, and forget the others since international treaties like product management contain several aspects. It is like instead of having thousands of small gadgets with one function each, people decide to buy one simple one where all the application can be found. Indeed, the OTF is a more inclusive and comprehensive framework which provides the possibility to consider the international instruments and everything that relates to them: the states, the transnational actors, the international organizations. It considers ratification before and after. In the same way, if a real company wants people to buy its product it has to work on the product it is planning to sell. It is important to look at the product itself to see if the problem in sales does not have its root in the design of the product; that is why this thesis finds it necessary to explore law-making.

Summing up all the intricacies of international law in general and of human rights and labour migration in particular shows 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 OTF 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, analysing human rights and labour migration issues in the framework led to many findings which can be summarized as follow:

This study found on the basis of research of Thomke and Leduc, among others, that customers are rarely able to express their needs with specificity due to the uncertainty they face and that they have 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 & 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, price premium, and so on, leading to a more prosperous organization (Bradley & 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 alternatives. 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 concerned with the brand than anyone else. Indeed, high income in particular usually implies brand awareness, price premium, and focus on functionality. Brand power, however, also implies well-designed product and so on. These are points 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.

This study also found that actual offers, which refer to the other existing products in the markets, can help foresee the obstacles that the new product will face due to the presence

of competitive products (Leduc, 1969) and other alternatives. As a matter of fact, the ratification issues of the ILO conventions illustrate perfectly this snippet of information. Indeed, if the statistics emanating from the International Federation of Robotics from 1973 to 1995 are analysed, an increase can be noted in the number of robots produced and sold around the globe, mostly in developed countries. During the period from 1975 to 1995 Boockmann (2003) in his experimental study, noted a decrease in ratification of the ILO conventions. That is why, as Wind and Tyebjee (1977) stated, an essential element to consider in the product design is the need to create a product today that will be introduced in a few years from now under different environmental considerations. It is important to make sure that it will still be needed. The extent and the pace of automation are expected to vary depending on the countries, and the benefits they expect from it, as well as the regulatory and the social acceptance. Moreover, some countries with declining birth rates and aging trends like China, Germany, Japan, Italy, South Korea, Australia, Canada, France, and the United Kingdom, might turn to automation to gain the productivity required to meet economic projections (Chui et al., 2017). Still according to Chui et al.'s analysis, the expected decline in the share of the working age population is expected to lead to an economic gap that automation has the potential fill. Robertson (2014) even argued that human rights will be facing robots' rights sometime in the future. It is better to be safe than sorry and, therefore, nothing should be overlooked.

The study found that ILO has several databases related to national legislation about labour and social; however, they do not have anything that could reduce or facilitate the report tasks. A special software could be conceived to input key information; it could take less time both for the countries to prepare and for the organizations to analyse. The software could also help in the training and monitoring as well as in the simulation, and the conception of prototypes that include more values, ameliorate the states' experience, and so on.

This study came to realize that the lessons that can be drawn from studying the UN Convention of 1990 on the Protection of Migrant Workers as a problem child are tremendous. Some threats are obvious and some opportunities also. Managing the problem child is not something simple and requires many important steps among which are the evaluation of the performance of the product, and its current position in the market, the analysis of the reasons that could explain such difficulties, and product development and performance learning tips from successful products. This is what this thesis has tried to do in order to help in managing the UN Convention of 1990, other treaties, and their issues.

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 to the customers, it is too vulnerable to competitive threats, its profitability, and performance in the past and in the present are not so good; therefore, its future is 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. An example is the laws of the Olympic games, which “sell dream” in a certain way and give the states their claimed sovereign rights to decide a few things at the national level. The immigration laws at

the international level need that inspirational background or underpinnings. They need 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. The programs for prototyping or simulation could be really helpful for them to design the international instruments capturing as many values as possible from all level of the pyramid of value The modelling techniques developed by Thomke and Fujimoto would help solve several problems in less time. They would not need several years to develop the legal instruments and their impacts would be better.

Effective product development is challenging, so it is not surprising that 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 activity. However, some paths inevitably lead to success while others lead 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 & Fujimoto, 1991).

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 fulfil their mission, and effectively lead to the protection of the rights of the migrant workers and their families. 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. To make a long story short, the OTF is the bridge to the next level.

However, 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 and more dynamic, and it will have a better future.

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ANNEX I

Ratification of the relevant conventions

Source: Normlex ILO; (ILO,2016)

Country	**ILO FUNDAMENTALS**								migrant for employment	migrant workers conventions	UNCMW 1990
	Freedom of association		Forced labor		Discrimination		Child labor				
ILO	C087	C098	C029	C105	C100	C111	C138	C182	C97	C143	
Total: 187	154	164	178	175	173	174	169	180			
Total: 186									49	23	
Total: 193											49

ANNEX II

Analysis to determine market attractiveness

Criteria 1	ILO Fundamentals	Migration for employment C97	Migrant workers C143	UNCMW 1990
Market size (Ratification number)	80%	40%	20%	45%
Social, Cultural, political, legal barriers for ratification	50%	80%	80%	80%
Segmentation (receiving/ sending countries)	80%	40%	40%	40%
Cost trends	80%	70%	70%	70%
Opportunity to differentiate	60%	50%	50%	50%
Competitive intensity	60%	80%	80%	80%
Market attractiveness	68%	54%	56%	60%

ANNEX III

Analysis to determine the competitive strength of the legal instruments under concern

Criteria 2	ILO Fundmentals	Migration for employment C97	Migrant workers C143	UNCMW 1990
Market share	80%	40%	30%	40%
Product quality	70%	70%	60%	70%
Brand reputation	70%	20%	20%	20%
Cost	80%	80%	80%	80%
Promotional effectiveness	70%	60%	50%	50%
Customer loyalty	50%	20%	10%	20%
Competitive strength	70%	48%	38%	46%