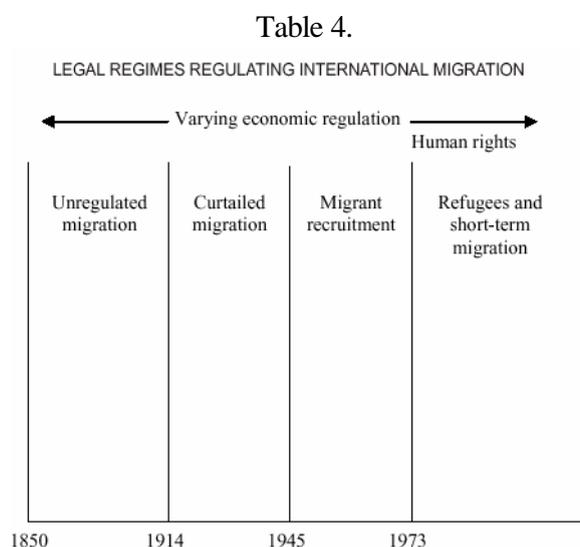


Chapter V. International Immigration Policies

The movement of people across international borders is an important policy issue for national governments. All across the Western democracies and in the entire world the governments are implementing policies to control immigration, although the result is not necessarily successful. There are many reasons for the increased activity in international migration, as the UN, Department of Economic and Social Affairs Population Division points out:

The persistent disparity in wealth and resources between rich and poor countries motivates people in developing countries to migrate and participate, at least temporarily, in the labour forces of developed countries. Even when receiving countries stop accepting legal labour migrants, movement may continue, involving undocumented migrants and trafficking across unpatrolled borders.¹

In this manner, these restrictive policies are supporting the existence of the paradoxes. However, immigration policies have not always been restrictive. To start a review of how international policies have evolved we will show how Thomas Schindlmayr has divided this process into four distinct periods that coincide with the division that Castles made in his book *The Age of Migration*.²



Source: Thomas Schindlmayr, "Sovereignty, Legal Regimes and International Migration," *International Migration* Vol.41 (2) (2003), 112.

¹ UN Department of Economic and Social Affairs Population Division, *International Migration Policies*. (New York: United Nations, 1998), 1.

² Stephen Castles and Mark J. Miller, *The Age of Migration. International Population Movements in the Modern World*, (Great Britain: Palgrave Macmillan, 2003), 50.

This is important because it helps to support the hypothesis, the paradoxes. The first paradox is respecting the liberal economic model and the restriction of migration. We can find that in each period where migration was more widely accepted there was a clear economical growth was impulsed by the low wages and the great profit that immigration generated. In the following restrictive periods the tightening measures were founded in racism, religion and various others reasons. That appointed the immigrants as a threat when the real threat was the bad national administrations. Paraphrasing Schindlmayr the first period was distinguished by the largely unregulated mass migration from Europe to America and Oceania that was at the same time provoked by the Industrial Revolution and the improvement in transportation and communication. Slavery was abolished in the British colonies in 1834 but not in the southern states of USA until 1865. In the later half of the century, slaves were replaced by indentured servants, which involved recruitment of large group of workers that were some times forced to work against their will. The problem was that the wage and condition were generally very poor, even cheaper for their employers than slaves.³ From that the results were that the “[s]lavery had been a major source of capital accumulation in the early USA.”⁴ The exploitation of labour has always created a surplus that generates an accumulation of capital.

During this period of immigration the recorded number of migrants vary from 40 million to 70 million because of the lack of regulation at the time. Even though the exact statistics of migrants is unknown we can still make the claim that the larger amount of migrants significantly contributed to the maturation of Western capitalism and the emergence of the Atlantic world system. There was a relative *laissez-faire* approach to migration; the free movement of people was accepted as a norm. Countries as Canada and Australia encouraged immigration because it was a crucial factor to their economic development.⁵ Definitely, this is a clear proof of the equalization of incomes through the flow of labour as a factor of production that drives the new industrial revolution and the expansion of capitalism. As we can confirm in the “Williamson’s overall conclusion is that

³ Stephen Castles and Mark J. Miller, *The Age of Migration. International Population Movements in the Modern World*, (Great Britain: Palgrave Macmillan, 2003), 55-6.

⁴ Ibid, 57.

⁵ Thomas Schindlmayr, “Sovereignty, Legal Regimes and International Migration,” *International Migration* Vol.41 (2) (2003), 112-113.

around 70 percent of the real wage convergence between 1870 and 1910 was due to mass migration, leaving the rest due to other forces such as trade.”⁶

The curtailed migration period was between the end of World War I and 1945. “This stemmed from a mixture of economic stagnation, security concerns, increased hostility toward migrants, and racism.”⁷ Even countries with traditions of immigration such as the United States and Canada, curtailed the flow of immigrants based on racial and religious principles, and to protect their national labour force during the economic stagnation and depression.⁸ For example, Castles pointed out that in this period “[i]n the USA, ‘nativist’ groups claimed that Southern and Eastern Europeans were ‘unassimilable’ and presented threats to public order and American values.[...] France was the only country to recruit foreign workers in this period.”⁹ In reality, bad economic policies rather than migrants were who to blame. Stalker points out that this process of ‘desglobalization’ was accompanied by a divergence in real wage rates. This dispersion coefficient started to rise again and by the end of the WWII was still high.¹⁰ The next period according to Schindlmayr was migrant recruitment was from the aftermath of the World War II to 1973. Castles and many scholars as Marlou Schrover¹¹ also coincide with this division in migration history, for Castles “the long boom stimulated large-scale labour migration to Western Europe, North America and Oceania from less-developed areas.”¹² This period is important because it is here where “[i]n the first instance, states took in refugees to help their recovering economies.”¹³ Before this period, the term refugee did not exist,¹⁴ and it was very convenient to fill the labour shortage with a humanitarian concern. Appleyard states “[t]raditional receivers willingly participated in the displaced persons scheme, partly

⁶ Williamson, J, “The Evolution of Global Labour Markets Since 1830: Background Evidence and Hypotheses,” *Explorations in Economic History* Vol. 32, 286.

⁷ Ibid, 114.

⁸ Ibid, 114.

⁹ Stephen Castles, “International Migration at the Beginning of the Twenty-First Century: Global Trends and Issues”, *International Social Science Journal*, Vol. 52 Issue 165(Sep2000), 274.

¹⁰ Peter Stalker, *Workers Without Frontier. The Impact of Globalization on International Migration*, (Colorado, Lynne Rienner Publishers, ILO, 2000), 14.

¹¹ See in point 2.2 Circumstances that hindered migration available from:

<http://www.let.leidenuniv.nl/history/migration/chapter9.html#2>

¹² Ibid, 274.

¹³ Thomas Schindlmayr, “Sovereignty, Legal Regimes and International Migration,” *International Migration* Vol.41 (2) (2003), 114.

¹⁴ Ibid, 120.

for humanitarian reasons, but also because of the benefits that the migrants would provide to their labour-short economies.”¹⁵

Occidental Europe also used temporary labour recruitment during this period, as Schindlmayr points out, for example West Germany made agreements with Italy, Spain, Greece, Portugal, Turkey and Yugoslavia to attract labour. As Schrover says Germany become from being an emigrant country to be an immigrant country.¹⁶ Others countries such as France, Netherlands and United Kingdom profited from their colonial ties which allowed them to draw more workers from their colonies. Canada and Australia came back from the restrictive period to encourage immigration policies.¹⁷ As Appleyard says “[t]hroughout the 1960s, guest-worker and post-colonial immigration occurred simultaneously with sustained permanent emigration of western Europeans to the traditional receivers.”¹⁸ Castles support the simultaneous refill of the demand of labour by the guest-worker’s system and the colonial workers by the European countries.¹⁹ And as Salker also suggest “Europe as a whole had become a net importer of labor, from North Africa, Eastern Europe and Turkey.”²⁰ We can better appreciate this flow of immigrants in the following map.

¹⁵ Reginald Appleyard, “International Migration Policies: 1950-2000,” *International Migration*, Vol. 39 Issue 6, (2001), 9

¹⁶ Marlou Schrover 2.2 Circumstances that hindered migration available from:
<http://www.let.leidenuniv.nl/history/migration/chapter9.html#2>

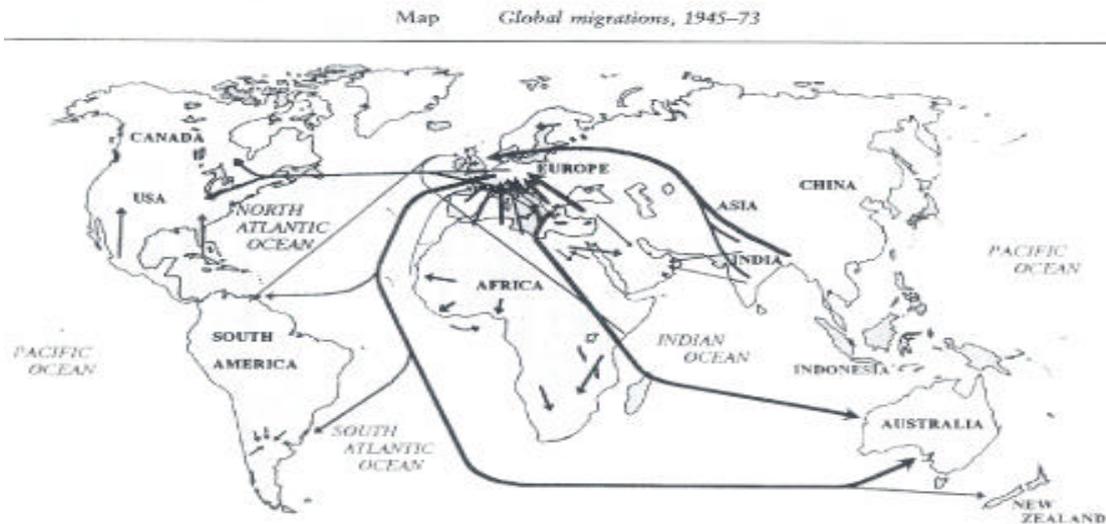
¹⁷ Thomas Schindlmayr, “Sovereignty, Legal Regimes and International Migration,” *International Migration* Vol.41 (2) (2003), 114-115.

¹⁸ Reginald Appleyard, “International Migration Policies: 1950-2000,” *International Migration*, Vol. 39 Issue 6, (2001), 10.

¹⁹ Stephen Castles and Mark J. Miller, *The Age of Migration. International Population Movements in the Modern World*, (Great Britain: Palgrave Macmillan, 2003), 69-75.

²⁰ Peter Stalker, *Workers Without Frontier. The Impact of Globalization on International Migration*, (Colorado, Lynne Rienner Publishers, ILO, 2000), 16.

Map 1.



Source: Stephen Castles and Mark J. Miller, *The Age of Migration. International Population Movements in the Modern World*, (Great Britain: Palgrave Macmillan, 2003), 70.

Countries such as Belgium and Switzerland started to recruit foreign workers immediately after the war, for example, a third of the Swiss labour force in the 1970s was foreign.²¹ A clear result is that between 1947 and 1973 in Australia, more than 50 per cent of the labour force were immigrants who were largely responsible for the economic growth. In this period Schindlmayr points out that many multilateral and bilateral treaties were concluded allowing migrant workers free movement that refilled the shortage of labour and supporting the economical growth.²² Appleyard points out that migration legacy of WWII were the many “migration schemes”, such as the migration agreement signed between Australia and the United Kingdom in 1947.²³ In this way, they use again the immigration policy as an auxiliary to refill the labour shortage and to further their economic growth. Castles points out that

[t]he high net immigration countries, like the FRG, Switzerland, France and Australia, had the highest economic growth rates in the 1945-73 period. Countries with relative low net immigration (like UK and

²¹ Stephen Castles and Mark J. Miller, *The Age of Migration. International Population Movements in the Modern World*, (Great Britain: Palgrave Macmillan, 2003), 69-71.

²² Thomas Schindlmayr, “Sovereignty, Legal Regimes and International Migration,” *International Migration* Vol.41 (2) (2003), 115.

²³ Reginald Appleyard, “International Migration Policies: 1950-2000,” *International Migration*, Vol. 39 Issue 6, (2001), 8.

the USA at this same time) had much lower growth rates. Thus the argument that immigration was economically beneficial in this period is convincing.²⁴

This supports our hypothesis, because there were periods, as this one, where the trade and the more open immigration policies worked together as complements and had good results.

The last phase, pointed out by Schindlmayr, is the short-term migration and human rights movement that began after the oil crisis (1973-1974) until today. Authors, such as Lohrmann, Schrover and Appleyard, also agree with the idea that the oil crisis was an outbreak to a new era in policy formulation, a restrictive one.²⁵ “In response to economic stagnation and increasing unemployment, immigration rules were tightened in several states in the early 1970s.”²⁶ As the author pointed out in the cases of West Germany, the United Kingdom, Netherlands and Switzerland, anti-immigration policies become more severe. Although, as Jagdish Bhagwati points out, “[p]aradoxically, the ability to control migration has shrunk as the desire to do so has increased.”²⁷ The following map shows the flows of migration. When this map is compared with that of the period before, we can see not only an augmentation of migration but also a diversification of sending and receiver countries.

Map 2.

²⁴ Stephen Castles and Mark J. Miller, *The Age of Migration. International Population Movements in the Modern World*, (Great Britain: Palgrave Macmillan, 2003), 77.

²⁵ Reinhard Lohrmann, “Migrants, Refugees and Insecurity. Current Threats to Peace?”, *International Migration*, Vol.38 (4) 2000, 7, Marlou Schrover, 2.2 Circumstances that hindered migration, available from: <http://www.let.leidenuniv.nl/history/migration/chapter9.html#2> and Appleyard, “International Migration Policies: 1950-2000,” 10-11.

²⁶ Thomas Schindlmayr, “Sovereignty, Legal Regimes and International Migration,” *International Migration* Vol.41 (2) (2003), 115.

²⁷ Jagdish Bhagwati, “Borders Beyond Control” *Foreign Affairs*, Vol. 82 No.1 (January/February 2003), 99.

TABLE 3. GOVERNMENTS' VIEWS OF THE LEVEL OF IMMIGRATION, 1976-1995

(Percentage of countries)

Year	Too low	Satisfactory	Too high	Total	Number of countries
1976	7	87	6	100	156
1978	8	87	5	100	158
1980	6	81	13	100	165
1983	7	74	19	100	168
1986	4	76	20	100	170
1989	3	76	21	100	170
1993	3	75	23	100	190
1995	2	77	21	100	190

Source: The Population Policy Data Bank maintained by the Population Division of the United Nations Secretariat.

Source: UN Department of Economic and Social Affairs Population Division, *International Migration Policies*. (New York: United Nations, 1998), 4.

This period is closely related with the second paradox, the convergence between the rights based in liberal precepts and the market. In states with liberal pretensions, such as those that try to regulate migration, their arguments concerning restrictive immigration are only based on national security and thus clash with their liberal principles leading to a contradiction in their policies. The contradiction is having an underground economy supported by undocumented immigrants and at the same time proclaiming to be states of law. We can find support in Appleyard when he also made mention of a tightening of refugees and policies regarding asylum seekers.

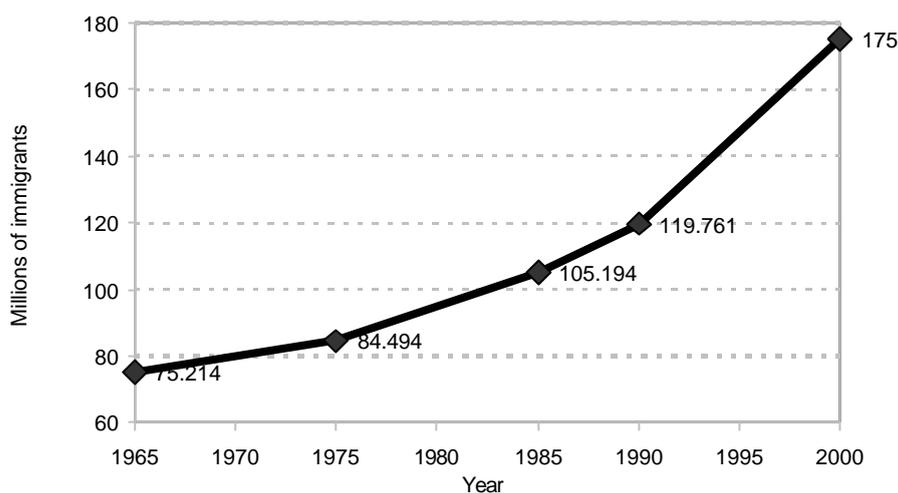
[f]actors that have changed the determinants of immigration policies so markedly have also led to an increase in the number of undocumented migrants.[...] The demonstrable increase in undocumented migration (“one of the faster growing forms of migration is the world today”) has been attributed partly to declining opportunities for persons to qualify as permanent settlers, workers and refugees.²⁹

In this way, we can compare the volume of migration (see following table) to the governments' view of the level of immigration, there is a close relation and that can give us an idea of the restrictive aptitude that the governments have adopted toward immigration, and their unproductive measures. The number of migrants grew to almost double in less than 25 years from 75 million in 1965 to 120 million in 1990. The annual rate of change in immigration between 1965 and 1975 was 1.2 percent, while during 1975 and 1985 it was

²⁹ Reginald Appleyard, “International Migration Policies: 1950-2000,” *International Migration*, Vol. 39 Issue 6, (2001), 12.

2.2 percent³⁰, this means the percentage of immigration almost doubled during this period.³¹ During this last period was when the governments' view of the level of migration was too high, and when the restrictive policies were implied.

Table 6. International Migration since 1965.



Source: UN, *International Migration and Development*, (New York: UN Population Division, 1997), 14. And in *World Migration 2003* (Switzerland: IOM, International Organization for Migration, 2003), 5.

As Castle points out “[i]n the 1980s and the 1990s, flows from less-developed to developed countries have grown rapidly, despite attempts by receiving countries to restrict such movements.”³² The family reunion was little accepted as a human right in some cases. The end of the Cold War and the collapse of the Soviet Union produced some changes that affected migration. First, there was the reorientation of investment in capital from the southern countries to Eastern Europe; the second change was, the growth of the massive migration from east to the west.³³

On the other hand in the same period Schindlmayr points out that

[a]lready there are signs of the next big wave of migration, that of high-skilled migrants. Expanding trade creates opportunities for skilled migrants, which governments encourage because of their high-income

³⁰ UN, *International Migration and Development*, (New York: UN Population Division, 1997), 14.

³¹ To see statistics with more detail see Annexe 1.

³² Stephen Castles, “International Migration at the Beginning of the Twenty-First Century: Global Trends and Issues”, *International Social Science Journal*, Vol. 52 Issue 165 (Sep2000), 275.

³³ Stephen Castles and Mark J. Miller, *The Age of Migration. International Population Movements in the Modern World*, (Great Britain: Palgrave Macmillan, 2003), 92.

potential and the need to address skill shortages.[...] This new emphasis on temporary, skilled migrants has been introduced into international treaties³⁴

Bhagwati also identify this appetite of developed countries for skilled immigrants “in which countries compete for markets by creating and attracting technically skilled talent.”³⁵ This new pattern of migration poses a great dilemma; on the one hand, there is an aperture to migration; however, at the same time this migration is a restriction, as Schindlmayr point out:

On the one hand, most governments encourage the mobility of highly skilled people, usually on temporary basis. On the other, however, lower skilled workers are often unwelcome, despite employer demand, resulting in increased illegal migration often organized by labour-recruiters and people -traffickers.³⁶

In this way what is being provoked, is a brain drain from undeveloped countries, a selective migration that is legal and is also a labour market demand for illegal immigrants where under liberal states the fundamental civil rights are not respected, leading to the emergences of paradoxes. First, the selective restrictive measures goes in opposition to the liberal model, where there only exists an openness to high skill labour when the labour market also demands unskilled labour. Irregular immigration is a response to the existing demand for cheap irregular labour, this need has increased throughout the global integration of markets. Moreover, Appleyard suggest “a shift of immigration policy-making towards the trade arena,... in which both some states and firms seek to fold temporary migration of workers into trade in services.” If we follow the development of the international migration it sounds logical that the national governments together with the firms seeks an alternative option to fill the shortage of high skill labour, and restrict asylum and refugees seekers that their labour market does not need. The problem is that they are producing illegal immigrants that are outside of human rights protection. Secondly, the paradox between the market and their rights emerges. For example, Castles points out:

Some Asian governments have set up special departments or agencies to manage labour emigration, such as the Bureau of Manpower, Employment and Training (BMET) in Bangladesh, or the Office of the Protector of Emigrants within the Ministry of Labour in India. However, regulation of emigration from

³⁴ Thomas Schindlmayr, “Sovereignty, Legal Regimes and International Migration,” *International Migration* Vol.41 (2) (2003), 117.

³⁵ Jagdish Bhagwati, “Borders Beyond Control” *Foreign Affairs*, Vol. 82 No.1 (January/February 2003), 100.

³⁶ Thomas Schindlmayr, “Sovereignty, Legal Regimes and International Migration,” *International Migration* Vol.41 (2) (2003), 118.

less-developed countries is often ineffective, as the large number of irregular migrants demonstrates. This allows exploitative employment and abuses like the trafficking of women and children for prostitution.³⁷

The roots of the general problem that support the hypothesis, like Georges Tapinos suggests, is that...

[s]ince the 1980s migratory movements have been taking place within a new and paradoxical context. On the one hand, the industrialised countries have reaffirmed their policy of controlling migration movements and, on the other, these restrictions are being enforced at a time when the developing countries which have generally started their demographic transition, are seeing their workforce and the proportion of their working-age population rise sharply without a corresponding increase in employment. With the worsening of economic disparities between the countries of North and the South the causes of migration movements are reinforced. This has led to the resumption of illegal immigration and the development of new channels of entry, in particular through request for asylum, significantly blurring the distinction between economic migrants and refugees.³⁸

In this way if the pull and push factor of migration are increasingly at the same time that restrictive measures are they are provoking paradoxes. On the one side, the negation of developed governments out of their necessity for foreign labour makes the restrictive measures confront the principles of the liberal economic model. On the other side, the same restrictive measures keep more illegal immigrants outside of any protection of their more basic human rights. This is the second paradox.

Cohen has shown, “capitalism has made use of both free and ‘unfree’ workers in every phase of its development.”³⁹ Now that we have reviewed the last century and a half of migration, we can conclude that migrations have been an indispensable factor in the expansion of capitalism and there is no reason than in the future we should not let it be. Staker points out, “[i]n the past the flow of people did help economies move closer. But in recent years political resistance to migration has stifled this process and contributed to widening this disparities.”⁴⁰ As Reinhard Lohrmann said:

Since the 1950s, important labour shortages which accompanied the rapid economic expansion of Western European countries led to the recruitment of temporary migrant workers from Southern Europe, as well as from Yugoslavia, Turkey, and later from the Maghreb and other developing countries.

³⁷ Stephen Castles, “International Migration at the Beginning of the Twenty-First Century: Global Trends and Issues”, *International Social Science Journal*, Vol. 52 Issue 165(Sep2000), 275.

³⁸ Georges Photios Tapinos, “Globalisation, Regional Integration, International Migration”, *International Social Science Journal*, Vol. 52, Issue 165(Sep2000), 298.

³⁹ Stephen Castles and Mark J. Miller, *The Age of Migration. International Population Movements in the Modern World*, (Great Britain: Palgrave Macmillan, 2003), 50.

⁴⁰ Peter Stalker, *Workers Without Frontier. The Impact of Globalization on International Migration*, (Colorado, Lynne Rienner Publishers, ILO, 2000), 18.

Confronted with similar economic expansion, the US also admitted, as immigrants, low skilled workers from Caribbean, Mexico and Central America.⁴¹

According to Lohrmann migration will not stop. Castles suggest in his famous book *The Age of Migration*, there are several reasons to expect why what he terms 'the age of migration' will endure, reasons such as...

growing inequalities in wealth between North and the South are likely to impel increasing numbers of people to move in search of better living standards; political, ecological and demographic pressures may force many people to seek refuge outside their own countries and the creation of new free trade areas will cause movements of labour, whether or not this is intended by the governments concerned.⁴²

Consequently if this will endure we need to accept also that "[l]abour migration has always been a major factor in the construction of a capitalist world market"⁴³ and it will be in the future.

If we have found that the international migration has been and is an indispensable factor for the expansion of capitalism and that migration will continue, the imperative thing is that we need to find ways to resolve the paradoxes. Surprisingly, the World Bank has begun to recognize the growing significance of reorienting their perspectives and policies to be closer to a "human security agenda" in pursuing sustainable economic growth. As the World Bank recognized "economic and social stability and human security are pre-conditions for sustainable development."⁴⁴ These preconditions include that "every person is entitled to be free of oppression, violence, hunger, poverty, and disease and to live in a clean and healthy environment."⁴⁵ Based on these preconditions for growth the suggestion is a re-orientation toward immigration policies where human rights are respected, not only by humanitarian reasons but as necessary pre-conditions for sustainable development.

Also the United Nations Developed Program (UNDP) suggests that the concept of security has been more related to nation-states than to people, and than there needs to be a profound transition in thinking toward "human security". Human security is needed in order to take into account threats to ordinary people such as hunger, disease and

⁴¹ Reinhard Lohrmann, "Migrants, Refugees and Insecurity. Current Threats to Peace?", *International Migration*, Vol.38 (4) 2000, 7.

⁴² Stephen Castles and Mark J. Miller, *The Age of Migration. International Population Movements in the Modern World*, (Great Britain: Palgrave Macmillan, 2003), 4.

⁴³ Ibid, 66.

⁴⁴ World Bank, *Development Cooperation and Conflict, Operational Policy 2.30*. (Washington, DC: World Bank, 2001), 1.

⁴⁵ World Bank Post Conflict Unit. *Security, Poverty Reduction and Sustainable Development: Challenges for the New Millennium* (Washington, DC: World Bank, 1999), 7.

repression.⁴⁶ If these policies are carried out, then there will no longer be a paradox between the rights based in liberal precepts and the market.

Even in the context of national democratic liberal states, there does not need to be a paradox as Bach explains:

Democratic states have a responsibility to promote protection of all individuals within their boundaries. In the clash between rights and responsibilities, this protection not only expresses a 'right', it constitutes a core responsibility of states to take concrete steps to promote and defend democratic inclusion and participation. As the Durban Conference on Racism highlighted tensions associated with global migration often result from fears of immigrants as strangers, newcomers, and members of other racial and ethnic groups. States have a responsibility to reduce those fears by promoting the long-term security of these individuals, their communities, and the larger society that suffers from unchecked racism and xenophobia. Any success among right-wing parties would reflect as much a failure of these states' responsibilities to promote security and advance democratic tolerance as it would the recurring inability to check unauthorized immigration.⁴⁷

In this way the national states have the obligation to amplify the rights protection to the immigrants whether they are under legal status or not, if they want to be coherent to their liberal and democratic principles and if not, they will fall in the paradox, as Bach pointed out:

A common example of this recurring clash involves the exercise of rights and responsibilities in relationship to sustained unauthorized ('illegal') immigration. For many observers in the international community, receiving states have severely curtailed the right to free movement – especially among poor migrants, refugees and asylum seekers – by blocking entry and dramatically increasing deportations. These migrations controls have failed they say, because, because of the irresistible, inevitable pressures behind immigration. Increased enforcement efforts have merely made it more difficult for migrants to enter and, some argue, have led to 'perverse' consequences that have increased migrants' vulnerabilities.⁴⁸

It is not enough for states to confirm that the paradox between the rights and the market exist within their borders. As long as these governments are tolerant of their own hypocritical policies each time illegal immigrants have their human rights infringed upon and are abused, the paradox becomes bigger. Jorge Bustamante points out in his article a contradiction that gives more support to existence of the paradox between the rights and the market, because it explains another reason why the immigrants' rights are not respected:

the vulnerability of international migrants becomes the focus of a contradiction between (A) a classical notion of the sovereign rights of nations to define who is a national and who is not, and to control

⁴⁶ Reinhard Lohrmann, "Migrants, Refugees and Insecurity. Current Threats to Peace?", *International Migration*, Vol.38 (4) 2000, 6-7.

⁴⁷ Robert L. Bach, "Global Mobility, Inequality and Security," *Journal of Human Development*, Vol. 4, No.2, (July 2003), 242.

⁴⁸ *Ibid*, 240-241.

immigration by controlling their borders; and (B) the sovereign right of a national government to commit its country to limiting its own sovereignty through due ratification by its legislative branch of internationally agreed upon standards of human rights.

When a country exercises its sovereignty to commit itself duly to adopting an international standard of human rights, by remaking it into a law of the land, this exercise of sovereignty becomes dialectically opposed to that other sovereign exercise that makes a distinction between nationals and foreigners. This is a typical dialectical contradiction.⁴⁹

This means that once a country, in an international community of nations, has exercised its sovereignty by committing itself to accepting, promoting, and defending the human rights, it has implicitly agreed to limit its sovereign right to establish or condone a difference between nationals and foreigners in regard to their human rights. As for example, the commitment defined by the Universal Declaration of Human Rights or the Charter of UN.

The contradiction between the market and the rights has contributed more to the immigrant's vulnerability than the one explained by Bustamante; however, both have contributed to the immigrant's vulnerability. Trying to resolve this paradox we can find, some interesting suggestions as is proposed in the following:

[t]he [UN] Secretary General should tackle four specific types of vulnerability-based mobility in which migrants require protection and security. These flows do not include the high visibility movement of high-skilled workers or family migrations that are routine, normal occurrences in the global economy, and states are quite capable of negotiating national immigration policies and bilateral and multilateral rules of exchange on their own. Rather, attention should be given to at least the following four types of migration that involve vulnerabilities and human insecurities.

- *The brain/skills drain.* Although the international mobility of skills is a positive feature of the global economy, in some situations the loss of skilled personnel is threatening the ability of governments and communities to respond to critical, life-sustaining needs (e.g. in health and education).
- *Trafficking:* Trafficking of people, especially women and children, is today's dark side of global mobility. A human security initiative should insist on and mobilize international support for anti-trafficking measures that appear currently to be languishing among alternative priorities.
- *Illegal, irregular, chaotic migration.* States of origin and destination have a mutual responsibility to organize migration flows to be safe, orderly, and lawful. A human security initiative would provide a comprehensive approach to these situations, calling for responsibilities of orderly exit from the sending countries and safe entry into receiving countries. A focus on development alternatives to provide for human security is essential.

⁴⁹ Jorge Bustamante, "Proposition 187 and Operation Gatekeeper: Cases for the Sociology of International Migrations and Human Rights", *Migraciones Internacionales, El Colegio de la Frontera Norte*. Vol.1 No.1 (July-December 2001), 7-34.

- *Internally displaced persons*. The ‘responsibility to protect’ is one principle that offers a mechanism for a human security approach to infuse states with the values, goals, an urgency of responding to these humanitarian, developmental, and state-security crises.⁵⁰

As we can see the main point is the protection of the most vulnerable immigrants, especially those who do not enjoy special programs from the governments and in consequence do not enjoy some rights. The majority of responsibility must be over the receiving countries. However, the governments of sending countries need to make an effort to protect their nationals but they find themselves in the following situation:

Most emigration country governments have policies to prevent abuse or exploitation of their citizens while abroad, and to provide assistance in case of illness, accident, death, trouble with the law, disputes with employers or emergencies. [...] However, measures and services for the protection of emigrants are frequently ineffective. They are not available to the irregular migrants, who may face the worst problems. The number of consular officials is often far too small to cope with the case-load. Even legal migrants are so dependent of finding and keeping employment abroad that they hesitate to complain about abuses. Moreover, sending country authorities hesitate to antagonise the authorities and employers in the countries of immigration, for fear that these will prefer workers from other countries. In a situation of a global oversupply of low-skilled migrants, the market power lies with the recruiting countries.⁵¹

This situation happens precisely because the paradoxes exist, and will prevail as long as the paradoxes exist. The contradiction between the protection of the immigrants’ rights and the labour market generate a lack of action for those “independent” actors, such as sending governments and immigrants, which are dependents to the same labour market. In the end that dependency and oversupply is what compromises all the fighting for better rights and responsibility from part of the receiving governments and the employers. In this manner it is notable that international cooperation on securing migrants’ rights and interests is actually weak, but it will be the only way in having a better covering of their rights, as noted by Bhagwati:

we do not have a treaty-based “World Migration Organization” (WMO) to oversee the phenomenon of global migration according to internationally agreed objectives and procedures. This reveals that international migration continues to be viewed as a subject falling within the purview of sovereign states. Considering the growing understanding of migration as an important factor for development and the considerable role migrants already play, it is time to increase the protection of migrants’ rights by forming a global migration policy framework.⁵²

⁵⁰ Robert L. Bach, “Global Mobility, Inequality and Security,” *Journal of Human Development*, Vol. 4, No.2, (July 2003), 244.

⁵¹ Stephen Castles, “International Migration at the Beginning of the Twenty-First Century: Global Trends and Issues”, *International Social Science Journal*, Vol. 52 Issue 165(Sep2000), 276.

⁵² Ninna Nyberg, “The Development Dimension of Migrant Remittances,” *Migration Policy Research. Working Paper Series*. (IOM No. 1 June 2004), 26.

We need to look for reasons why this cooperation between the states and the immigrants has not arrived at a beneficial result, in Castles opinion...

[t]he main reasons for this are lack of long-term strategies by both emigration and immigration countries, and the reluctance of immigration countries to take steps which might increase the cost of migrant labour to employers. Major elements of an international regulatory framework already exist in ILO [International Labour Organization] Convention No. 97 of 1949 and No. of 1975 and in the 1990 United Nations Convention on the Rights of Migrant Workers and Members of their Families. These standards need to be linked together in a comprehensive framework to regulate the rights and conditions of migrant workers. However, the main problem is that relatively few countries (especially immigration countries) have ratified these instruments. Action is needed to persuade more countries to sign up and implement the Convention.⁵³

If the framework already exists then this is precisely why the paradox between the market and the rights that do not let that the sovereign states can act in concordance with their liberal principles to ratify and respect intergovernmental agreements. Besides, this is confirmed when cooperation is not coordinated by economical reasons, in this case the benefit is cheaper immigrant labour. Global or multilateral agreements seem to be difficult to pursue in the short term. Following this road, the IMP (International Migration Policy Programme) was founded in 1998, an inter-agency programme for government capacity building co-operation on migration and refugee policies, which some of their goals are:

Through a comprehensive multi-disciplinary approach, to promote a better understanding of global and regional migration and forced displacement policies and issues, including aspects such as irregular migration, asylum, refugee protection, population, development, trade, globalisation, international law and human rights, and to offer focused information and in-depth training on emerging issues of specific interest to senior government migration managers and policy makers.⁵⁴

The IMP's work in regional conferences, seminars and workshops has resulted in the awareness of some governments of the importance that the cooperation over migration policy, however there not has been a real commitment.

Another important multilateral effort towards cooperation in migration policy field has been the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families that has entered into effect 1 July 2003 and proposed by the UN. This extended convention of 93 articles specify in great measure all the rights and protections that the immigrants need to enjoy, in their preamble it points out:

⁵³ Stephen Castles, "International Migration at the Beginning of the Twenty-First Century: Global Trends and Issues", *International Social Science Journal*, Vol. 52 Issue 165(Sep2000), 277.

⁵⁴ IMP available from <http://www.impprog.ch/>

Considering the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment, Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection[...]
Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition⁵⁵

We will mention some of the most significant articles of the Convention throughout what we can see encompasses many rights; human, civil, social, economical and political. As Article 7 ensures rights of all migrants without distinction of any kind, this ensures equality; as Article 18, ensures legal equality between immigrants and nationals. Article 16 gives the right to liberty and security of person. Respecting the welfare state, Article 28 said that immigrants and their families should have the right to receive any medical care, as Article 30 said, each child of a migrant worker must have the basic right of access to education on the basis of equality of treatment with nationals.⁵⁶ One of the most important and less respected is Article 25, which says:

Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms⁵⁷

As we can see the convention attacks the principal economical reasons of discrimination toward immigrants. If the international community under multilateral cooperation accepts the implementation of this, the paradoxes will resolve themselves. Developed countries must realize that it is only in acceptance of the necessity of immigrants and in a more open immigration policy that they will be in concordance with their liberal precepts and respecting all their rights. Unfortunately the convention was not ratified by the main receiving countries, in fact it was not even ratified by many countries,⁵⁸ obviously because their economic interest seems to be affected.

⁵⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), *entered into force* 1 July 2003 available from: <http://www1.umn.edu/humanrts/instreet/n8icprmw.htm>

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ The following 20 States had ratified the Convention in the 10 December 2002: Azerbaijan, Belize, Bolivia, Bosnia-Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, Ghana, Guinea, Mexico, Morocco, Philippines,

Consequently, a more feasible international cooperation could be of bilateral or regional agreements. Many emigration countries seek to make bilateral or regional agreements, with receiving countries on the regulation of migration and the rights and conditions of their citizens. Such bilateral or regional agreements can play a major role in covering the labour demand in receiving countries and can improve the social security and rights of immigrant workers and their families. With these bilateral agreements both countries gain. The emigration countries gain because such agreements facilitate transfer of remittances, migration returns (that import skills, capital and technological transfer) and prevents human traffic; which could avoid the violation of the human rights. For immigration countries the agreements provide better control of the immigration workforce, enjoin the illegal immigrants and support a more civilized society of consistency with liberal principles and state of law.

In the past, there have been bilateral agreements that have been unsuccessful due to the paradox between the liberal economic model and the restriction of migration, Georges Tapinos stated that...

[i]n a context of increased potential for emigration on the one hand and of higher controls on immigration on the other, the opening up of trade is being presented as a substitute for international migration. Yet the significance of this strategy has changed. Free trade accompanied by internal factor mobility, considered by classical economists as a more realistic means of specialisation than international migration is now seeking to prevent or, failing that, to reduce international migration, illegal immigration in the case of the United States and any form of migration of unskilled extra-community workers in the case of Europe. In the United States when the temporary labour program known as the Bracero Programme, which had been initiated in 1951, ended in 1964, [in substitution] the fear of rise in immigration from Mexico led to the introduction of preferential customs tariffs – importation of components and exportation of products free duty- for companies which set up on the Mexican side of the border (*maquiladoras*). The result was [...] no reduction of migratory movements toward the United States.⁵⁹

Some economists believe the substitution of migration by trade prevents migratory movement, however the last case proved the restrictive measures actually helps to create illegal immigrants. The denial of that labour demand has stopped the negotiations between governments of the labour supply. Those factors in consequence create the two paradoxes, which support this hypothesis. As mentioned in the last chapter, complementing rather than

Senegal, Seychelles, Sri Lanka, Tajikistan, Timor Leste, Uganda and Uruguay. In IOM, *World Migration 2003* (Switzerland: IOM, International Organization for Migration, 2003), 21.

⁵⁹ Georges Photios Tapinos, "Globalisation, Regional Integration, International Migration", *International Social Science Journal*, Vol. 52, Issue 165(Sep2000), 300.

substituting migration by trade would significantly improve the situation. Tapinos poses the problem:

do unskilled workers have more to fear from the direct competition of immigrants (factor mobility) or from the indirect competition of imported goods as a result of the specialisation of the country of origin on labour-intensive exports?⁶⁰

The above question, examines the restrictions in immigration and trade. Both are arguments to implement restrictions in immigration and in trade respectively, however, protectionist measures are in opposition to the economic liberal model. The answer to this question is in part what organizations such as the WTO (World Trade Organization) search for- free and fair trade. While the immigrants search a free and fair migration.

⁶⁰ Ibid, 305.