

Keynote Address:

THE SITUATION OF MIGRATION FROM MEXICO TO THE UNITED STATES

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Introduction

This paper deals with the relationship between the phenomena of international migration and human rights. That relationship is part of the theoretical context within which an attempt is made to explain the **vulnerability** of migrants as subjects of human rights and labor. Since the U.S. is the largest host country in the map of migration flows from Latin American countries, it is an attempt to understand the bottom of the issue of the vulnerability of Central American immigrants in Mexico. Although migration flows from Mexico and Central America to the United States are the most numerous in the hemisphere, the examination of the vulnerability of migrant workers should not ignore the population movements of South America, particularly the importance of the increase in immigration to Spain from the Dominican Republic and most recently from Ecuador. These Latin American countries are substituting emigration from the Maghreb to Spain in the first places in the numbers of immigrants to this country. This is relevant for a focus on the vulnerability of these migrants as subjects of human rights and labor. There are other important migratory movements in the southern hemisphere such as Bolivia and Paraguay to Argentina and Brazil and, to a lesser extent, from Colombia to Ecuador. To varying degrees, in all these movements there are problems of

violations of human rights of migrants, the further north the country of destination in the hemisphere, the greater the violations of migrants human rights.

To further complicate life in the northern border cities of Mexico, in late May 2008, two ominous trends clouded the future of the region: one: the U.S. economic crisis and its negative effects on employment in the maquiladora industry and the other, the increase in violence and crime associated with drug trafficking. The inability of the government of Mexico to do something effective against these trends has not gone beyond the expectations derived from the so-called " Mérida Plan ", details of which are not still known as of late January 2009.

The inauguration of Barack Obama as the first African American to assume the presidency of the United States opened new hopes for the dispersing of the anti-immigrant atmosphere prevailing until then. The atmosphere was fuelled every day by U.S. radio programs targeting the most recalcitrant anti-immigrant and anti-Mexican sectors of opinion. Hal Turner, a radio host from New Jersey urged his listeners to kill each of the "foreign invaders." According to the findings of an investigation of the Southern Poverty Law Center (SPL) and the Anti-Defamation League (ADL), "hate groups" have shown a 33% growth over the past five years. A statement by Susy Buchanan, SPL researcher illustrates the growth of xenophobia, saying: "Throughout the country the anti-immigrant movement is spreading like wildfire and a group of activists are fed these flames." Among the organizations that promote hatred against immigrants in general and Mexicans in particular are the Minutemen, American Border Patrol, Ranch Rescue and Save our State. According to Angelica Salas, director of the Coalition for the human rights of immigrants in Los Angeles (CHIRLA) monitoring by her organization has uncovered and documented the relationship these anti-immigrant groups have with the Ku Klux Klan and neo-Nazis.

Jim Chase, 59, of Ocean Side, California, a veteran of the Vietnam War, who is leader of the anti-immigrant California Border Watch, sent a call over the Internet for people to join him, "those who don't want their families to die at the hands of Al Qaeda or undocumented criminals or, the Aztlan punks who wear Che Guevara T-shirts." The operational base of this agitator was Campo, California.

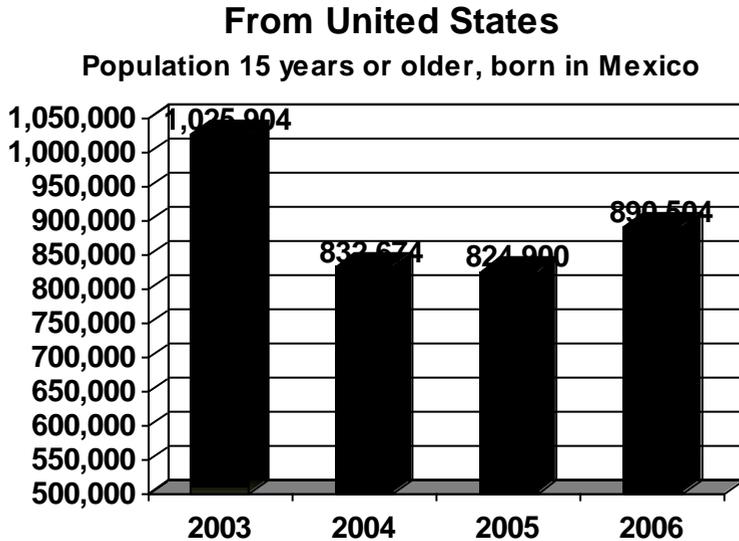
The actions of these anti-immigrant groups have represented a dimension that was not covered in the discussions of the 45 amendments that preceded the adoption of SB 2611 passed by the Senate on 26 May. It is no coincidence that the vast majority of these amendments intended to make tougher anti-immigrant proposals in this bill, SB 2611. There has been a clear process of feedback between anti-immigrant legislative actions and the actions of the groups mentioned above. The strength of this combination in retrospect explains the impossibility of a reconciliation of projects HR 4437 and SB 2611, approved by each House of Congress. The bitterness of the anti-immigrant arguments was the main factor in the failure of the so-called "immigration reform."

The flow of documented and undocumented workers from Mexico to the United States is a circular process of migration set in motion by the "forces" of supply and demand for a de facto international labor market. It is an imperfect "market", as conceptualized by Max Weber⁷⁶, where wages and working conditions are more the result of an asymmetry of power between the main protagonists of an employment relationship than the classical result of the interaction between supply and demand. The way that the asymmetry of power between the main protagonists of the social and economic relationship develops has to do with the values and ideologies that belong to a different dimension of the migration situation. Therefore, the conclusion that can be drawn from these data is still incomplete, despite the production of direct estimates of the migration of documented and undocumented workers from Mexico, which was documented for the first time by the COLEF.

The understanding of the circularity of migration between Mexico and the United States is particularly relevant in light of the appearance in Mexico in late 2008 of a new myth about migration, concerning the alleged mass return of several million

⁷⁶ Wolfgang J. Mommsen, *Max Weber an die deutsche Politik 1890 1920*, pp 23 54, cited by Dirk Käsler in *Max Weber: An Introduction to His Life and Work* (Chicago: University of Chicago Press, 1988). In this event, Mommsen regards Weber did detailed studies on agriculture in the region of the Elbe, in which he analyzed more than a dozen publications published between 1892 and 1894 (not yet translated from German) the conditions of agricultural workers, including migrant Polish workers. Many of the ideas of Weber particularly relevant for industrial sociologists appear in this series of works commissioned by the Verein für Sozialpolitik in 1890 that Weber directed, along with Thiel, Conrad and Sering. My knowledge of this aspect of social and economic theory, in which Weber develops fully the sociological concept of a labor market, came from reading the book of Dirk Kasl, cited above, and the later work of Wolfgang J. Mommsen, *The Political and Social Theory of Max Weber* (Chicago: University of Chicago Press, 1989).

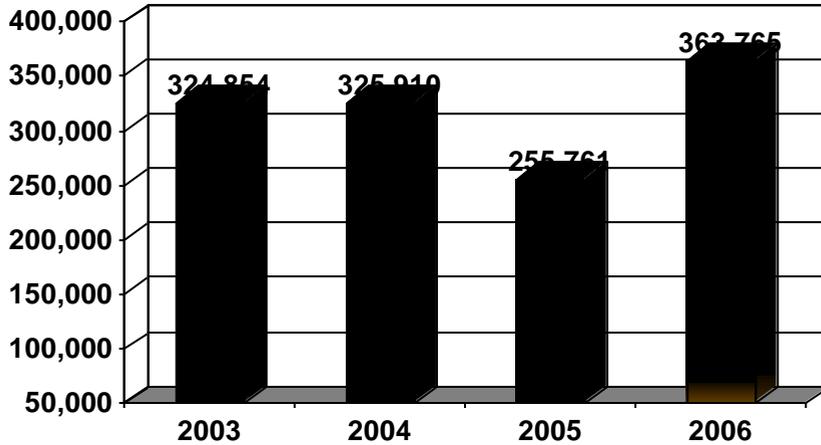
Mexicans in the United States as a result of the shortage of jobs caused by the economic crisis in that country. The data produced by El Colegio de la Frontera Norte displayed in the following graph:



Source: Prepared by the USEG - El Colegio de la Frontera Norte. Survey on Migration in the Northern Border. SEGOB: CONAPO, INM, STPS, SRE and El Colegio de la Frontera Norte, several years.

From United States

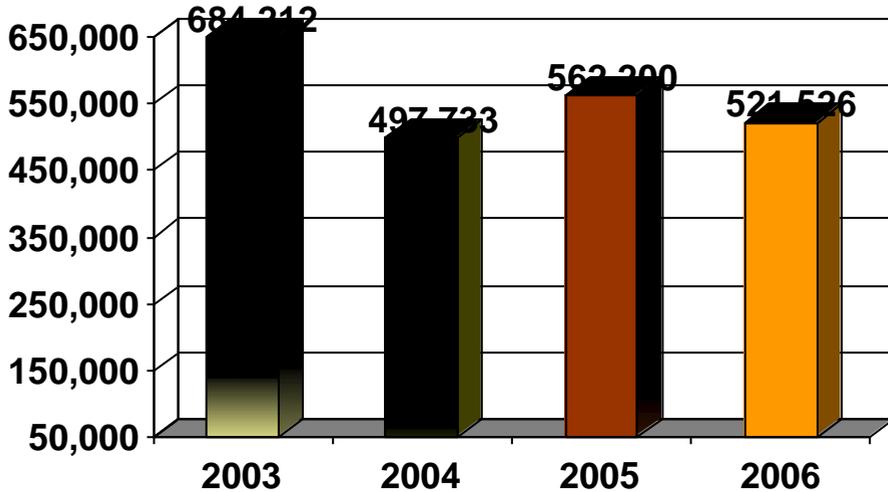
Population 15 years or older who were born in Mexico and residing in the U.S.



Source: Prepared by the USEG - El Colegio de la Frontera Norte. Survey on Migration in the Northern Border. SEGOB: CONAPO, INM, STPS, SRE and El Colegio de la Frontera Norte, several years.

From United States

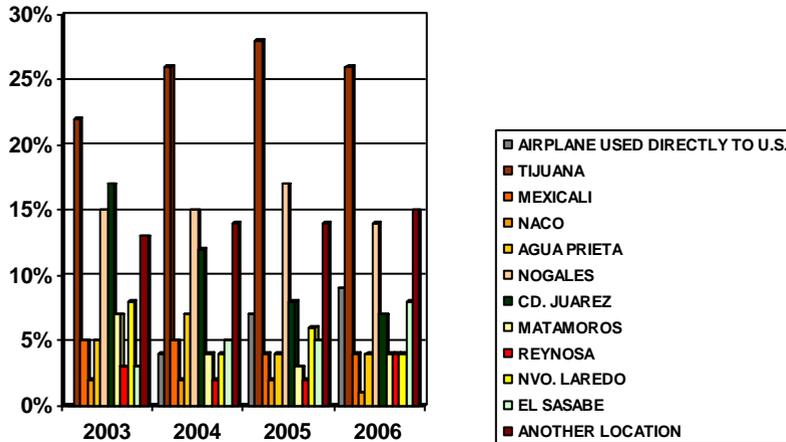
Population 15 years or older who were born in Mexico and residing in the U.S.



Source: Prepared by the USEG - El Colegio de la Frontera Norte. Survey on Migration in the Northern Border. SEGOB: CONAPO, INM, STPS, SRE and El Colegio de la Frontera Norte, several years.

City of crossing into the United States.

Population 15 years or older who were born in Mexico



Source: Prepared by the USEG - El Colegio de la Frontera Norte. Survey on Migration in the Northern Border. SEGOB: CONAPO, INM, STPS, SRE and El Colegio de la Frontera Norte, several years.

These graphs correspond to the series of annual surveys carried out in several cities in the northern border through personal interviews with migrants conducted every year, going to both U.S. and back to Mexico and are based on systematic random sampling of migrants detained in several border cities. They show: 1) that Mexican migrants who leave for the United States, regularly return home; 2) those born in Mexico came back in 2006 in fewer numbers than the previous year and that it can hardly speak of a massive return when the numbers of returning migrants still have not reached the levels achieved in 2003; 3) that the levels of returning migrants has regularly been massive for many years; 4) so far no evidence that a mass return is occurring, beyond what occurs regularly each year.

There is certainly some logic in the supposed return of those who left the country in search of employment and, suddenly, jobs are scarce in the country where they

went to look for work as a result of a recession. The reason that reality does not support this assumption can be summarized in what is meant by the concept of the "social networking" of migrants. This concept must be understood as a series of "contacts" that migrants seek to establish to help achieve the objectives for which they emigrated. These "contacts" seen from a sociological perspective are "social" relationships established by migrants on leaving home until they achieve the objectives that motivated their migration. These "social networks" are composed of people who help migrants, particularly in times of crisis or emergencies or unforeseen events that impede the realization of their plans. Even in the loss of employment, migrants turn to their "contacts" for help before taking the decision to return to Mexico.

That is their last option, for the migrant tries to avoid returning to face the costs and sacrifices he had to endure in the previous migratory experience. In addition, the information he already has about the economic conditions in Mexico, does not provide the answer to the question of returning to what or why. In reality, the migrant acquires enough skills to build his "social networks" to call upon if necessary, which explains his reluctance to return in spite of factors contrary to the reasons for emigrating in the first place.

The vulnerability of Central American immigrants in Mexico

Several decades ago Mexico became a country of immigration and transmigration for Central American migrants traveling through Mexican territory to satisfy the demand for labor originating in the United States. Mexico is no longer just a country of emigration. The traditional migration from Mexico has been internationalized. There is still a dearth of research in Mexico on Latin American immigration and transmigration. There is even less data that allow us to know for certain the level of violations of human rights of Central Americans in Mexico, but there is enough evidence to suggest that such violations could be the same and even more serious than those committed in the United States against Mexicans. This assertion finds grounds in the work of several sources: first, the journalistic work of Sonia Nazario – winner of several Pulitzer Prizes in the United States, both for her research and

news photography and as a writer of a "Non Fiction" book entitled "*Enrique's Journey*", (published by Random House in New York, 2006).

In concluding this section, I don't want to skip a comment about the slow progress within the Government of Mexico, on the reform of the General Population Law, which governs the issues in this text. It is widely recognized in Mexico as an outdated norm that is insufficient to consider fulfilled the commitments made by Mexico regarding the obligation of having first promoted, then finally signed and ratified the *UN International Convention on Rights of All Migrant Workers and their families*. These UN norms came into force five years ago, after being ratified by at least 20 countries as the instrument that represents the most comprehensive regulation of universal validity that exists on the protection of international migrants' human and labor rights. In strict law, an amendment to the General Population Act may not be less than what has already been committed under the UN Convention of 1990. According to the Mexican Constitution, the law must be regarded as a domestic law in force in Mexico, the highest ranking of which the President of Mexico swears to meet and enforce on taking office as the Chief Executive. Of particular urgency for the Mexican legislature is to produce legislation covering the omissions in the laws of Mexico regarding the "trafficking" of migrants, particularly girls, in line with the Palermo Protocols on trafficking and international migrants.

A THEORETICAL FRAMEWORK TO EXPLAIN THE VULNERABILITY OF MIGRANTS

The basic structural condition that determines the status of illegal immigrants in the country of destination is their vulnerability as subjects of human rights and labor. The understanding of this theoretical premise takes on importance according to the UN definition of international migrants as a "vulnerable group". The basic premises that will be discussed below relate to the concept of the vulnerability of migrants as subjects of human rights⁷⁷.

⁷⁷ See: Bustamante, J.A. "Immigrants' Vulnerability as Subjects of Human Rights", *International Migration Review*, Vol.36, no. 2, pp.333-354. An empirical reference of vulnerability as understood in this paper can be found in the resolution of the end of April 2004 a federal judge in Portland, Oregon, who called it "slave" in a trial against owner of "De Coster farms, located in the state of Maine where more than eight hundred undocumented Mexican immigrants were kidnapped. Could hardly find a picture of something worse than an "**extreme lack of power**" that "slave" to which he referred to the Federal judge in that trial.

Vulnerability is defined here as the condition imposed on an immigrant/foreigner of extreme powerlessness. It is central to this conceptual approach to understand this lack of power as a **social construction**⁷⁸ that is imposed like a label⁷⁹ on the immigrant.

The social process that involves the imposition of such a condition of vulnerability from one person to another implies an asymmetry of power between such persons. To paradigmatically identify those people as an immigrant or foreigner⁸⁰ in social interaction with a host country national, it is necessary for the purpose of this paper, to detail the nature of that relationship and the origin of the asymmetry of power that characterizes it.

Weber's distinction between the observable behavior of the actors and the intersubjective dimension of culture, is used here as a theoretical basis for distinguishing between **structural vulnerability** and **cultural vulnerability**.

The first concerns the difference between a national and a foreigner/immigrant in their dealings with the State⁸¹ in the host country. This difference stems from the sovereign right each country has to define who is a national and who is not. In this self-differentiation, which appears in the constitutional laws of most countries, is the structural origin of unequal access to State resources among nationals and foreigners or immigrants. Upon entering into a social relationship with others, this

The level of abstraction of this concept and **Vulnerability** to which this section are at risk of being lost in skepticism when it refers in its application to reality of a democratic country like the United States, and temporality of the early third millennium.

⁷⁸ L. Berger Peter and Thomas Luckmann, *The Social Construction of Reality*, Buenos Aires, Library of Sociology. Amorrortu Publishers, 1970.

⁷⁹ This term is used in the sociological sense used by **Howard S. Becker** in *Outsiders Studies in the Sociology of Deviance*, New York, NY The Free Press. 1968. Pp 17 and 18. A basic premise of labeling theory "of Beker can be found in the following words:"Social groups create diversions by setting the rules whose infraction constitutes deviance, applying them to specific individuals that are classified as intrusive. From this point of view, deviance is not a quality of the act committed by a person but a result of the application by others of rules and sanctions to an "offender." The deviant is one to which we have successfully applied that label. Deviant behavior is that of the people so labeled "Becker, *Outsiders*, p.9

⁸⁰ In this paper the terms "immigrant" or "foreigner" are used indistinctly while migrant means an international migrant, who by definition, is a foreigner in the host country.

⁸¹ As discussed below, the "inside" nature of the individual's relationship with the government in their country of origin, she acquires with the status of immigrant / foreigner, from which it comes into relationship with the state of the host country. The latter relationship is one that is relevant to international law, which examines the vulnerability of international migrants in this work.

inequality becomes, in practice, an understood value gradually evolves into a regulatory enforcement in ever wider social circles by the repeated experience of social relations between nationals and immigrants.

In these dynamics, nationals transfer the differentiation the State makes between nationals and foreigners to the social context of their relations with immigrants / foreigners. That distinction ends up being converted into a standard or normative basis of a **de facto** power asymmetry in the relations between immigrants and nationals.

This condition of vulnerability has two dimensions: the first, which is objective, and is conceptualized as a **structural vulnerability**, and the second, which is subjective, and is conceptualized as a **cultural vulnerability**. The first is characterized by an "extreme lack of power." This condition is understood in the way that Max Weber understood an **ideal type** in his theory of social relations. Similarly, the "extreme lack of power" is a theoretical construction that represents the extreme inequality that characterizes international migrants as subjects of human rights.

One of the empirically demonstrable expressions of "extreme lack of power" is "impunity", understood as a consequence of the condition of "extreme lack of power." This impunity is understood as the absence of sanction of the violation of immigrants' human rights.

Such impunity exists in practice because it is fueled by the ideological elements with which inequality is justified subjectively imposed on immigrants vis a vis the nationals of the host country. One of the regulatory frameworks relevant to the understanding of vulnerability as a condition of migrants as subjects of human rights is represented by the so-called Schengen Agreement". The spirit of these agreements is to achieve equal or " full integration " of immigrants' / aliens' access to public and private resources for the improvement of their living standards and the protection of their human rights. The "Schengen agreements" represent a regulatory framework under which countries interested in being accepted as members of the European Union, are measured.

This does not mean that those who currently members have complied in full. Candidate countries criticize current members for the double standard of accountability by asking for "accountability" on the observance of the regulatory framework in each member country of the European Union. The fact is that several countries in the system are at the forefront in their levels of observance and protection of human rights of immigrants. These levels of compliance with these international regulatory frameworks have had an empowering effect of enabling immigrants / foreigners as subjects of human rights whose clearest expression is implicit in the recommendation to grant the right to vote in local elections to all legal immigrants.

This effect is concomitant to a departure from the status of "extreme lack of power" of the immigrants in those host countries that have not accepted the compromise represented by the human rights frameworks based on the UN's Universal Declaration of Human Rights.

If it were feasible to construct a scale of "integration" of immigrants / foreigners as members of the societies of host countries with equal rights as nationals, it would be to have a criterion for measuring the vulnerability of immigrants in each country as subjects enjoying human rights. A **contrast /sensu** would have a yardstick to measure the empowerment or rating that dialectically "collides", as suggested by the diagram, with the conditions of impunity from the inequality initially created by the act of sovereignty that distinguishes nationals from foreigners/immigrants and by which the "asymmetry of power" is derived between each other, when that distinction was based on the social relations between them to the condition of vulnerability of international migrants.

On the positive end of these measurements it is likely to find countries that have granted voting rights in local elections to immigrants with legal residence. This is the case today of Spain, Sweden, Denmark and Portugal. It is unavoidable to make comparisons between these countries and the countries receiving the largest flows of immigrants in the world. From this comparison arises the daunting realization of what needs to be achieved regarding the conditions of vulnerability in which the majority of the 190 million international migrants who swarm around the world and

cross international borders without immigration documents live. This reflection brings us back to the diagram to understand that integration, as defined here, represents the most rational way to combat the impunity that is the most unjust and irrational result of the processes of vulnerability of migrants as subjects of human rights.

To the extent that in the practice of social relations, the alien / immigrant does not have enough power to successfully challenge the imposition of this asymmetry of power and social status of their relationship with nationals, the inequality this implies begins to acquire a legislative nature from which subsequent relationships of these immigrants with those nationals are repeated and perpetuated.

The recurrence of social relations between nationals and foreigners in the asymmetry of power that acquires "meaning content" in Weberian terms, involves a process of social construction of an inherent asymmetry of power and social relations between them. Social process that involves the metamorphosis of structural vulnerability in a cultural vulnerability, a "value understanding" reached in the origin of social relations between immigrants and national, has grown into a social equivalent of what Bourdieu calls a *habitus*⁸², that is, a *sui generis* regulatory framework that immigrants are subject to the social contexts of their interactions with nationals of the host country.

Taking our analysis a step further it becomes necessary to elaborate on the "structural" character of vulnerability. That character derives from the existence of a power structure that occurs in every national society in which some have more power than others. The concept of power as a factor shaping social relations used here is consistent with the use given this concept by the American sociologist Howard S. Becker as included in his theoretical development of the explanation of deviant behavior as follows:

The different capacity to formulate and apply norms to others is essentially a case of differences of power (legal or extralegal). Groups whose social position gives them weapons and power are best able to ensure that their norms are met. The distinction as to sex, age, ethnicity and social class is

⁸² Pierre Bourdieu, *Meditations pascaliennes*, Paris, Editions du Seuil. 1997. Pp. 158-193)

***related to power differences, which explains the differences in the degree to which the groups so distinguished can make norms for others*⁸³.**

In this sociological approach to the power differential between those who "set rules" and "others" who follow them, the actors who interact to set up "rules for others" are implicit. The cultural nature of vulnerability derives from the set of cultural elements (stereotypes, prejudice, racism, xenophobia, ignorance and institutional discrimination) with derogatory meanings which tend to justify power differences between nationals and foreigners or immigrants.

The combination of: a) power differentials based on a structure in which the immigrant is placed at a lower level to nationals and b) the set of cultural elements that justify this results in various degrees of impunity in cases of violation of human rights of immigrants. This impunity becomes therefore an empirical indication of the powerlessness of the migrant, equal to their vulnerability. Here "impunity"⁸⁴ means the absence of economic, social or political costs for the violator of the human rights of immigrants.

RECOMMENDATIONS

The fact that no country with the highest immigration rate has ratified the UN International Convention for the Protection of the Rights of All Migrant Workers and Their Families, adopted in 1990, which came into force in 2003, is sufficiently

⁸³ The paragraph so eloquently refers to the application of labeling theory of immigrants: "In Hughes's analysis there is another element that can be usefully applied: the distinction between master and subordinate status. In our society, as elsewhere, some conditions supercede the other and have some priority. Race is one of them. Membership of the black race as socially defined, will have greater importance than other social considerations in most cases. Being a doctor, or middle class, or a woman shall not prevent any entity being treated as black, the other considerations taking in second place. Outcome status (depending on the type of deviation) corresponds to such master / slave relationship).

⁸⁴ In the first week of May an anonymous message appeared on the Internet inviting people to a "hunt of undocumented migrants" in the ranches of Arizona. One of these ranchers named Roger Barnett said he was ready to defend his property from damage caused by the "illegal foreigners". He told **USA Today** that they leave trash in their path and destroy water pipes. He said he was willing to put a stop to it with weapons and was willing to kill Mexicans if needed (see **Los Angeles Times**, May 9. Note Sergio Munoz). The context of impunity in which such expressions of xenophobic overtones abound took on a tragic face on May 13 when the migrant José Vega Bastida was shot by an officer of the U.S. Border Patrol steps away from the metal fence border in Mexico at the place called "the edge" (see: Mexicali newspaper **La Voz** May 18, p.23-A). Another Mexican was killed by a bullet in the chest by a Border Patrol agent in the United States in the early hours of Sunday, May 21, in Brownsville, Texas. In the same week five Mexican migrants were killed in violence caused by U.S. raiders (Diario **Frontera** de Tijuana, May 23, p. 1.).

eloquent as to talk of the resistance of host countries to recognize the benefits they receive from immigration. This fact leaves no doubt that in most host countries of immigrants there exists a reluctance to recognize the endogeneity of demand for labor of immigrants. It is quite possible that in the absence of such resistance, if, by contrast, there were an official recognition of the manner in which the immigrant workforce meets the requirements of their respective endogenous labor demand, such recognition would have a neutralizing effect on anti-immigrant ideologies that promote xenophobia and justify discrimination against immigrants.

Such recognition by the governments of the UN Member States would produce annual statistics on immigrant labor demand by sectors of the economy. Norms, adhered to by all countries who would commit to sending a UN quantitative information about the reality of their annual demands of workforce immigrants, could become an incentive for host countries to seek the path of negotiation with countries of origin to the international agreements by which the responsibility of countries of origin and host countries to combat illegal immigration more rationally would be propitiated. The growth of illegal immigration in the world is crying out for new strategies that enable international migration to be consistent with the principle of legality and rule of law without which it loses the rationality of markets and international coexistence. The acceptance of a UN standard that commits member states to produce annual quantitative information on their respective demands for immigrant labor force, would not conflict with the sovereign right of each country to decide who can and cannot enter its territory or would entitle any person to enter a foreign country without proper authorization from the government of that country. Such regulations would be aimed at inhibiting the emergence and proliferation of anti-immigrant ideologies that tend to fuel xenophobia and to justify discriminatory practices against immigrants. The production and availability of such statistics on the endogenous demands of the immigrant workforce might allow the anti-immigrant ideological confrontation with the objectivity of the facts.

For these reasons it is recommended that a UN norm be created that commits UN Member States to produce an annual report with measurements and statistics about the reality of their immigrant workforce demands.

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