

## **INTERNATIONAL MIGRATION AND HUMAN RIGHTS IN NORTHEAST ASIA**

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### **Introduction**

A human rights analyst observes, "The language of human rights, not to mention the view and perspectives of migrants, have been largely absent from the migration policymaking arena to date."<sup>1</sup> As another observer puts it, "[M]uch— perhaps most — national migration policy making takes place outside a human rights framework."<sup>2</sup> Among the reasons cited for the general lack of attention to the need to protect the human rights of migrants are a lack of data, gaps between different institutional mandates (migrants fall through the cracks in international law), parallel systems for protecting employment rights and human rights, and limited reporting by human rights NGOs. The dominance of refugee protection in the migration field is another reason mentioned, as well as the fact that until recently human rights law only made explicit reference to migrants in the context of free (voluntary) movement of people across borders.<sup>3</sup>

A change is afoot. The international community is beginning to recognize the relationship between migration and human rights. During the 1990s, the UN General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) and the UN Human Rights Commission identified migrants as a vulnerable group and appointed a Special Rapporteur in 1990. As well, an expert study by the Sub-Commission on the Promotion and Protection of Human Rights charted the protection of non-citizens' rights under international law.<sup>4</sup> The Global Commission on International Migration (GCIM) was launched in January 2004. The World Commission on the Social Dimension of Globalization, established by the International Labor Organization (ILO), issued a report calling for the

development of fair rules for the cross-border movement of people to complement fair rules for trade and capital flows.<sup>5</sup> Another sign of the growing global awareness of the importance of migration and of the protection of migrants' rights is the High-Level UN General Assembly Discussion scheduled for September 2006 to discuss these issues.

The purpose of this paper is to assess the state of human rights protection for border-crossing migrants in Northeast Asia and to explore the potential of regional cooperation in promoting the cause of human rights protection in this region. We will first look at the state (scale and nature) of international migration in Northeast Asia. We will highlight the most serious human rights problems in the region. We will then provide a brief review of the human rights principles and norms established under conventional and international customary law. In that section, we will also see which pertinent treaties the Northeast Asian countries have ratified. In the final section we will explore the advantages and disadvantages of a regional approach to the promotion and protection of human rights of international migrants in Northeast Asia.

### Definitions

Before we proceed, we need to define some key terms used in this discussion: “migration”; “human rights”; and “Northeast Asia.”

In this paper, we are primarily concerned with migration across national borders, leaving internal movement of people to other studies. Traditional population studies define migration as “the geographic movement of people across a specified boundary for the purpose of establishing a new permanent or semipermanent residence.”<sup>6</sup> This definition, however, overlooks some of the nuances of primary migration modes in Northeast Asia—such as Chinese shuttle traders moving between northeast China and the Russian Far East. Such cross-border human flows reflect a different type of migration. They differ temporally—because they are not necessarily permanent or semipermanent—and qualitatively—because their purpose is not necessarily to establish new residence. Yet, we cannot dismiss such people as mere business travelers. Their impact on both the sending and receiving countries is greater than that of the itinerant businessperson or tourist.<sup>7</sup> Thus, we

define *migration* broadly to include temporary human flows across national borders, in addition to migration for the purpose of establishing new and more permanent residence.

Most of the cross-border movement of people takes place legally but some of it is illegal. Many migrants are “undocumented” in the sense that they lack the necessary and/or proper documents for departure, admission, transit, or return. Many migrants are considered “irregular” in the sense that the lawfulness of their entry or residence in the transit or destination country has not been established or is contested by the respective state. Our discussion will include all these categories of people who, for most part, voluntarily cross national borders. In addition, our discussion will include refugees who are compelled to flee their country of origin for various reasons, as well as persons who are trafficked abroad against their will and those who legally and voluntarily move to a foreign country but then end up in a situation of exploitation or human rights abuse, such as in the sex industry.

In this discussion, “human rights” is also defined broadly and includes all the basic human rights enshrined in international human rights conventions, those human rights for which there is widely recognized customary international law, as well as those rights which are not yet firmly established. Our discussion will also include treaties and customary international law that specifically addresses the rights of migrants who cross state borders.

Turning to the question of what territories constitute “Northeast Asia,” the difficulty of drawing clear boundaries affects our understanding of international migration in the region. For example, if we were to calculate the region’s share of total global migrant stock in 2000, it would account for only 11.7 percent, or 19,029,000 persons. However, this figure reflects the inclusion of all territories of all Northeast Asian countries: China, the Democratic People’s Republic of Korea (DPRK), Japan, Mongolia, the Republic of Korea (ROK), and the Russian Federation. Clearly, including the entire expanse of the Russian Federation in Northeast Asia is hardly justifiable. Were we to subtract Russia and its 13,259,000 migrants from the picture, Northeast Asia would be home to only 3.4 percent of the world’s total migrant stock—and even this number includes some 2.7 million migrants in Hong Kong, Special Administrative Region (SAR).<sup>8</sup> In the present paper, Northeast

Asia is geographically limited to the three northeastern provinces of China (Heilongjiang, Jilin, and Liaoning), DPRK, Japan, Mongolia, ROK, and the territories of the Russian Far East.

### **International Migration in Northeast Asia**

In this section, we will briefly describe the causes (“push” and “pull” factors) and dynamics of cross-border migration in Northeast Asia.

#### Causes

The causes of migration, whether in Northeast Asia or elsewhere in the world, are some combination of demographic, economic, political, and other factors. In the case of Northeast Asia, demographic and economic conditions play the largest role. Both sets of conditions have push and pull components.

Demographic changes in the region over the past twenty years have established conditions in both sending and receiving countries conducive to migration. China’s large population is the most evident push factor in the region, and its population is expected to grow for several decades to come. Significant internal migration, accompanied by rapid urbanization, increases the pressure for continued migratory outflows to other nations.<sup>9</sup> It is worth noting that Northeast Asian host nations receive significant numbers of migrants from countries outside of this region experiencing similar demographic transitions, e.g., India, Thailand, and the Philippines. Japan is host to a large number of Latin Americans of Japanese descent.

On the pull side, many receiving nations in the region are entering a phase of population decline. Japan, ROK, and Russia in particular are experiencing rapid population decline, due to low fertility rates and, in the case of Russia, high morbidity as well. Accompanying this transition is the ageing of the labor force in these same countries. This situation has

led to a shift in the population structure in which a growing number of elderly dependents must be supported by a diminishing number of workers.

Migration for economic purposes is not a new phenomenon in Northeast Asia, although it may have been temporarily suspended due to Cold War political factors.<sup>10</sup> In terms of labor supply, underemployment in sending countries serves as the main push factor. Economic hardship in China's northeastern provinces has led to high levels of unemployment in that region, causing some to look to Japan, ROK, and Russia for opportunities. The Russian Far East has also lagged behind the overall economic performance of the nation, and some Russians have sought employment elsewhere in Northeast Asia. A number of workers from DPRK have also looked for opportunities to work outside of their own poverty-stricken nation. Again, Northeast Asia has become host to migrants from Asian nations outside the region experiencing economic hardship.

Rapid economic development in Japan and ROK set the stage for the demand side of labor migration in the region. On the one hand, wages for unskilled or manual labor in these economies had risen to a level attractive for workers from less prosperous countries, but they were no longer attractive to the native populations, who now expected a higher standard of living. On the other hand, ageing and population decline had reduced the labor force in the host countries, requiring an inflow of migrant labor in order to guarantee continued economic growth.<sup>11</sup> However, both Japan and ROK have long maintained restrictive immigration policies. As a result, illegal or irregular migration into these countries has grown in recent years.<sup>12</sup>

In addition to demographic and economic reasons, individuals might be motivated to leave their home countries for political reasons. The political situation in Northeast Asian nations has been relatively stable. As well, potential receiving states, namely Japan and ROK, have been reluctant to accept refugees. Consequently, the flow of refugees and other displaced persons in Northeast Asia has been relatively small as compared to other regions. The primary exception appears to be DPRK, as we will discuss below.

### Dynamics

Northeast Asia was home to 19,027,941 international migrants in 2000, as compared with 15,981,436 in 1990 (if Hong Kong and Macao are excluded, then 16,033,680 in 2000 and 13,558,789 in 1990). All nations increased their stocks of international migrants. Some nations saw the total number of migrants increase almost twofold (e.g., Japan and China) (see Table 1).<sup>13</sup>

What is missing is the composition of this migrant stock. Data for all Northeast Asian countries are incomplete.

Table 1. Migrant Stock, NEA Nations, 1990, 2000.

Major area, region, country or area	Estimated number of international migrants at mid-year (both sexes)		Estimated total population at mid- year (thousands)		Estimated number of female migrants		Estimated number of male migrants		Percentage of international migrants		Female migrants as percentage of total migrants		Net Migration		
	1990	2000	1990	2000	1990	2000	1990	2000	1990	2000	1990	2000	1990	1995	2000
<b>Eastern Asia</b>	<b>4,292,736</b>	<b>5,768,541</b>	<b>1,349,961</b>	<b>1,481,110</b>	<b>2,102,777</b>	<b>2,960,174</b>	<b>2,189,959</b>	<b>2,808,367</b>	<b>0.32</b>	<b>0.39</b>	<b>49.0</b>	<b>51.3</b>			
China	379,808	512,688	1,155,305	1,275,215	186,047	263,090	193,761	249,598	0.03	0.04	49.0	51.3	-528,050	1,280,700	1,950,000
Hong Kong, China	2,218,473	2,700,531	5,704	6,807	1,092,722	1,455,567	1,125,751	1,244,964	38.89	39.67	49.3	53.9	25,750	300,000	300,000
Japan	877,210	1,619,790	123,537	127,034	436,271	790,066	440,939	829,724	0.71	1.28	49.7	48.8	158,230	248,180	280,130
Korea, Democratic People's Republic	34,364	36,562	19,956	22,268	16,833	18,762	17,531	17,800	0.17	0.16	49.0	51.3	0	0	0
Korea, Republic of	572,053	597,112	42,869	46,835	264,807	284,790	307,246	312,322	1.33	1.27	46.3	47.7	-189,420	-115,000	-80,000
Macao, China	204,174	293,730	372	450	102,837	143,728	101,337	150,002	54.86	65.30	50.4	48.9	37,820	16,400	16,400
Mongolia	6,654	8,128	2,216	2,500	3,259	4,171	3,395	3,957	0.30	0.33	49.0	51.3	32,720	-60,000	-90,000
Russian Federation	11,688,700	13,259,400	148,292	145,612	6,325,859	7,207,495	5,362,841	6,051,905	7.88	9.11	54.1	54.4	1,314,480	1,858,210	2,300,000
NEA, All Territories NEA, No HK and Macao	15,981,436	19,027,941	1,498,253	1,626,722	8,428,636	10,167,668	7,552,800	8,860,272	0.08	1.27	52.7	53.4	851,530	967,090	776,530
	13,558,789	16,033,680	1,492,176	1,619,465	7,233,077	8,568,373	6,325,712	7,465,306	0.08	1.07	53.4	53.4	787,960	650,690	460,130

Source: World Bank, World Development Indicators, <<http://devdata.worldbank.org/>> (accessed August 19, 2005)

*Russia*, the country with the largest migrant stock in Northeast Asia, compensated for 14 percent of its population shortfall with immigration in 2004 and this figure is expected to grow to 22 percent in 2008.<sup>14</sup> However, Northeast Asian countries are neither major sources nor major destinations of migration. No nation in this region has ranked in the top five sending nations to Russia since 1994, when officials registered an inflow of 328,368 Chinese nationals.<sup>15</sup> Between 1997 and 2004, China played an ever-diminishing role in immigration to Russia, declining sharply from 2,861 arrivals to 212. The same trend is true for departures from Russia to China: 1,222 in 1997 and 154 in 2004.<sup>16</sup> In 1999, Russia officially received 24,256 registered workers from China and 10,110 from DPRK.<sup>17</sup> Of course, actual numbers may be different, given significant suspected irregular migration into the Russian Far East from China. No other Northeast Asian nation made a significant contribution to Russia's migrant stock.

In *ROK*, the economy has become increasingly dependent on labor migration. Rapid economic expansion and population ageing resulted in labor shortages beginning in the 1980s. *ROK* supplemented its labor force with workers from the region, many of whom were undocumented.<sup>18</sup> Inflows of officially employed migrants to *ROK* peaked in 1989 with 164,463 persons, the majority of whom were from Japan. After some decline in the 1990s, the numbers rose again. In 2002, *ROK* received 118,303 persons—22,389 from China, 17,778 from Japan, 6,143 from Indonesia, and 4,917 from the Philippines. Over the same period, *ROK* was a sending country to Japan, Hong Kong, Taiwan, Singapore, China, and the Philippines. In 2002, *ROK* sent 251,604 persons abroad—56,246 to Japan, 50,978 to China, and 6,481 to the Philippines.<sup>19</sup> By 2003, foreign workers comprised about 2 percent for the total labor force in *ROK*. Estimates place the total number of foreign workers at 388,816 persons. Most work in low-skilled occupations, and about 35.5 percent are presumed to be irregular workers.<sup>20</sup>

*Japan* also relies increasingly on migrant labor. The labor force saw the number of foreigners working legally in Japan jump from 750,000 in 1975 to 1.8 million in 2001. This last number was supplemented by a supposed 250,000 irregular workers.<sup>21</sup> By 2004, the number of registered foreigners living in Japan had increased to 1,973,747 persons. Koreans, including those born in Japan, accounted for the largest share with



607,419 persons (30.8% of total), followed by 487,570 Chinese (24.7%), 286,557 Brazilians (14.5%), and 199,394 Filipinos (10.1%).<sup>22</sup>

Over the past thirty years, *China* has emerged as one of the world's leading sources of labor migration outflows. However, in recent years, the dynamics of migration in China have grown more complex, and it is becoming both a sending and receiving country.<sup>23</sup> Without question, China remains a major migrant sending nation. In 2002, 118,000 Chinese nationals took up residence overseas, up from 70,000 in 2001. The Chinese government registered a total of 20,204,600 exits in 2004.<sup>24</sup> Papademetriou and Margon report that “in 2002, the Chinese government estimated that more than 400,000 Chinese left for overseas employment.”<sup>25</sup> The number of Chinese working overseas is bound to grow as part of the fast swelling number of Chinese citizens going overseas, which is expected to grow from about 28.8 million in 2004 to 100 million in 2020.<sup>26</sup>

## **Refugees**

Despite an increasing number of persons of concern to the UN High Commissioner for Refugees (UNHCR) around the world, the global refugee population has steadily dropped since 2001, marking a 24-percent decline over the past four years.<sup>27</sup> Other categories of concern include asylum-seekers, internally displaced persons (IDPs), returned refugees, and returned IDPs.

The refugee population in Northeast Asia has also declined steadily. In 1996, there were a reported 542,080 refugees located in Northeast Asian nations (excluding Hong Kong and Macao SARs). China accounted for more than half of this number and Russia for just less than half.<sup>28</sup> By 2004, the total refugee population in the region had declined to 303,238 persons. Of this number, the vast majority (98.72%) lived in the People's Republic of China.<sup>29</sup> With this decline in refugee population, Northeast Asia's share of the global refugee population—though never significant compared to other regions—has diminished as well. In 1997, the region accounted for 4.51 percent of the global refugee population. That share had declined to 3.37 percent in 2004.<sup>30</sup>

The composition of refugee-sending nations has changed, too. Northeast Asian nations were the origins of 365,330 refugees in 1994. Although this number had

decreased to 151,400 persons in 2000, it had increased to 243,705 persons by 2004. Again, Russia and China were the primary source countries for refugees.<sup>31</sup>

### Country Cases

#### *People's Republic of China*

China is both a refugee sending and receiving country. Almost all official refugees entering the People's Republic of China arrive from Vietnam. Refugees leaving PRC mostly seek asylum in Western nations (United States, Germany, etc.) and India. China is a signatory to the 1951 Convention and the 1967 Protocol.<sup>32</sup> As will be discussed later, these figures clearly reflect the Chinese government's reluctance to classify North Koreans in PRC as anything other than economic migrants.<sup>33</sup> PRC refusal to acknowledge the status of North Korean refugees or to accept their applications for asylum has made it difficult for observers to estimate their numbers, with estimates ranging from 10,000 (according to official Chinese reports) to 400,000 (according to various NGO estimates).<sup>34</sup> A reasonable estimate appears to be between 50,000 and 100,000 North Koreans living in China, primarily in Yanbian Province, bordering DPRK.<sup>35</sup>

#### *Democratic People's Republic of Korea*

Little information is available regarding the refugee population of DPRK.<sup>36</sup> The country is not a party to any of the international conventions regarding refugees and appears to have no policies or legislation protecting the rights of refugees and asylum seekers. Its closed regime and reportedly harsh socio-political environment make it unlikely that DPRK would be a destination for refugees from other nations. As noted above, it is suspected that a large number of DPRK citizens continue to cross into PRC's Yanbian region, although it is unclear whether their purpose is to seek out better economic opportunity or to escape the severe living conditions of DPRK. Freedom of movement in DPRK is highly restricted, and it is likely that any attempt to seek asylum in neighboring China or Russia would meet with harsh punishment by the DPRK government. However, DPRK does issue short-term exit visas for North Koreans with family on the Chinese side of the border or for small-scale trade with Chinese border

communities. The Department of State's report on human rights practices in DPRK provides some indication that the DPRK government has taken measures to distinguish between illegal labor migration and outright defection.<sup>37</sup>

### *Japan*

Japan is signatory to both the 1951 Convention and the 1967 Protocol. It received a very small number of refugees with respect to the rest of Northeast Asia, totaling 2,266 persons in 2003, according to one report. Another report estimates a higher number, about 7,900 refugees. Most of these refugees were reportedly from Southeast Asian nations such as Vietnam, Myanmar, Cambodia, and Laos, although Japan received 22 official asylum applications from Chinese citizens in 2003. Japan is not a major source of refugees.<sup>38</sup> On the whole, Japan has well-established legal and procedural frameworks for managing refugee issues. The Japanese government supports family reunification of refugees and does not detain asylum seekers without legal status. Poor training, however, seems to have led to incidences of UNHCR-recognized refugees being detained or asylum seekers being rejected. Japan's many complex immigration rules often make the asylum application process unnecessarily complicated and drawn out.<sup>39</sup>

### *Mongolia*

The U.S. State Department reports that Mongolia is not a party to the 1951 Convention or the 1967 Protocol. The Mongolian government has not established laws or rules for granting refugee status. Nevertheless, Mongolia did adhere to some bare minimum practices with regards to refugees, including non-refoulement. Asylum requests were rarely granted. The Mongolia Government has embarked upon minimal cooperation with UNHCR. No data are available on the refugee population of Mongolia, although there are reports of small numbers of North Koreans residing in Mongolia. Like China, the Mongolian government seems to prefer classifying these individuals as "economic migrants."<sup>40</sup>

### *Republic of Korea*

South Korea is a signatory to both the 1951 Convention and the 1967 Protocol. Its refugee population in 2004 was minimal (44 individuals) according to one report.<sup>41</sup> A different report speculates that 1,670 refugees live in South Korea, most of whom are from North Korea.<sup>42</sup> Most asylum applicants were from Myanmar. The primary destinations for refugees from ROK were Germany and Canada.<sup>43</sup> ROK policy towards refugees is rather restrictive. Filing and receiving asylum status is complicated. UNHCR assistance has helped improve some of the asylum procedures. The main exception to South Korea's relatively rigid stance towards refugees is the case of North Koreans. ROK law affords refugees from DPRK citizen status upon defection from the North. South Korea also facilitates the processing of North Koreans from third countries.<sup>44</sup>

### *Russian Federation*

Russia is party to both the 1951 Convention and the 1967 Protocol. For most of the 1990s, Russia was home to large numbers of refugees, partly due to the massive upheavals following the disintegration of the Soviet Union and partly due to armed conflict in border regions of the Caucasus, primarily Chechnya. By 2004, Russia's official refugee population had declined to 1,852 persons. Much of this decrease is accounted for by naturalization of refugees.<sup>45</sup> Major refugee origin countries were former Soviet republics; Northeast Asian nations were not major sources of refugee flows to Russia.<sup>46</sup> The U.S. Committee for Refugees and Immigrants reports a far greater number of refugees living in Russia: 150,000 refugees and asylum seekers, most of them from Afghanistan and Georgia.<sup>47</sup> Russia is also a significant refugee sending nation, primarily to Western countries. According to UNHCR, the number of Russian refugees has grown from 28,314 persons in 1999 to 107,903 in 2004.<sup>48</sup> The U.S. Committee for Refugees estimates this number to be 50,700 persons.<sup>49</sup> Despite its accession to the conventions on refugees, Russia's handling of refugees and asylum seekers has been problematic. Violations of these protocols include frequent refoulement of refugees (in contradiction to the existing Law on Refugees), refusal to grant asylum, and refusal to grant legal entry to the country for rejected asylum seekers. Authorities would often not even accept asylum applications or simply discard them. Many refugees from specific

ethnic groups have been victims of xenophobic attacks with little action by law enforcement authorities. Police often use the unsettled status of refugees as opportunities for extortion, or they simply detain the refugees as illegal migrants. It was hoped that the 2002 Law on Citizenship would clarify some refugee issues, especially for citizens of former Soviet republics, but the law actually introduced more difficulty into the citizenship process.<sup>50</sup>

### **Human Trafficking**

One of the consequences of increased movement of people across borders in Northeast Asia has been a definite rise in human trafficking. All Northeast Asian nations are in some way involved in the process of the illegal transport of humans across national borders for commercial sexual exploitation and forced labor. Countries may be senders or receivers of trafficked individuals, or they may be transit points for further travel to third countries. Many Northeast Asian countries are simultaneously any combination of these roles. Moreover, human trafficking processes in Northeast Asia are very much linked with Southeast Asian and global trafficking flows.<sup>51</sup>

There are no reliable data on trafficking in the Northeast Asian region, which is to be expected for an illegal activity that is often associated with organized crime networks. Some estimates put the global flow of trafficked persons at nearly one million individuals. If all of Asia accounts for about one-third of this number, then Northeast Asia's share of human trafficking flows is naturally less than 300,000.<sup>52</sup> Again, geographic boundaries become blurred when discussing human trafficking flows since many links exist between the region and other parts of the world. Table 2 shows human trafficking linkages in Northeast Asia.

The primary characteristics of human trafficking are similar across the region. The quest for economic opportunity is one factor. Many victims of trafficking are deceived by traffickers, who lure the former with promises of legitimate employment in foreign countries. In many cases, victims have even paid large sums of money to their exploiters as a service fee.<sup>53</sup> The combination of restrictive migration policies and legal loopholes also facilitates the spread of trafficking. For example, Japan's "entertainer" visa system was long used for bringing in woman for commercial sexual exploitation,

although recent regulatory changes may improve the situation.<sup>54</sup> Another characteristic is the increasing feminization of international migration in Asia.<sup>55</sup> Many of these women are legitimate economic migrants working as domestic help or healthcare providers.<sup>56</sup> Others are women deceived by devious criminal schemes. Women migrants tend to be more vulnerable to trafficking, especially women in marginalized positions (divorced, widowed, etc.).<sup>57</sup> It should be remembered, however, that trafficking victims are not exclusively women, nor are they used exclusively for sexual exploitation. Men, women and children throughout Asia are trafficked for exploitative labor, too, often bordering on involuntary servitude.<sup>58</sup>

Table 2 Human Trafficking Linkages in Northeast Asia

NEA Country	Sending to:	Receiving from:	Transit Point
China	Japan, ROK, Russia, Singapore, Sri Lanka, Taiwan, Rest of World	DPRK	Yes
DPRK	China, Russia	--	--
Japan	--	China, Philippines, Russia, Taiwan, Thailand	
Mongolia	China, ROK	--	--
ROK	Japan, United States, Canada	China, Philippines, Russia, Thailand	Yes
Russia	China, Japan, Mongolia, ROK, Gulf States, Macao, Sri Lanka	China, DPRK	Yes

*Sources:* Piyasiri Wickramasekera, Asian Labour Migration: Issues and Challenges in an Era of Globalization, International Migration Programme, International Labour Office No. 57, Geneva: International Labour Office, 2002; Demetrious Papademetriou and Sarah Margon, "International Migration Trends and Patterns in Asian and Oceania," in Irena Omelaniuk, ed., World Migration 2005: Costs and Benefits of International Migration, Geneva: International Organization for Migration, 2005; U.S. Department of State, Trafficking in Persons Report, Office of the Under Secretary for Global Affairs No. 11252, Washington, D.C.: U.S. Department of State, June 2005.

### North Koreans in Northeast Asia: Refugees or Economic Migrants?

The status of North Korean migrants in Northeast Asia has become a topic of heated debate in the region. As noted earlier, the Chinese government is reluctant to classify North Koreans in China as anything other than economic migrants.<sup>59</sup> Beijing's refusal to acknowledge the status of North Korean refugees or to accept their applications for asylum has made it difficult for observers to estimate their numbers. Official Chinese government reports state there are no more than 10,000 North Koreans in China.

Certain NGOs claim figures of more than 300,000 persons. Seymour reports that a reasonable estimate is between 50,000 and 100,000 North Koreans living in China, primarily in Yanbian Province, bordering DPRK.<sup>60</sup>

Because of their uncertain status in China, North Korean migrants are highly vulnerable to human rights violations.<sup>61</sup> Likewise, China's insistence that these North Koreans are just economic migrants means that those who are seeking refuge are usually refused the right of transit to a third country or, worse, are refouled to DPRK. The problem of North Koreans in China is exacerbated by the Chinese government's refusal to fulfill its obligations under various international conventions to which it is a signatory. Thus, the government continues to deny the UNHCR's requests to monitor the situation in Northeast China.<sup>62</sup>

In recent years, some North Koreans with the clear intention to defect have found their way to South Korean or third-country diplomatic missions in China. Other countries tend to recognize these individuals as legitimate asylum seekers and are prepared to assist with relocation to South Korea. (Russia has historically been less accommodating to North Korean defectors.) As mentioned earlier, the ROK offers all Koreans from the DPRK full South Korean citizenship. Since the end of the Korean War, an estimated 6,000 North Korean "refugees" have arrived in South Korea, including the 460 North Korean defectors airlifted from Vietnam to Seoul in 2004.<sup>63</sup> As a result of several widely publicized defections, the Chinese government seems to be trying to make this method of defection nearly impossible by increase the police guard around foreign consular offices.<sup>64</sup>

The consequences of refoulement can be severe. If classified as "illegal economic migration," the sentence might be three years of hard labor. Leaving the country for clearly politically motivated reasons may merit at least seven years or, perhaps, even execution.<sup>65</sup> The difficult conditions of DPRK prisons and labor camps are a further example of human rights violations that an emigrant or refugee from North Korea may have to endure.

### **Relevant Human Rights Principles and Norms**

In this section, we will introduce the most important principles and norms under international customary and conventional law that pertain to the rights and responsibilities of states, including sending, transit, and destination countries, and to the basic rights of migrants, both as citizens of their respective countries and as non-citizens in receiving and transit countries. We will also point out the most notable limitations of the existing legal regimes in this field.

### State Authority and Responsibility

International law affirms the authority of states to regulate the movement of persons across their borders. States have wide discretion in developing admission, residence, expulsion, and naturalization policies for non-citizens.<sup>66</sup> They have authority to manage admissions and residence of foreign nationals in their territory. They can exercise authority against persons and organizations that seek illegal transportation of migrants.<sup>67</sup> States have authority to decide who its nationals are. There is no international law requiring states to grant citizenship to the children of immigrants, although international law urges states to take steps to avoid statelessness.<sup>68</sup> States possess authority to limit and control migration on national security grounds, and states expel and exclude persons believed to pose a threat to their national security.<sup>69</sup> For example, in the wake of the September 11, 2001 attacks in the United States, the UN Security Council adopted Resolution 1373, calling on states to "[p]revent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents."<sup>70</sup>

Under customary and conventional international law, states have a set of responsibilities regarding the cross-border movement of people. At the most fundamental level, states must observe the principle, *pacta sunt servanda*, that treaties freely concluded and in force between states are to be respected and implemented.<sup>71</sup> It is also established that under international law, treaty obligations between parties take precedence over conflicting provisions of domestic law, although it remains a question of municipal law whether international law will be given priority in domestic courts over inconsistent domestic law.<sup>72</sup>



States are obligated to comply with commitments in human rights conventions that they are parties to as well as with customary international law norms. Most human rights are guaranteed irrespective of an individual's immigration status or nationality.<sup>73</sup>

Among the international legal principles with direct relevance to the cross-border movement of people, the most basic are: non-discrimination, general protections regarding due process, detention, and access to courts, specific protections pertaining to immigration proceedings, and norms relating to family unity.

The principle of *non-refoulement*, or prohibition against the return of persons to particular kinds of harm, is enshrined in the 1951 Convention Relating to the Status of Refugees, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.<sup>74</sup> Another principle, which is widely recognized under customary international law, relates to the duty of states to accept the return of their nationals from other states, although this rule is not found in any multilateral convention.<sup>75</sup> States are also bound by the requirement under the 1963 Convention on Consular Relations to inform a non-citizen whom they arrest or detain of his/her right to contact consular officials of his/her home state and to communicate such a request to consular officials "without delay." Consular officials have the right "to visit a national of the sending state who is in prison, custody, or detention, to converse and correspond with him, and to arrange for his legal representation."<sup>76</sup>

### Individual Persons' Rights

Among the rights established for individual persons that relate to international migration is the freedom to leave any country and to return to one's own country.<sup>77</sup> However, this right is not absolute. States may, for example, prevent departure to enforce criminal sanctions, the payment of taxes, military service requirements, and attendance at legal proceedings.<sup>78</sup> Even though individual persons have the right to leave any country, including their own, they cannot exercise this right unless there is a state willing to admit them. In this sense, this right is "incomplete".<sup>79</sup> This obviously creates difficulties for refugees and asylum seekers who seek safety outside their countries of origin. Unauthorized departure and entry may and do result from this

fact.<sup>80</sup> The right to leave applies to both nationals and non-nationals of the state of residence, but the right to return may be limited to citizens and nationals of a state or to persons stripped of their nationality in violation of international law, as well as to settled immigrants. There are fewer restrictions on one's right to return to his/her country than on his/her right to depart.<sup>81</sup> It should be added that even though a state has the right to decide whether a migrant entered or remained in its territory illegally, the fact of illegal entry or stay does not nullify the state's duty under international law to protect the migrant's basic rights without discrimination, for example against torture, degrading treatment, or forced labor.<sup>82</sup>

### Forced Migration

International law does not recognize a general category of "forced" or "involuntary" migrant, but there are important and well-established norms that relate to certain classes of border-crossing persons. For example, a fairly elaborate regime exists for the international protection of refugees and for victims of torture.<sup>83</sup> Interstate agreements and arrangements have extended protection to persons who cross national borders to escape from other forms of inhumane treatment, civil war or disorder, as well as natural disasters. In addition, human rights principles condemn many of the practices that force persons to flee.<sup>84</sup>

Over 140 states have ratified the 1951 Convention relating to the Status of Refugees or its 1967 Protocol. These instruments have established states' obligation to grant recognized refugees a range of benefits and opportunities afforded to immigrants and nationals. Article 33 provides for the principle of non-refoulement, i.e., prohibition against the return of a refugee to a country where his/her life or freedom would be threatened.<sup>85</sup> The regime of "surrogate protection" obligates states parties to the convention to protect persons forced to flee their home state who cannot rely on that state to ensure their fundamental rights and interests.<sup>86</sup> The convention also establishes non-discrimination norms regarding the right to work, social welfare programs, and religious freedom for legally settled refugees. It further guarantees the right of access to courts and freedom of movement and establishes limits on the detention of refugees.<sup>87</sup>

The international regime for refugees has many gaps, some of which apply to refugee situations in Northeast Asia. One of the gaps is that although the right to seek asylum is recognized, states are under no obligation to grant asylum or even admit persons so that they can pursue asylum claims. Nor is there an established obligation on the part of a state that creates refugee outflow toward the state that bears the burden of refugee inflow. Another weakness of the international refugee regime is that states define the term "refugee" differently and consequently, the application of the 1951 convention is inconsistent from state to state. The UNHCR has authority to issue guidance on the interpretation of the convention's provisions but cannot impose it on states parties. Furthermore, some classes of people who are forced to cross international borders, e.g., victims of civil war or disorder and persons who flee extreme poverty, famine or other natural disasters, are outside the application of the convention and the 1967 protocol. The implementation of the convention has been made inconsistent, as well, by states adopting various measures to deter unlawful migration, such as visa requirements, carrier sanctions, and detention policies. These measures hinder asylum-seekers' ability to leave their countries of origin or to gain access to procedures for refugee status determination. Another obstacle is that norms concerning the duties of transit states or return of asylum-seekers to such countries are not well established. Furthermore, the convention does not provide standardized procedures for determining the status of asylum-seekers.<sup>88</sup>

We can readily see that the above limitations have important consequences for the protection of human rights of North Korean "defectors". Despite the fact that China, South Korea, and Japan are all parties to the 1951 convention, each state deals with the issue of North Korean refugees according to its own interests, including political and diplomatic considerations.

Conventional and customary international law protects other victims of human rights abuses from refoulement. For example, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commits states parties not to return a person "where there are substantial grounds for believing that he would be in danger of being subject to torture."<sup>89</sup> All Northeast Asian states, except North Korea, are parties to this convention.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons (Trafficking Protocol), in addition to promoting the suppression of trafficking, is aimed at protecting and assisting victims of trafficking, "with full respect for their human rights."<sup>90</sup> States parties are obligated "to take steps to protect the physical safety, privacy, and identity of victims, to assist victims in legal proceedings, and to consider implementing measures to provide for the physical, psychological, and social recovery of victims. States are also urged to consider adopting laws or regulations that permit victims to remain in the territory on a temporary or permanent basis."<sup>91</sup> Russia is the only Northeast Asian country that has ratified the protocol as of March 2005. Japan has developed an action plan of measures to combat trafficking in persons, adopting the definition of "trafficking in persons" found in the protocol.<sup>92</sup> International law extends similar norms to the protection of children, who are particularly vulnerable to trafficking.<sup>93</sup>

### Human Rights of Migrants

The *non-discrimination* norm plays a central role in the protection of migrants' human rights. The norm is enshrined in the major universal and regional human rights treaties. It is also included in the United Nations Charter.<sup>94</sup> It applies to immigrants as well as to citizens. Under the International Covenant on Civil and Political Rights (ICCPR), non-citizens are protected against discrimination "on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."<sup>95</sup> This does not mean that no distinctions can be made between citizens and non-citizens.<sup>96</sup> It is beyond the scope of this paper to delineate the provisions in international legal instruments regarding such distinctions.<sup>97</sup> It merits mentioning that "the status of the alien (settled immigrant, temporary visitor, unauthorized migrant) is likely to influence the evaluation of the differential treatment."<sup>98</sup>

It would be difficult for states to justify policies that deny to non-citizens core civil rights and political freedoms that are granted to citizens, such as access to courts and freedom of speech. However, states can legitimately restrict the franchise and political office holding to citizens without violating the principle of non-discrimination.<sup>99</sup>

Non-citizens are protected against discrimination based on their alienage with respect to rights guaranteed for citizens under the International Covenant on Economic,

Social, and Cultural Rights (ICESCR), such as the right to work, to an adequate standard of living, to health, and to education.<sup>100</sup> A qualification to this rule should be noted. Developing states are permitted to determine "to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals."<sup>101</sup> States' practices indicate widespread limitations on economic and social rights of migrants.<sup>102</sup>

Instruments protecting human rights generally apply to citizens and non-citizens alike.<sup>103</sup> Non-citizens are entitled to rights that are absolute or not subject to derogation or limitation. They are also entitled to those rights whose denial on the basis of alienage would never be justifiable. Such rights include but are not limited to the right to life; prohibitions against torture and cruel, inhuman, and degrading treatment or punishment; rights guaranteed in the criminal process; freedom of thought, conscience, and religion; the right to leave a country; the prohibition on retroactive criminal penalties; and the right to marry.<sup>104</sup>

There are other categories of rights for which immigration status may be a legitimate consideration.<sup>105</sup> *Detention* of immigrants in immigration proceedings is justified, as is *deportation* under some circumstances of an immigrant who has family members in the state of settlement. States may, on national security or *ordre public* grounds, limit some rights established in conventions for both citizens and non-citizens. Furthermore, alienage itself may be considered in a state's decision to limit the exercise of immigrants' rights if such limitation is for legitimate state purpose and is proportional to the end being sought by the state. For example, in the wake of the terrorist bombings in London in 2005, the British government announced that it would deport non-British citizens who directly or indirectly advocated acts of terrorism. Certain rights are expressly reserved for citizens. Article 25 of ICCPR states, "[e]very citizen" shall have the right to take part in the conduct of public affairs, vote and be elected, and to have access to public service. The right to freedom of movement, which is secured by Article 12(1) of ICCPR, is guaranteed only for citizens and lawfully present migrants. Some rights apply only to non-citizens, such as those pertaining to immigration proceedings. Some human rights treaties state that their protections do not apply to certain differential treatment based on citizenship status.<sup>106</sup>

*Family unity or unification* is a widely recognized right, but its exercise may entail some difficulties. Under the Convention on the Rights of the Child, a child may be separated from his/her family only when competent authorities subject to judicial review determine that such separation is necessary for the best interests of the child.<sup>107</sup> The right to family unity, which is guaranteed for both citizens and non-citizens, entitles immigrants to the right to marry and form and raise a family.<sup>108</sup> Most states permit the entry of immediate family members to join an immigrant who is lawfully resident in the state. However, some immigration policies pose difficult challenges to family unity. For example, admissions policies frequently cause long delays in the entry of close family members or deny entry altogether and expulsion measures may also threaten family unity. Moreover, the definition of family adopted by the receiving state may differ from that used by the immigrant family.<sup>109</sup>

*Family unification across national borders* has been suggested to be a necessary corollary to the right of family unity, but it is not yet a firmly established norm under international law and state practices vary. The Convention on the Rights of the Child states that “family unification shall be dealt with by States Parties in a positive, humane, and expeditious manner.”<sup>110</sup> This provision leaves it unclear whether the receiving state must admit family members of settled immigrants; it is possible for family members to be united in another state, e.g., the state of origin.<sup>111</sup> Nor has the right to family unity been firmly established in expulsion cases; an expelled immigrant may unite with his/her family in a state other than the expelling state.<sup>112</sup> According to the Human Rights Committee, factors to be considered in expulsion cases include the length of residence, the age of the children, and the impact of expulsion of a parent, the conduct of the parent, and the state’s interests in protecting public safety and promoting compliance with immigration laws.<sup>113</sup> The Convention on the Rights of the Child appears to apply a stricter standard, permitting family separation only when it is in the best interests of the child.<sup>114</sup>

With respect to *immigration proceedings*, the non-discrimination principle under international law renders indefensible immigration policies based on race, and gender-based distinctions would require special justification.<sup>115</sup> The *due process* requirement under international law applies to immigration proceedings. Therefore, for example, the

ICCPR does not permit states parties to expel a non-citizen who is lawfully in their territory except in pursuing a legally rendered decision and must, without compelling reasons of national security, permit the individual to submit the reasons why he/she should not be expelled. States parties are also required to allow for a review by and legal representation of the non-national before the competent authority.<sup>116</sup> This provision applies only to non-citizens who are lawfully in the receiving state and presumably does not apply to undocumented immigrants, whose legal status may need to be legally contested. In view of this, the Human Rights Committee has stated that “if the legality of an alien’s entry or stay is in dispute, any decision of this point leading to his expulsion or deportation ought to be taken in accordance with Article 13.”<sup>117</sup>

The detention of immigrants in the course of immigration proceedings – an issue of concern among human rights advocates in Northeast Asia – is also subject to human rights norms that prohibit “arbitrary arrest or detention.” The ICCPR provides that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if detention is not lawful.”<sup>118</sup>

The issues of *integration and assimilation* of immigrants are of increasing relevance and importance in Northeast Asian countries. Under international law today, immigrants have no duty to naturalize; nor do they have an internationally recognized right to integrate in the host state and to be afforded the means to do so.<sup>119</sup> However, the non-discrimination principle under international law prohibits “discrimination against non-citizens that hinders material integration and sends a stigmatizing message to immigrants that they do not belong.”<sup>120</sup>

*Citizenship (nationality) and naturalization* are at the heart of the debate on the integration of migrants. Even though it is possible for migrants to retain their foreign citizenship and still become an integral part of the society in which they reside, citizenship may be a very important issue for migrants because its acquisition is understood to afford them the full range of domestic rights recognized by the state of residence. The Universal Declaration on Human Rights (UDHR) states that “[e]veryone has the right to a nationality,” and that no one shall be arbitrarily deprived of his nationality or denied the right to change his nationality. We are reminded, however,

that “the UDHR does not by itself establish legally binding norms, although many of its guarantees may have attained the status of customary international law.”<sup>121</sup> In order to prevent statelessness, the 1961 Convention on the Reduction of Statelessness requires states to grant nationality to persons born in their territories who would otherwise be stateless and not deprive a person of his/her nationality if it would render him stateless.<sup>122</sup> Furthermore, the Convention relating to the Status of Refugees provides that states “shall as far as possible facilitate the assimilation and naturalization of refugees.”<sup>123</sup>

There are no international conventions significantly regulating acquisition of citizenship and under customary international law, states are generally free to decide on whom to confer citizenship, with some states adopting the *jus soli* rule (citizenship based on birth within national territories) and others *jus sanguinis* (citizenship based on descent) in determining citizenship.<sup>124</sup> Non-discrimination, requirements of procedural fairness, and other human rights norms prohibit states from using race or gender in denying or terminating citizenship.<sup>125</sup> Multiple nationality was previously seen as an irritant in international relations and thus discouraged, but it is increasingly accepted by states which recognize that persons can maintain links to more than one state without causing major interstate conflicts.<sup>126</sup> Obviously, however, interstate discussion and cooperation is necessary to sort out rights and obligations for persons with multiple nationality.<sup>127</sup> Multiple nationality is very rare among the citizens of Northeast Asian countries, where citizenship, nationality, identity, and political loyalty are generally understood to be inseparable. Any developments that may weaken political control by the state over its citizens are likely to be seen as a threat to the premise of political loyalty based on nationality. For example, China is concerned that South Korea’s encouragement of Korean Chinese to come to South Korea for work may lead to eventual assimilation of the Chinese citizens of Korean ethnicity and, hence, loss of political loyalty to Beijing.<sup>128</sup> In May 2005, the South Korean national assembly passed legislation to amend the law on dual citizenship, prohibiting male Koreans born abroad and holding dual citizenship from abandoning their Korean citizenship unless they first do their compulsory military service.<sup>129</sup>

*Assimilation* is an important issue for both members of the host society and the immigrants themselves. “Assimilation” generally means acquisition by immigrants of



prevailing values of the host society, its language, and its dominant cultural practices. Cultural assimilation is a complex issue as it relates to the tension between two basic principles, human rights (the individual's freedoms of religion, association, expression, marriage, etc.) on one hand and, on the other, the need of every society to maintain cohesion on the basis of commonly accepted values. Although international law does not directly address these issues, its protection of individual rights necessarily implies some degree of tolerance of difference. Thus, ICCPR provides for the right of members of an ethnic, religious, or linguistic minority to "enjoy their own culture, to profess and practice their own religion, or to use their own language."<sup>130</sup> States are free to promote assimilation but cannot compel it, or they would violate the human rights of the immigrants being forced to assimilate.<sup>131</sup> Assimilation is a very sensitive issue in all Northeast Asian countries, as the example of Korean residents in Japan demonstrates.<sup>132</sup>

### Human Rights of Migrant Workers

According to the ILO, there were an estimated 150 million migrants in the world in 2002, of whom about 36-42 million were migrant workers and an additional 44-55 million were members of their families.<sup>133</sup> The 2004 report by the World Commission on the Social Dimension of Globalization, noted earlier, decries the absence of uniform and fair labor standards for workers around the world, including migrant workers.

The rights of migrant workers are a very complex issue. As Fitzpatrick notes, migrant workers comprise several distinct groups with varying human rights issues, ranging from multinational executives, to legally admitted skilled and unskilled workers, and to irregular migrants. In addition, the rights of irregular migrants are particularly controversial, as are issues of family unity.<sup>134</sup> The migrant workers conventions also deal with the issue of illegal migration. However, states are generally and chronically reluctant to commit themselves to legally binding, multilateral regimes that regulate international labor migration and protect the rights of migrant workers.<sup>135</sup>

Furthermore, the nature of international labor migration has changed in some significant ways since the adoption of the ICMW. For example, the role of states in the recruitment of migrant labor has declined, giving a greater role to commercial agents and intermediaries. Another visible change in recent years has been the feminization of

migrant labor, with women migrant workers predominant in the sex industry and domestic work, an area usually outside the protection of labor law. Short-term labor migration has grown, relative to long-term migration. There has also been a considerable growth in irregular migration.<sup>136</sup>

In 1990, the UN General Assembly adopted the ICMW and the convention went into force in 2003. However, as of March 2005, there were only 27 signatories, none of them a major receiving state.<sup>137</sup> None of the Northeast Asian countries is a party to the convention. Nor are they parties to key ILO conventions, including the Convention concerning Migration for Employment (No. 97) of 1949 and the Convention concerning Migration in Abusive Conditions and the Promotion of Equality in Opportunity and Treatment of Migrant Workers (No. 143) of 1975.

Part III of the ICMW guarantees rights to all migrant workers and their families. It reaffirms many fundamental rights, provides for national treatment in matters such as equal work conditions, trade union rights, social security, and basic education. It deals with the preservation of cultural identity, repatriation of savings, and other matters of special concern to migrants. Part IV establishes more extensive guarantees for migrants in a documented or regular situation, in matters ranging from freedom of movement to access to employment.

The ICMS explicitly refers to nationality as a prohibited basis of distinction.<sup>138</sup> ILO Convention No. 97 covers the conditions governing the orderly recruitment of migrant workers, articulates the principle of their equal treatment to national workers regarding working conditions, trade union membership and enjoyment of the benefits of collective bargaining, accommodation, social security, employment taxes, and legal proceedings relating to matters outlined in the convention.<sup>139</sup> ILO Convention No. 143 promotes equality in broader areas such as social security, access to employment, trade union freedoms, and cultural rights.<sup>140</sup> It devotes a whole section to irregular migration and to interstate collaborative measures considered necessary to prevent it. It also obligates states to respect the basic human rights of all migrant workers, confirming the applicability of this duty to irregular migrant workers.<sup>141</sup>

Major international trade agreements include limited provisions supporting the temporary movement of persons between trading partners. The General Agreement on

Trade in Services (GATS), as part of the World Trade Organization (WTO) Agreement, encourages governments to commit to opening markets to foreign service-providers. GATS Article 1 recognizes, *inter alia*, the movement of natural persons to provide services in a foreign country. However, this recognition applies only to people who cross a border temporarily and "temporary" is understood to mean periods ranging from a few weeks to three to five years.<sup>142</sup>

Generally, skilled workers who fill professional jobs in the formal sector have relatively few human rights problems. Unskilled workers, in contrast, are often employed in the informal sector and many of them experience human rights abuses. Particularly vulnerable are individuals who are trafficked and forced into the sex industry, as well as those who are smuggled across national borders and exploited in the countries of destination. Even within their countries of origin, individuals may suffer violations of their economic and social rights to health care, education, and adequate housing. Their civil and political rights may also be violated. Such violations then become "push factors" encouraging migration.<sup>143</sup> Some women are at greater risk of trafficking because of illiteracy, gender discrimination, violence against women and girls, and low economic status of women and girls. Irregular migrant workers are also vulnerable to abuse and exploitation by employers, migration agents, and criminal organizations.<sup>144</sup>

### **Northeast Asian Countries and International Human Rights Law**

An important measure of a state's commitment to the protection of human rights of migrants is whether it is a party to the core international human rights conventions and international treaties pertaining to migration. Table 3 lists such treaties and indicates the ratification status of the Northeast Asian states. Most states in the region are parties to the core international human rights treaties. The notable exceptions are China, which has not joined the International Convention on Civil and Political Rights, and North Korea, which is not a party to the International Convention on the Elimination of All Forms of Racial Discrimination or the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Russia has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Japan and South Korea have signed but not yet ratified the protocol. However, Japan

revised its penal code and immigration law in June 2005 to criminalize human trafficking.<sup>145</sup> China, North Korea, and Mongolia have not signed the protocol.

Table 3 International Human Rights Treaties and States Parties in Northeast Asia (As of June 3, 2005)

	ICERD	ICCPR	ICESCR	CEDAW	CAT	CRC	Trafficking Protocol
China	a		r	r	r	r	
Japan	a	r	r	r	a	r	
ROK	a	a	a	r	a	r	
DPRK		a	a	a		a	
Mongolia	r	r	r	r	a	r	
Russia	a	r	r	r	a	r	r

  

	Vienna Convention	Refugee Convention	Refugee Protocol	ILO C97	ILO C143	ICMW	
China	a	a	a				
Japan	r	a	a				
ROK	r	a	a				
DPRK	a						
Mongolia	a						
Russia	r	a	a				

Notes:

ICERD: UN International Convention on the Elimination of All Forms of Racial Discrimination (adopted in 1965; entered into force in 1969; ratified by 170 as of March 1, 2005)

ICCPR: UN International Convention on Civil and Political Rights (adopted in 1966; entered into force in 1976; ratified by 154 states as of March 1, 2005)

ICESCR: UN International Covenant on Economic, Social, and Cultural Rights (adopted in 1966; entered into force in 1976; ratified by 151 states as of March 1, 2005)

CEDAW: UN Convention on the Elimination of All Forms of Discrimination against Women (adopted in 1981; not yet in force; ratified by 179 states as of March 1, 2005)

CAT: UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted in 1987; not yet in force; ratified by 139 states as of March 1, 2005)

CRC: UN Convention on the Rights of the Child (adopted in 1989; went into force in 1990; ratified by 192 states as of March 1, 2005)

Trafficking Protocol: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted in 2000; entered into force in 2003; ratified by 87 states as of September 4, 2005)

Vienna Convention: Vienna Convention on Consular Relations (adopted in 1963; entered into force in 1967; ratified by 166 states as of March 1, 2005)

Refugee Convention: UN Convention relating to the Status of Refugees (applied to refugee situations before 1951; adopted in 1950; entered into force in 1954; ratified by 142 states as of March 1, 2005)

Refugee Protocol: UN Protocol relating to the Status of Refugees (applied to refugee situations after 1951; adopted in 1967; entered into force in 1967; ratified by 142 states as of March 1, 2005)

ILO C97: ILO Convention concerning Migration for Employment (Convention No. 97; adopted in 1949; entered into force in 1952; ratified by 42 states)

ILO C143: ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Convention No. 143; adopted in 1975; entered into force in 1978; ratified by 18 states as of March 1, 2005)

ICMW: UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted in 1990; entered into force in 2003; ratified by 27 states as of March 1, 2005)

Ratification (r); accession (a); succession (s)

Sources: Office of the United Nations High Commissioner for Human Rights, "Status of Ratifications of the Principal International Human Rights Treaties." <<http://www.ohchr.org/english/bodies/docs/RatificationStatus.pdf>> (accessed August 31, 2005); United Nations, "United Nations Treaty Collection," <<http://untreaty.un.org/sample/EnglishInternetBible/bible.asp>> (accessed August 31, 2005); United Nations Office on Drugs and Crime, <[http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_trafficking.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html)> (accessed September 3, 2005); International Labor Organization, "Database on International Labor Standards," <<http://www.ilo.org/ilolex/english/newratframeE.htm>> (accessed August 31, 2005); Stefanie Grant, "Migrants' Human Rights: From the Margins to the Mainstream," Migration Policy Institute, Washington, D.C., March 21, 2005, <<http://www.migrationinformation.org/Feature/print.cfm?ID=291>> (accessed August 6, 2005).

As noted earlier, none of the Northeast Asian states has joined the two ILO conventions related to migrant workers or the ICMW. This testifies to the general lack of commitment on the part Northeast Asian states to legally binding rules concerning the protection of migrant workers' rights. A UNESCO-sponsored study in 2003 examined the reasons behind Asia-Pacific countries' unwillingness to sign the ICMW. The case study of seven countries (two sending countries: Bangladesh, Indonesia; five receiving countries: Japan, Korea, Malaysia, New Zealand, and Singapore) revealed two major obstacles. First, sending countries feared that ratification would result in a loss of labor markets in destination countries to their non-ratifying competitors. Second, receiving countries were reluctant to join the ICMW because of the protections the convention would give to irregular migrants and the perception that it would require the admission of migrant workers' family members.<sup>146</sup>

### **Human Rights Problems of Migrants in Northeast Asia**

It is beyond the scope of this paper to provide a comprehensive survey of the state of human rights of international migrants in Northeast Asia. Here we will review the most commonly observed problems and needs. Our discussion is aided by a report from the regional hearing for Asia and the Pacific organized by the GCIM in May 2004.<sup>147</sup> Also helpful is the 2003 IOM report "Labour Migration in Asia: Trends, Challenges, and Policy Responses in Countries of Origin."<sup>148</sup>

Participants in the GCIM hearing described as "benign neglect" the situation of migrant workers in many parts of Asia and the Pacific who work in deregulated sectors. The report from the hearing notes that the protection of migrants' rights in the region is "tenuous".<sup>149</sup> Participants discussed the need for comprehensive national frameworks to address migration issues based on appropriate legislation and structures, combined with a stronger sense of social responsibility among all stakeholders. In view of the feminization of migration in the region, the participants also discussed the need for appropriate policies to prevent the disempowerment and exploitation of women as a result of migration of women.<sup>150</sup>

Participants also discussed problems associated with irregular migration, particularly in the context of return and readmission, trafficking and smuggling in

humans, and the asylum-migration nexus. They noted that the cross-border movement of people without proper authorization undercut countries' ability to manage their borders. They called for a balance between enforcement and openness and emphasized the importance of combating the activities of illegal employers, recruitment agencies involved in illegal activity, and transnational organized crime groups. Participants also noted that victims of trafficking and legitimate asylum-seekers are often treated as criminals despite their heightened vulnerability and the special protections afforded to them under international law. They were also critical of the way employers took advantage of the illegal status of many migrants as cheap labor. They called for improved inter-ministerial coordination at the national level and cooperation between and within countries. They also noted the importance of regional fora, in particular the Bali Process, which we will discuss below.<sup>151</sup> Some participants in the hearing decried the appalling human rights violations their nationals are experiencing, particularly (but not only) in the Middle East.<sup>152</sup>

Participants outlined essential elements to ensure human rights protection: minimum standards based on international law; redress mechanisms in countries of origin and destination; and representation through trade unions and other ways. They also emphasized the importance of raising migrants' awareness of their rights, discussed whether irregular migrants should be afforded the same basic rights as legal migrants, and considered whether migrants should have the same rights as nationals.<sup>153</sup>

The IOM report on labor migration in Asia focuses on the sending countries and corroborates the issues and concerns raised at the GCIM hearing. The report points to uneven and incomplete application of legal guarantees and protections in the areas of access to employment, equal treatment in respect of remuneration and wages for performing the same work, freedom of association and the right to organize, and right to social security provisions.<sup>154</sup> The report highlights the vulnerability of female workers employed as domestic workers and entertainers, trafficked persons, and irregular migrant workers.<sup>155</sup> It also bemoans the total lack of ratification of the ILO migrant workers conventions.<sup>156</sup>

In short, the problems and needs identified for international migration and human rights in Asia-Pacific range widely and parallel the problems and needs observed throughout the world.

### **Regional Approach in Northeast Asia**

How may a regional approach contribute to the promotion and protection of the human rights of international migrants? What limitations and drawbacks might a regional approach entail? What lessons can we learn from regional frameworks and processes developed in other parts of the world?

Recognizing the central role of states in the management of cross-border movement of people, we must turn ultimately to each state for crafting legislation, policies, and other instruments in the promotion and protection of the rights of migrants. National measures must be made consistent with internationally established principles and norms. They must also represent the interests of all stakeholders: national agencies (foreign policy, labor, health, social welfare, public safety, child welfare; and law enforcement); local governments; major employers; labor unions and other spokespersons for workers' interests; the legal profession; human rights NGOs; women's organizations; and the educational community (particularly in view of the impact of migration on children's education).

Although bilateral arrangements help the states concerned manage cross-border migration and reduce illegal or irregular migration, they are likely to result in uneven and unequal treatment of migrants of different nationalities. Therefore, states must be urged to develop, as much as practicable, uniform standards for foreign migrants regardless of their nationality.

The harmonization, i.e., the elimination of discrepancies, between national rules and practices, can be facilitated through regional policy dialogues. Harmonization must not result in the lowering of standards toward the least common denominator but rather encourage the emulation by states with lower standards of higher standards and the best practice in the field. A recent review of various regional consultative migration processes (RCMPs) has found that regional dialogue processes indeed promote

convergence in policy and practice in international migration and that regionalization of dialogue through these processes is generally complementary to international efforts.<sup>157</sup>

The 2003 issue of "World Migration" by the International Organization for Migration (IOM) reaches similar conclusions about the contributions the regional processes are making.<sup>158</sup> The annual report identifies four principles common to regional consultative processes (RCPs): (1) promotion of exchange of information toward a common understanding of migration issues; (2) protection of the fundamental human rights of migrants, including the right to non-discrimination; (3) reinforcement of efforts to prevent and combat irregular migration including smuggling and trafficking; and (4) facilitation of voluntary return as a strategy to reduce irregular migration.<sup>159</sup> The report concludes with a ten-point plan for successful cooperative approaches in migration management. These points are relevant to regional dialogue processes in Northeast Asia and are worth listing.

1. Participants must take ownership of the process.
2. There should be continuity with regularly scheduled meetings.
3. There should be common agreement on priorities.
4. Meetings should be focused on specific issues, with clear and comprehensive objectives.
5. Issues should be focused on enhancing understanding and regional cooperation in migration management.
6. The process should begin with and be continuously upheld by a compilation and sharing of reliable and accurate data.
7. Meetings should take place at defined administrative levels – for instance at strategic policy level or program implementation level or at the technical expert level.
8. Participation should be comprehensive – from all relevant ministries, as well as from relevant intergovernmental and non-governmental organizations where appropriate.
9. Funding stability should be provided to ensure continuity.
10. A core secretariat is essential to ensuring regularity and continuity.<sup>160</sup>



Migration is not a priority issue in the various regional institutions that exist in Asia-Pacific, including the Association of Southeast Asian Nations (ASEAN) and the Asia Pacific Economic Cooperation (APEC). In the migration field, there are three major regional consultative processes in Asia: (1) Manila Process (1996); (2) Inter-Governmental Asia-Pacific Consultations on Refugees, Displaced Persons, and Migrants (APC) (1996); and (3) Bali Ministerial Conference on People Smuggling, Trafficking in Persons, and Related Transnational Crime (Bali Conference) (2002).

The Manila Process is concerned with combating irregular migration and migrant trafficking, root causes of regular and irregular migration, return, reintegration, entry/border control, remittances, and migrant rights. Among the participants in this process are the People's Republic of China, Japan, Republic of Korea, and Hong Kong SAR of China. APC is focused on irregular migration, asylum, information sharing on reintegration of refugees and returnees, best practices on issues related to cross-border migration management, and common migration and asylum challenges. The Northeast Asian countries represented in this process are China, Hong Kong SAR of China, Japan, and South Korea. Bali Conference deals with migrant smuggling and trafficking, information and intelligence sharing, cooperation in fraudulent document detection, cooperation on border and visa systems, and return.<sup>161</sup> The participants include China, Japan, and both North and South Korea.

In short, there is some experience in regional consultations in Asia regarding international migration issues and the experience is growing. However, none of the above-mentioned processes is focused on Northeast Asia. This is largely because the most serious migration issues in Asia-Pacific involve South and Southeast Asian migrants and their governments have been compelled to consult with each other in multilateral fora, while Northeast Asian states have preferred to deal with migration issues either unilaterally or bilaterally.

Several factors complicate the development of regional dialogue within Northeast Asia. First, the interests and concerns of the Northeast Asian governments regarding migration vary widely. Two states in the region (Japan and South Korea) see themselves mostly as receiving states; three states (China, Mongolia, and North Korea)

see themselves primarily as sending states; and one state (Russia) sees itself mainly as a receiving state, at least in the post-Soviet context.

Second, Northeast Asian states have preferred bilateral consultations. This is largely due to the nature of the migration issues within the region. China and Japan are increasingly concerned about the negative consequences of illegal and irregular migration of Chinese citizens to Japan and recognize the need to manage migration from China to Japan. At the same time, they are also making efforts to expand the bilateral flow of Chinese and Japanese citizens for tourism and other short-term purposes. It appears that Beijing and Tokyo believe they should deal with these problems unilaterally or bilaterally. Similarly, China, and Russia have been consulting bilaterally over mutual visits by Chinese and Russian citizens. The presence of large numbers of Chinese in Russia and the travel by even larger numbers of Russians to China have not generated any significant consequences for other countries in Northeast Asia.

The one important migration issue in Northeast Asia that has had clearly multilateral implications is the defection of unknown numbers of North Koreans to China, South Korea, Japan, and Mongolia. Because of the political sensitivity of the issue, however, the governments of these countries have opted to handle the problem quietly and through bilateral channels – Beijing with Pyongyang, Mongolia with Pyongyang, Seoul with Beijing, and Tokyo with Beijing.

Yet another reason why a major push for multilateral consultations over international migration in the region is unlikely is that Northeast Asian countries have not developed the habit of multilateral dialogue that we see well developed in Southeast Asia, e.g., the ASEAN, and the ASEAN Regional Forum (ARF). Even though some Northeast Asian countries participate in ARF and ASEAN Plus Three processes, those fora address issues that concern either Southeast Asia primarily or the entire East Asian region.

The fact that migrants in Northeast Asia come from all around the world argues for a multilateral process that is open not only to Northeast Asian countries but also to representatives of other parts of the world. Extra-regional and inter-regional migration issues should also be taken up in developing a regional cooperation scheme in Northeast Asia.<sup>162</sup> Cooperation with Southeast Asian partners is particularly important because

Northeast Asian countries are destination and transit countries for large numbers of Southeast Asian migrant workers, as well as women and children trafficked from Southeast Asia.<sup>163</sup> Participants should also include representatives of international organizations, e.g., the UNHCR, the ILO, the IOM, and the GCIM.

## **Conclusion**

By all accounts the cross-border movement of people in Northeast Asia is bound to grow in the foreseeable future. The demographic changes in the countries of the region, the labor needs of the economies of the region, and the need to sustain essential social institutions in the region (such as marriage, family, and social welfare) all point to increased migration throughout Northeast Asia. This means that the Northeast Asian states must develop mutually beneficial mechanisms for managing population flows across their borders.

Migration issues that require national, regional, and international attention are wide-ranging. They include: national legislation and policy framework that comprehensively address the human rights of migrants; the feminization of migration; migrant women's health and reproductive rights; migrants' children and their education; irregular migration, return and readmission; trafficking and smuggling in humans; domestic workers; refugees; asylum-seekers; law enforcement; detention; deportation; illegal employment; illegal labor recruitment; transnational organized crime groups; the sex industry and other informal sectors; work conditions and benefits; racism and xenophobia; and multiple citizenship.

Most of the principles and norms that should guide Northeast Asian countries' efforts to address these issues are well established under conventional and customary international law. Some of those principles and norms are being further refined and new ones are slowly emerging through the global process of regime building.

In addressing migration and human rights issues of common concern to the Northeast Asian countries, regional policy dialogue should be promoted. Regional discussions will be helpful in developing a common language for discussion, a common understanding of the issues involved, a shared concern for the human rights and welfare of individual citizens, and a sense of common goal in promoting and protecting human

rights. There are already plenty of examples of successful regional dialogue around the world, including within Asia-Pacific. However, for the reasons noted in the preceding discussion, major initiatives for multilateral consultations involving just Northeast Asian countries are neither likely nor necessarily desirable.

## Notes

- <sup>1</sup> Monette Zard, "Human Rights Strengthen Migration Policy Framework," Migration Policy Institute, Washington, D.C., March 1, 2005, <<http://www.migrationinformation.org/Feature/print.cfm?ID=295>> (accessed August 8, 2005).
- <sup>2</sup> Stefanie Grant, "Migrants' Human Rights: From the Margins to the Mainstream," Migration Policy Institute, Washington, D.C., March 1, 2005, <<http://www.migrationinformation.org/Feature/print.cfm?ID=291>> (accessed August 6, 2005).
- <sup>3</sup> Ibid.
- <sup>4</sup> Ibid.
- <sup>5</sup> "A Fair Globalization: Creating Opportunities for All," World Commission on the Social Dimension of Globalization, International Labor Office, Geneva, 2004; cited in "World Commission on the Social Dimension of Globalization: Globalization Can and Must Change," *World of Work Magazine*, No. 50, <<http://www.ilo.org/public/english/bureau/inf/magazine/50/wcsdg.htm>> (accessed August 17, 2005).
- <sup>6</sup> Arthur Haupt and Thomas T. Kane, *Population Bureau's Population Handbook*, 1978, Washington, D.C.: Population Reference Bureau, 2001, p. 35.
- <sup>7</sup> Tsuneo Akaha and Anna Vassilieva, "Introduction: Crossing National Borders," in Akaha and Vassilieva, eds., *Crossing National Borders: Human Migration Issues in Northeast Asia*, Tokyo, New York, and Paris: United Nations University Press, 2005 (forthcoming), pp. 1-7.
- <sup>8</sup> Maurice D. Van Arsdol et al., "Population Trends and Migration Patterns in Northeast Asia," in Akaha and Vassilieva, p. 20.
- <sup>9</sup> Ibid.
- <sup>10</sup> Demetrios Papademetriou and Sarah Margon, "International Migration Trends and Patterns in Asia and Oceania," in Irena Omelaniuk, ed., *World Migration 2005: Costs and Benefits of International Migration*, Geneva: International Organization for Migration, 2005, p. 104.
- <sup>11</sup> "World Migration 2005," in Irena Omelaniuk, ed., *World Migration 2005: Costs and Benefits of International Migration*, IOM World Migration Report Series, Vol. 3, Geneva: International Organization for Migration, 2005, p. 390.
- <sup>12</sup> There were an estimated 207,000 foreigners illegally resident in Japan in 2004. *Japan Times*, March 29, 2005, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050329b1.htm>> (accessed March 29, 2005). The comparable figure for Korea was 188,000. Bae Keun-min, "Crimes by Foreigners Jump 48% in 2004," *The Korea Times*, February 10, 2005.
- <sup>13</sup> World Bank, World Development Indicators, <<http://devdata.worldbank.org/>> (accessed August 18, 2005).
- <sup>14</sup> These figures were released by the Economic Development and Trade Ministry. RIA Novosti, August 17, 2005.
- <sup>15</sup> International Labor Organization, International Labor Migration Database, <<http://www.key-flex.com/ilm/english/ilmstat/table13.asp>> (accessed August 19, 2005).
- <sup>16</sup> *International Migration, 2005*, Russian Federation Federal State Statistics Service, <[http://www.gks.ru/bgd/regl/b05\\_12/IswPrx.dll/Stg/d000/05-09.htm](http://www.gks.ru/bgd/regl/b05_12/IswPrx.dll/Stg/d000/05-09.htm)> (accessed August 19, 2005).
- <sup>17</sup> International Labor Organization, International Labor Migration Database.
- <sup>18</sup> Papademetriou and Margon, p. 390.
- <sup>19</sup> International Labor Organization, International Labor Migration Database, op. cit.
- <sup>20</sup> Papademetriou and Margon, p. 108.
- <sup>21</sup> "World Migration 2005," p. 390.
- <sup>22</sup> "No. of Foreign Residents in Japan Hits Record for 36<sup>th</sup> Straight Year," *Japan Economic Newswire*, June 17, 2005.
- <sup>23</sup> Papademetriou and Margon, p. 122.
- <sup>24</sup> Ibid., pp. 125-26.
- <sup>25</sup> Ibid., p. 106.
- <sup>26</sup> *Yomiuri Shimbun*, July 5, 2005, <<http://www.yomiuri.co.jp/world/news/20050704i217.htm>> (accessed July 5, 2005).
- <sup>27</sup> United Nations High Commissioner for Refugees, *2004 Global Refugee Trends*, Geneva: UNHCR, 17 June 2005, p. 2.

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- <sup>28</sup> World Bank, World Development Indicators, <<http://devdata.worldbank.org>> (accessed August 18, 2005).
- <sup>29</sup> United Nations High Commissioner for Refugees, 2004 Global Refugee Trends.
- <sup>30</sup> Authors' calculations.
- <sup>31</sup> World Development Indicators; UNHCR, 2004 Global Refugee Trends.
- <sup>32</sup> United Nations High Commissioner for Refugees, 2003 UNHCR Statistical Yearbook, Geneva: UNHCR, 2004, pp. 110-111.
- <sup>33</sup> James D. Seymour, China: Background Paper on the Situation of North Koreans in China, United Nations High Commissioner for Refugees, Protection Information Section, London: Writenet, January 2005, p. 11.
- <sup>34</sup> Shin-wha Lee, Promoting Human Security: Ethical, Normative, and Educational Frameworks in East Asia, Seoul: Korean National Commission for UNESCO, 2004, p. 59.
- <sup>35</sup> Seymour, pp. 15-16.
- <sup>36</sup> Ibid.
- <sup>37</sup> "Korea, Democratic People's Republic."
- <sup>38</sup> United Nations High Commissioner for Refugees, 2003 UNHCR Statistical Yearbook, pp. 204-205.
- <sup>39</sup> "Japan," in U.S. Committee for Refugees, World Refugee Survey 2004, Washington, D.C.: U.S. Committee for Refugees, 2004.
- <sup>40</sup> "Mongolia," in U.S. Department of State, U.S. Department of State Country Report on Human Rights Practices 2004, Washington, D.C.: U.S. Department of State, Bureau of Democracy, Human Rights and Labor, 28 February 2005.
- <sup>41</sup> United Nations High Commissioner for Refugees, 2004 Global Refugee Trends.
- <sup>42</sup> "South Korea," in U.S. Committee for Refugees, World Refugee Survey 2004, Washington, D.C.: U.S. Committee for Refugees, 2004.
- <sup>43</sup> United Nations High Commissioner for Refugees, 2003 UNHCR Statistical Yearbook, pp. 290-291.
- <sup>44</sup> "South Korea."
- <sup>45</sup> United Nations High Commissioner for Refugees, 2003 UNHCR Statistical Yearbook, pp. 296-97; United Nations High Commissioner for Refugees, 2004 Global Refugee Trends.
- <sup>46</sup> United Nations High Commissioner for Refugees, 2003 UNHCR Statistical Yearbook, p. 297.
- <sup>47</sup> "Russian Federation," in U.S. Committee for Refugees, World Refugee Survey 2005, Washington, D.C.: U.S. Committee for Refugees, 20 June 2005.
- <sup>48</sup> United Nations High Commissioner for Refugees, 2003 UNHCR Statistical Yearbook, pp. 296-97; United Nations High Commissioner for Refugees, 2004 Global Refugee Trends.
- <sup>49</sup> "Russian Federation."
- <sup>50</sup> Ibid.
- <sup>51</sup> Papademetriou and Margon, p. 112.
- <sup>52</sup> Ibid., p. 112.
- <sup>53</sup> Piyasiri Wickramasekera, Asian Labour Migration: Issues and Challenges in an Era of Globalization, International Migration Programme, International Labour Office No. 57, Geneva: International Labour Office, 2002, pp. 19-20.
- <sup>54</sup> Papademetriou and Margon, p. 113.
- <sup>55</sup> "World Migration 2005," in Irena Omelaniuk, ed., World Migration 2005: Costs and Benefits of International Migration, IOM World Migration Report Series, Vol. 3, Geneva: International Organization for Migration, 2005, p. 390.
- <sup>56</sup> Wickramasekera, pp. 13-14.
- <sup>57</sup> Papademetriou and Margon, p. 113.
- <sup>58</sup> U.S. Department of State, Trafficking in Persons Report, Office of the Under Secretary for Global Affairs No. 11252, Washington, D.C.: U.S. Department of State, June 2005.
- <sup>59</sup> Seymour, p. 11.
- <sup>60</sup> Ibid., pp. 15-16.
- <sup>61</sup> Hazel Smith, "North Koreans in China: Sorting Fact from Fiction," in Akaha and Vassilieva, pp. 165-190.
- <sup>62</sup> U.S. Department of State, "Korea, Democratic People's Republic," in U.S. Department Of State Country Report on Human Rights Practices 2004, Washington, D.C.: U.S. Department of State, Bureau of Democracy, Human Rights and Labor, 28 February 2005.

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- <sup>63</sup> Annie I. Bang, "Seven North Koreans Land in South, Seeking Asylum," *Korea Herald*, June 30, 2005.
- <sup>64</sup> Seymour, pp. 21-22.
- <sup>65</sup> *Ibid.*, pp. 26-28.
- <sup>66</sup> T. Alexander Aleinikoff, *International Legal Norms and Migration: An Analysis*, Geneva: International Organization for Migration, 2002, p. 15.
- <sup>67</sup> *Ibid.*, p. 16. For example, the UN Convention against Transnational Organized Crime (adopted by the General Assembly in 2000, not yet in force) includes protocols dealing with smuggling and trafficking.
- <sup>68</sup> *Ibid.*, p. 18.
- <sup>69</sup> *Ibid.*
- <sup>70</sup> Quoted in Aleinikoff, pp. 18-19.
- <sup>71</sup> Article 26 of the 1969 Vienna Convention on the Law of Treaties states this principle thus: "every treaty in force is binding upon the parties to it and must be performed in good faith."
- <sup>72</sup> Aleinikoff, p. 22.
- <sup>73</sup> *Ibid.*, p. 23.
- <sup>74</sup> *Ibid.*
- <sup>75</sup> *Ibid.*, pp. 23-24.
- <sup>76</sup> Article 36 of the 1963 convention; quoted in Aleinikoff, p. 25.
- <sup>77</sup> For example, the Universal Declaration of Human Rights (1948) states, "Everyone has the right to leave any country, including his own, and to return to his country"; quoted in Aleinikoff, p. 26.
- <sup>78</sup> Aleinikoff, p. 26.
- <sup>79</sup> *Ibid.*
- <sup>80</sup> *Ibid.*
- <sup>81</sup> *Ibid.*, p. 27. According to the Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights (ICCPR), "there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable." Human Rights Committee, General Comment No. 27, CCPR/C/21/Rev.1/Add.9, para 20 (1999); quoted in Aleinikoff, p. 27.
- <sup>82</sup> Stefanie Grant, "Migrants' Human Rights: From the Margins to the Mainstream."
- <sup>83</sup> Aleinikoff, p. 28.
- <sup>84</sup> *Ibid.*, p. 28.
- <sup>85</sup> The 1951 Convention and its 1967 Protocol define a refugee as a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country." Quoted in Aleinikoff, p. 29.
- <sup>86</sup> Aleinikoff, p. 29. The Office of the United Nations High Commissioner for Refugees is charged with the provision of international protection to refugees, permanent solutions for them, and supervision of the application of the provisions of the 1951 convention.
- <sup>87</sup> *Ibid.*, pp. 31-32.
- <sup>88</sup> For a brief discussion of gaps in the international regime for refugees, see Aleinikoff, pp. 29-32.
- <sup>89</sup> Art. 3; quoted in Aleinikoff, p. 32.
- <sup>90</sup> Art. 2; quoted in Aleinikoff, p. 33.
- <sup>91</sup> Aleinikoff, p. 33. These obligations are stipulated in Arts. 6 and 7 of the Trafficking Protocol.
- <sup>92</sup> Ministry of Foreign Affairs website, <[http://www.mofa.go.jp/policy/i\\_crime/people/action.html](http://www.mofa.go.jp/policy/i_crime/people/action.html)> (accessed September 3, 2005).
- <sup>93</sup> Aleinikoff, p. 33.
- <sup>94</sup> Art. 1(3), Art. 55(c); cited in Joan Fitzpatrick, "The Human Rights of Migrants," Conference on International Legal Norms and Migration, Geneva, 23-25 May 2002, p. 2.
- <sup>95</sup> Art. 26; quoted in Aleinikoff, p. 35.
- <sup>96</sup> Human Rights Committee, General Comment 18, Non-discrimination (1989), para. 13: "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant"; quoted in Aleinikoff, p. 36.
- <sup>97</sup> For an extended discussion of this issue, see Fitzpatrick, pp. 3-7.
- <sup>98</sup> Aleinikoff, p. 36.
- <sup>99</sup> ICCPR, art. 26; cited in Aleinikoff, p. 36.
- <sup>100</sup> Aleinikoff, pp. 36-37.

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- <sup>101</sup> ICESCR, art. 2(3); quoted in Aleinikoff, p. 37.
- <sup>102</sup> For example, various categories of immigrants are subject to restrictions with respect to the right to work or to participate in social welfare programs. Aleinikoff, p. 37.
- <sup>103</sup> Aleinikoff, p. 37.
- <sup>104</sup> Ibid., pp. 37-38.
- <sup>105</sup> Ibid., pp. 38-39.
- <sup>106</sup> For example, International Convention on the Elimination of All Forms of Racial Discrimination (CERD), December 21, 1965, art 1(2) states that the convention “shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens”; quoted in Aleinikoff, p. 39. Also, as noted earlier, developing countries may determine to what extent they would guarantee for non-nationals the economic rights recognized in the ICESCR. Aleinikoff, p. 39.
- <sup>107</sup> Art 9(1); cited in Aleinikoff, p. 39.
- <sup>108</sup> Aleinikoff, p. 39.
- <sup>109</sup> Ibid.
- <sup>110</sup> Art. 10(1); quoted in Aleinikoff, p. 40.
- <sup>111</sup> An emerging right to family unification across national borders is strongest for refugees and settled lawful immigrants but this right may be difficult to sustain for unauthorized entrants or asylum seekers. Aleinikoff, p. 40.
- <sup>112</sup> Aleinikoff, p. 41.
- <sup>113</sup> Ibid., p. 40.
- <sup>114</sup> Art. 9: states “shall ensure that a child shall not be separated from his or her parents against their will, except when...such separation is necessary for the best interests of the child.” Quoted in Aleinikoff, p. 41.
- <sup>115</sup> Aleinikoff, p. 41.
- <sup>116</sup> ICCPR, Art. 13; cited in Aleinikoff, p. 42.
- <sup>117</sup> General Comment 15, para. 9 (1986); quoted in Aleinikoff, p. 42.
- <sup>118</sup> Art. 9(4); quoted in Aleinikoff, p. 43.
- <sup>119</sup> Aleinikoff, p. 44.
- <sup>120</sup> Ibid.
- <sup>121</sup> Ibid., p. 45.
- <sup>122</sup> Ibid., pp. 45-46.
- <sup>123</sup> Article 34; quoted in Aleinikoff, p. 46.
- <sup>124</sup> Aleinikoff, pp. 46-47.
- <sup>125</sup> Ibid., p. 47.
- <sup>126</sup> Ibid.
- <sup>127</sup> Obod., pp. 47-48.
- <sup>128</sup> See Shin-wha Lee, “The Realities of South Korea’s Migration Policies,” in Akaha and Vassilieva, pp. 191-214. In June 2005, the Korean government announced a plan to grant Korean citizenship to illegal Chinese Korean residents who entered the country before Korea and China established diplomatic ties in August 1992. The plan was expected to affect an estimated 1,000 persons. Lee Sun-young, “Chinese-Korean Illegals to Be Given Citizenship,” *Chosun Ilbo*, June 11, 2005.
- <sup>129</sup> Seo Dong-shin, “Lawmaker Fuels over Dual Citizenship Law,” *The Korea Times*, May 20, 2005.
- <sup>130</sup> Art. 27; noted in Aleinikoff, pp. 48-49.
- <sup>131</sup> Aleinikoff, p. 49.
- <sup>132</sup> See, for example, Mike Mervio, “Koreans in Japan and Shimane,” in Akaha and Vassilieva, pp. 141-162.
- <sup>133</sup> Roger Zegers de Beijl, “Combating Discrimination against Migrant Workers: International Standards, National Legislation, and Voluntary Measures – The Need for a Multi-pronged Strategy,” May 1997, <<http://www.ilo.org/public/english/protection/migrant/papers/disstrat/index.htm>>; cited in Fitzpatrick, p. 7.
- <sup>134</sup> Fitzpatrick, p. 8.
- <sup>135</sup> See, for example, Cholewinski.
- <sup>136</sup> Cholewinski.
- <sup>137</sup> Jennifer Yau, “Promise and Prospects of the UN’s Convention on Migrant Workers,” Migration Policy Institute, Washington, D.C., March 1, 2005, <<http://www.migrationinformation.org/Feature/print.cfm?ID=288>> (accessed August 6, 2005).
- <sup>138</sup> Art. 7.



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- <sup>139</sup> Ryszard Cholewinski, "Protecting Migrant Workers in a Globalized World," Migration Policy Institute, Washington, D.C., March 1, 2005, <<http://www.migrationinformation.org/Feature/print.cfm?ID=293>> (accessed August 6, 2005).
- <sup>140</sup> Art. 10.
- <sup>141</sup> Cholewinski.
- <sup>142</sup> Caroline Dommen, "Migrants' Human Rights: Could GATS Help?" Migration Policy Institute, Washington, D.C., March 1, 2005, <<http://www.migrationinformation.org/Feature/print.cfm?ID=290>> (accessed August 6, 2005).
- <sup>143</sup> Grant.
- <sup>144</sup> Ibid.
- <sup>145</sup> "Panel OKs Bills to Aid Victims of Trafficking," *Japan Times*, June 15, 2005, <<http://www.japantimes.co.jp/cgi-bin/makeprfy.p15?nn20050615a5.htm>> (accessed June 15, 2005).
- <sup>146</sup> Robyn Iredale and Nicola Piper, "Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: The Asia-Pacific Perspective," UNESCO, Paris, October 23, <<http://unesdoc.unesco.org/images/0013/001395/139528E.pdf>> (accessed August 26, 2005)
- <sup>147</sup> "Regional Hearing for Asia and the Pacific, Manila, Philippines, 17 and 18 May 2004: Summary Report," Global Commission on International Migration, Geneva, n.d. (Hereafter "Regional Hearing for Asia and the Pacific")
- <sup>148</sup> International Organization for Migration, Labour Migration in Asia: Trends, Challenges, and Policy Responses in Countries of Origin, Geneva: IOM, 2003.
- <sup>149</sup> "Regional Hearing for Asia and the Pacific," p. 2.
- <sup>150</sup> Ibid.
- <sup>151</sup> Ibid., pp. 3-4.
- <sup>152</sup> Among the violations of migrants' human rights noted were: abusive work conditions; exposure to racism, xenophobia, and other forms of intolerance; employers' failure to extend the protections or benefits their employees deserve; abuse and torture during detention; and deportation under inhumane conditions. Ibid., pp. 4-5.
- <sup>153</sup> Ibid.
- <sup>154</sup> International Organization for Migration, Labour Migration in Asia, pp. 57-60.
- <sup>155</sup> Ibid., pp. 60-62.
- <sup>156</sup> Ibid., pp. 65-66. The report lists the following as the main obstacles: relative insignificance of migration/migrant workers in the country; absence of the necessary infrastructure to apply the conventions and high cost of implementing the conventions; national economic problems and high unemployment rates prompting governments to give preference to nationals over foreign labor; complexity of national immigration legislation and practice, as well as the constant evolution of legislation on this subject; and the different context in which the conventions were developed, i.e., increasing privatization of migration movements, feminization of migration, and increases in temporary migration and in irregular migration
- <sup>157</sup> Colleen Thouez and Frederique Channac, "Convergence and Divergence in Migration Policy: The Role of Regional Consultative Processes," Global Migration Perspectives No. 20, Geneva, Global Commission on International Migration, January 2005, p. 14. Examples of RCMPs are found in many parts of the world: Europe, North America, and Australia through the "IGC" (Inter-governmental Consultations on Asylum, Refugees, and Migration Policies in Europe, North America, and Australia); Northern and Central America through the "Puebla Process" (the Regional Conference on Migration); Southern Africa through the "MIDSA Process" (Migration Dialogue for Southern Africa); and Europe through the "Budapest Process". In Asia, we see the "Manila Process," (the IOM Regional Seminar in Irregular Migration and Migrant Trafficking in East and Southeast Asia), APC (Inter-governmental Asia-Pacific Consultations on Refugees and Displaced Persons), and the Bangkok Declaration on Irregular Migration.
- <sup>158</sup> International Organization for Migration, World Migration 2003, Geneva: IOM, 2003, particularly Chapter 8, "Managing Migration at the Regional Level – Strategies for Regional Consultation."
- <sup>159</sup> International Organization for Migration, World Migration 2003, p. 135.
- <sup>160</sup> Ibid., p. 136.
- <sup>161</sup> Ibid., p. 137. In addition, some economic groupings in Asia-Pacific pay some attention to migration issues even though they are not priority issues. Such groupings include ASEAN, South Asia Association for Regional Cooperation (SARC), Asia Pacific Economic Cooperation (APEC), Boao Forum for Asia

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(BFA), and Pacific Island Forum (PIF). International Organization for Migration, p. 138. See also International Organization for Migration, The Role of Regional Consultative Processes in Managing International Migration, IOM Migration Research Series No. 3, Geneva: IOM, 2001.

<sup>162</sup> This point is emphasized in Amanda Klekowski von Koppenfels.

<sup>163</sup> For a brief overview of human trafficking in East Asia, see Shin-wa Lee, Promoting Human Security, pp. 52-55.