

New Role of Labour Unions

in the Era of Globalization:

Labour Unions and Migrant Workers Protection

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Abstract:

Economic globalization exacerbates the fragmentation of labour in many ways, but in the same time it generates commonalities in the experience and aspiration of workers not only regionally but worldwide. This approach gives phenomena of what political scientists call “labour solidarity” the new urgency, this gives us reasonable believe that suggesting of labour unions as out of dated institution is inaccurate. The regional integration and globalization did not opened up the new issues, but transformed the old problem into broaden arena, those arising from comparative labour law and its application to legal regimes. One of the biggest questions, the most problematic is legal protection of the labour migrants, including the illegal labour migrants. As the modern global world provides labour force with many opportunities to move around, it provides little support and protection for the migrant workers.

All Asia Pacific Rim faces a big challenge by illegal migrant forces flows. The comparative study should help to find the fruitful way to solve the problem of the labour rights’ protection for this group of workers through labour unions. The main hypothesis of the study is that the labour unions can provide effective protection for the rights of migrants and this protection will not damage the security of national workers. The legal definition and legal status of the documented (legal) migrant workers based on the national legislation of studied countries and the position of international organizations also reviewed. Paper indicates the need for implementations of the official regional regulations that will help to develop productive inter regional labour protection by the national labour unions, of the migrant workers.

Key words: labour unions; migrant workers; protection; labour law; labour rights; comparative labour law; global workplace

Introduction

It seems that nowadays regional integration and the globalization opened up for discussion a number of issues and questions arising from comparative labour law and its application to legal regimes in Asian societies. Especially these questions are important for thousands of migrant workers all around the world. As the modern global world provides labour force with many opportunities to move around, but provides little support and protection for the migrant workers. This problematic situation of workers employed abroad was addressed for the first time to the newly founded ILO in 1919. The concern of the ILO about the situation of migrant workers was reflected in the adoption of a Recommendation which already sketched out two main aims of the ILO in this field, those were, (1) equality of treatment between nationals and migrant workers; and (2) coordination of migration policies between States, on the one hand, and between governments and employers' and workers' organizations, on the other. The Declaration concerning the aims and purposes of the International Labour Organization, or the Declaration of Philadelphia, adopted in 1944, also makes specific reference to the problems of migrant workers. As it seems the problem is not new, but lately with the growing immigration it became severe (see Appendix 1).

To make the definitions used in this paper clearer, I would like to note that terms 'migrant worker', 'foreign worker' and 'immigrant worker' are used interchangeably. There is also the term that came from the German *gastarbeiter* 'guest worker' which shows that traditionally in European labour law the migration has been treated as a temporary phenomenon. The expression 'migrants' is used in two senses depending on the context: to refer globally to all immigrants regardless of whether they migrate to take up employment, and to refer to migrant workers and their families taken together (Papademetriou and Martin, 1991). Likewise, the terms 'illegal migrant worker', 'non-documented' or 'undocumented migrant worker', 'clandestine migrant worker' and 'migrant worker in an irregular situation' or 'irregular migrant worker' are equivalent. States of employment are also referred to as 'receiving' or 'host countries', whereas migrants' states of origin are also called 'sending countries'. Although many sending countries are developing states and most receiving countries are developed and highly industrialized states, these terms are not necessarily synonymous. For example, Kritiz and Zlotnik observe that 'though migration from developing to developed countries is considerable, large flows also take place . . . between countries at comparable levels of development, and still other flows originate in developed countries and end in the developing world' (Kritiz and Zlotnik, 1992).

In fact the migration the international issue was mentioned a while ago. Between 1506 and 1650 it is estimated that just under half a million persons migrated from Spain to the Caribbean and

to Central and South America and Mexico, and that by 1815, one million migrants had settled in North America from the United Kingdom and Ireland. Their numbers, however, were considerably less than those forced to migrate, such as slaves, indentured labourers, convicts, and refugees (Ricca, 1989). But the mass migrations overseas started together with the improvements in ocean travel. Voluntary migrants were usually colonial settlers.

The nineteenth century witnessed the expansion and acceleration of voluntary migratory movements. Contributing factors included the industrial revolution, the demographic and economic situation of Europe, the attraction of spaces to be settled and developed in the New World, technical advances in transportation, and the relaxation of government controls on movements of people. Between 1815 and 1914, there were considerable intercontinental movements: about 60 million people migrated from Europe and elsewhere to the Americas, Oceania, and South and East Africa; an estimated 10 million persons migrated from Russia to Siberia and central Asia; approximately 12 million Chinese and 6 million Japanese moved to eastern and southern Asia; and 1.5 million persons emigrated from India to South-east Asia and South and East Africa (Cholewinski, 1997).

The nineteenth century also saw the development of migration for paid employment, which initially consisted of the large-scale importation of indentured agricultural labour to sustain the plantation economies of European colonial empires. The importation of Indian Tamils by the British to work in the coffee and tea plantations in Ceylon, Sri Lanka is just one example.

International voluntary migration continued during the inter-war period, but at a slower rate due to the introduction of restrictive immigration policies and the Great Depression of the 1930s; the latter resulting in a drastic decline in international trade, mass unemployment in many countries, and the phenomenon of large-scale forced and voluntary repatriation (as the USA and Argentina, for example, repatriated many Mexican and Italian migrants respectively) (Ansary, 1977).

The end of the Second World War brought about a significant increase in migration generally. In addition to the forced migration of refugees and settlers from former colonies, the 'guest workers' contributed significantly to the reconstruction of Western Europe after the devastation of the war and to the creation of economic prosperity shortly afterwards. Indeed, the influx of foreign labour in many Western European countries appeared to spiral uncontrollably upwards until the beginning of the 1970s. This brief historical survey indicates that international labour migration is truly a global phenomenon, taking place in every region of the world.

Foreign workers may either be long- or short-term immigrants. The first category includes workers and their families who migrate with a view to settle permanently in the receiving country. For example immigrants to Australia, Canada, and the USA, who are usually admitted as permanent residents and who eventually become eligible for naturalization after a certain period of residence in the country. The second category comprises workers lawfully admitted on temporary work permits

(of a finite duration), usually for specific employment (bearing in mind, of course, that work permits may be extended or renewed while workers are in the country of employment). This describes the approach that has been taken and, to some extent, is still being taken in Western European states of employment which do not consider themselves to be 'countries of immigration'. It is also the preferred approach in other migrant-receiving countries, such as the Gulf States and South Africa. Short term migrants also include frontier and seasonal workers and those studying and pursuing their careers abroad. Self-employed workers may fall into both categories. Not all of these groups are covered by the various definitions of 'migrant worker' in international instruments. Moreover, students, trainees and those sent by their employers to another country to perform a specific job are explicitly excluded from all the international definitions of 'migrant worker'. The two categories of long- and short-term immigrants are by no means mutually exclusive. For example, migrant workers who initially intended to work abroad for a limited period of time and then to return home may be permitted to settle on a permanent basis (Kritz and Zlotnik, 1992). But this can not be the case of the Japan and South Korea, as these countries has strict rules of the permanent residency.

That can be also the case that migrant workers may also work in a country illegally, i.e. without authorization. Illegal migrants usually excluded from the definition of 'migrant worker' in all the international legal acts, with the exception of the recent UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The following categories of illegal migrants are discernible. Migrants may attempt to cross a frontier wholly concealed from the authorities or may enter a country by means of false documentation or other kinds of misrepresentation. The first form of clandestine migration frequently takes place into countries with particularly long borders (Warzazi, 1974). Although the former method can be achieved on the migrant's own initiative or with the assistance of relatives, both methods, and especially the latter, increasingly involve the participation of criminal organizations with substantial resources. Clandestine crossings arranged by traffickers often expose immigrants to many forms of exploitation. Immigrants not only pay a large sum of money for these services, but also face blackmail by traffickers for long periods after entry together with confiscation of their travel documents. Moreover, illegal migrants are particularly vulnerable to dangerous, unhygienic, and very uncomfortable conditions of transport to their destination (Leary, 1987).

In some cases, however, illegal migrant workers actually enter a country by legal means. They may enter as 'tourists' without the necessary papers for employment and then find themselves in an 'irregular situation' when they start working (Power, 1978).

Irregular labour migration also frequently encompasses those migrants who are entitled to

residence and not to work and yet are employed, as well as those who have both residence and work permits but nevertheless work illegally in 'informal' jobs. In this instance, illegal migration for employment is inextricably bound up with legal labour migration (Rogers, 1985).

The numbers of illegal migrants may be inflated substantially by the family members of migrant workers. These may accompany a clandestine entrant, join a legally residing migrant worker in contravention of immigration requirements, or become workers in an irregular situation by finding employment without permission, even though their entry into, and their residence in, the host country are sanctioned by law.

The diverse definitions of 'migrant worker' found in the various international instruments indicate that it is necessary to embrace a broad understanding of this concept for the purpose of this study. The adopted definition applies to both long- and short-term immigrants. So long as these persons have not acquired the citizenship of the state of employment and are working or have worked in that country, they are included. Self-employed and seasonal migrant workers and those studying and training abroad but also working are therefore covered. A special interest is also reserved in this paper for illegal migrants, who constitute the most vulnerable class of migrants and who are most likely to be subject to exploitation and to suffer from human rights abuses. The persons excluded under this broad definition are Geneva Convention and *de facto* refugees, tourists, and those migrating to a country for the purpose of retirement, unless it is to the country in which they completed their work life.

Part 1. International migration

The causes of international labour migration are numerous and complex, and this section only focuses on what are arguably the principal causes. On a basic level, migration for employment is caused by complementary 'push' and 'pull' factors; the former is characterized by poor living conditions in the country of origin and the latter by the availability of well-paid work (in relative terms) in the country of employment. The labour migration process is then facilitated by improving communications, the availability of transportation, and by social or ethnic networks.

Most international labour migration movements are linked to poverty and economic underdevelopment in countries of origin (Papademetriou and Martin, 1991), chronic underemployment in the sending countries in contrast with the relative demographic stability in receiving countries.

Well, in this, its part plays the demand for the cheap labour. According to the analysis by Gordon H. Hanson, there is no evidence that legal immigration is economically preferable to illegal immigration. The illegal immigration responds to market forces in ways that legal immigration does

not. On example of US we can see, that when the illegal migrants tend to arrive in larger numbers the economy is booming (relative to Mexico and the Central American countries that are the source of most illegal immigration to the United States) and move to regions where job growth is strong. Legal immigration, in contrast, is subject to arbitrary selection criteria and bureaucratic delays, which tend to disassociate legal inflows from U.S. labor-market conditions (Hanson, 2007). All this gives us the reasonable believe that the migration can benefit the economy of the country, unlike the common fear tells. That means that the illegal immigration has the clear economic logic, so according this sending all illegal immigrants home would reduce the U.S. labor force by 5 percent and the low-skilled U.S. labor force (workers with less than a high school education) by 10 percent or more. In 2005, illegal immigrants accounted for 24 percent of workers employed in farming, 17 percent in cleaning, 14 percent in construction, and 12 percent in food preparation. Losing this labor would likely increase prices for many types of non-traded goods and services, increase wages for low-skilled resident labor, decrease incomes of employers that hire these workers, and increase the incomes of taxpayers that pay for the public services these individuals use. The net impact of these changes would be small, although in some regions and industries the dislocation caused by the labor outflow would be considerable. If, instead, illegal immigrants were allowed to remain in the country and obtain legal residence visas, the economic impact would depend on the rights granted to these individuals. In the short run, the economic impact of legalization would likely be minimal (Hanson, 2007). And this is an impact that illegal migrant workers gives on such massive economy as American.

So why is it important to protect the rights of migrants? First of all the studies shows that the whole labour standards connected to the economy in total (Flanagan, 2003):

Contrary to the race to the bottom hypothesis, the analysis did not find significant linkages between export performance or FDI inflows and the measures of labour standards. In sum, the paper finds no evidence that countries with lower standards gained competitive advantage in international markets. Poor labour conditions often signal low productivity or are one element of a package of national characteristics that discourage FDI inflows or inhibit export performance.

If the will to protect labour rights doesn't go from the willingness to defend the human rights, it shall be just motivated by the simple economic reasons. There were different measures for the protection the labour rights of migrants. Some of the researches think that it's the task for international organizations (see Vittin-Balima, 2002). But other think differently (David, 2002), David empathizes that the solidarity with migrant workers might help labour unions to get back to the basic principles of the labour movement.

The immigration in total linked to workers' rights and, therefore, is of concern to trade unions. It is a complex issue for unions, because the nature of migration flows and the legal status of migrants vary. Many migrant workers – including many in the construction, wood and forestry industries in Asia-Pacific – are effectively invisible. This makes it difficult to gain adequate and reliable data as a basis for useful analysis and planning. Majority of countries in the Asia-Pacific region are experiencing economic reform, with the adoption of market economies, trade liberalization and new forms of international trade agreements and cooperation. Structural adjustment programmes have contributed to the loss of jobs, with the decline of traditional industries and public sector employment and as earning opportunities drop at home, the pressure increases to move to find them elsewhere. Globalization means that access to travel and awareness of 'other places' has increased. So workers are driven to migrate, legally or illegally. Developing nations in the Asia-Pacific region continue to have a demand for cheap, low-skilled labour. Rather than move where labour can be found, many companies restructure and subcontract, as part of the search for cheap labour. Gaps need to be filled, and the most available source will be migrant workers, whether authorized or not. There is a demand for immigrant labour, both to fill vacant jobs and to provide additional taxpayers who can contribute to state-run pension schemes in ageing societies. The labour came largely from Egypt, India, Indonesia, Pakistan, the Philippines and Thailand. In the next two decades, newly industrialized countries (NICs) within Asia drew intra-regional sources of labour as workers migrated to new locations for employment. There are some cases where migrant workers are allowed in on the basis of specific agreements between governments and companies. In Australia, Bangladesh, Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia and Pakistan, there have been some examples of migrant workers' being recognized – even sought – for particular projects. However, this is often under unsatisfactory conditions or severe limitations. In some cases, the workers are brought in despite general policies of not welcoming them. Where this happens, there is often a wide gap between the estimated numbers of legal and irregular migrant workers, as companies and project managements find alternative sources when they are blocked legally. These illegal workers are very vulnerable – and it is this illegal status of many individual migrant labourers in the construction industries that creates most difficulty for trade unions needing to act and react in workers' interests. But there are clear needs not only to react, but to act as well. These irregular migrants have no access to trade unions and therefore no avenues for insisting on basic workers' rights. With no rights, they can be manipulated to depress salaries, standards, terms and conditions for local workers who may be members of trade unions. They may also be used as strike-breakers. Trade unions are constantly hindered by not knowing the numbers and origins of illegal workers and by the inability to contact and engage with them. There is often anecdotal knowledge, but the risky and uncertain lifestyle of

the illegal immigrant labourer makes it virtually impossible to substantiate stories even of severe abuse and exploitation. Many trade unions, particularly in the construction industry, have therefore concentrated on limiting the potentially harmful impact of irregular migrant workers on the terms and conditions of union members. This must continue – with vigilance and with determined action against opportunistic employers who are ready to set workers against one another.

But it can be the case that workers may come from countries where there are active unions. So they are so used to have unionized protection so they may want to obtain it again, if they can overcome the risks involved in becoming visible. These people may constitute a new reservoir of trade union membership. It is essential that the member unions recognize these workers and understand the forces that drive them and the contexts in which they operate. It is not surprising, therefore, that with barriers to legal migration, illegal migration has developed and grown to meet demand. Most of these workers were in manufacturing, but it is an example of how some governments pick and choose when to turn a blind eye to illegal labour, and how they exploit the availability of an uncontrolled workforce. Undocumented foreign workers are estimated to receive less than half the wage of Korean workers doing the same job and have few if any benefits in case of accident. Trade unions may do better by addressing the needs of workers at their source, by educating workers about their rights in whatever country they are employed, and by finding ways to make contact with illegal workers.

Part 2. South Korea Case

Before moving towards the more precise characteristic of the Korean Labour Unions the prehistory shall be briefly discussed. Korea launched the democratic reform in 1987, the major changes in its political system, economic structure, and society were made. The authoritarian regime was replaced by democratic politics. The economy has been through booms and busts that have reduced the central role of the dominant *chaebol* conglomerates. Reforms of the legal system have both reflected and contributed to the changes in the country.

The understanding the current position of the labour unions can't be full unless the legal system of South Korea would be reviewed. As in any other East Asian societies, law in Korea has traditionally been described as reflecting the Confucian tradition, adopted at the outset of the Yi dynasty (1392-1910) (Hahm, 2001). The Confucian legacy is complex, but several elements of it have drawn attention as having particular consequences for the Korean legal system. First, Confucianism is usually seen to incorporate an aversion to litigation and a preference for social norms as the primary regulatory mode. Second, Confucianism is based on notions of social hierarchy, which contrast with liberal assumptions of formal equality. Third, Confucianism reflects

a notion that positive law is to be understood in instrumental terms as primarily a tool of the state, rather than an external constraint on state power. The traditional attitude can be characterized as rule by law, as opposed to the rule of law.

These notions comported well with a state-centric legal and political structure introduced during the Japanese colonial period (1910-45). During this timing, Japan introduced Western notions of law that had, in turn, been borrowed from France and later Germany, i.e. roman-germanic legal system. It was under colonialism that Korea assumed the formal structure of a modern legal system, with distinct judges, prosecutors, and private lawyers. However, because of the colonial character of the state, notions such as judicial independence, separation of powers, and constitutional rights were minimal, and the paradigmatic function of the legal system was social control through criminal law (Choi, 1980).

Since the democratization of Korean society began in 1987, industrial relations in Korea have undergone a rapid transformation. The period between 1987 and 1997 was marked by growing resistance to the pattern of authoritarian labor relations that had predominated in the era of rapid development, and by efforts to build a new dynamic of industrial relations. The Korean labor legislation, which had not been significantly changed in the 43 years since its enactment in 1953, was not suitable to cope with the challenges of the new business environment. As a result, labor laws were drastically revised in 1997 to improve labor-related systems and to enhance basic labor rights.

The reform of the Labour Law helped two main changes occur. First, provisions were made allowing private school teachers and public workers to unionize. Second, legal permission was granted for dismissal for 'managerial reasons', and legal permission was granted to temporary workers and temporary work agencies. The aims of these changes were to help firms overcome their predicament and to boost Korea's economy by making the labor market in Korea more flexible.

One of the centerpieces of the new reforms was the creation of the Commission of Labor, Management and Government ('Tripartite Commission'). The Commission formulated a consensus concerning the increase of employment of flexibility and the enlargement of labor movement rights. With the Tripartite Commission playing the central role, Korean industrial relations experienced a turning point. The Tripartite Commission was a new type of decision-making mechanism, bringing together opposing social interests in a way that had not previously been possible. On the one hand, trade unions, which have often prevailed in collective bargaining in the past, geared to devise a new strategy, due to the economic crisis. Trade unions gathered and formed industrial unions. Along with the growth of participatory and cooperative industrial relations, decentralization of collective bargaining proceeded. This development indicates that while the trade unions have played a powerful role in past collective bargaining, spurring the centralization of collective bargaining, the

decentralization of the firm structure, involving the horizontal changes in the enterprise organization and empowerment, has led to a decentralization of the bargaining structure. In addition, with the interface between the trend of globalization and information economy, the importance of the issues at the level of work organization and workplace has increased (Lee and Choi, 1998).

The labor movement in Korea has traditionally found the greatest support from regular workers, and has been challenged by the dramatic increase in the number of non-regular workers, which is the result of a more flexible labor market. Consequently, labor-labor conflicts have risen. The regular worker unions opposed allowing non-regular workers to join their unions for fear that working conditions would fall to the level of those currently accorded to non-regular workers by the employers. However, the national labor unions, such as the Korean Confederation of Trade Unions, and the Federation of Korea Trade Unions, have supported the organization of unions, especially for non-regular workers, and are now fighting for the improvement of non-regular workers' poor working conditions and unstable employment status, demanding legislative protection and social welfare.

In addition to the private sector, civil servants and college professors are also taking steps to organize trade unions (Lee, 2001). This goes against a long tradition of constraining such workers' right to organize. Civil servants are now allowed to organize work councils, but they still have no right to organize labor unions.

The sense of crisis regarding the labor movement, which deepened during the economic crisis, has led to efforts to change the structure of trade unions. In particular, efforts are being made to change the union structure into industry-based unions and to consolidate existing industry-based federations. The early part of 2001 brought some trade unions together under the Korean Metal Workers' Federation. The largest federation under the Korean Confederation of Trade Unions changed its structure to that of an industry-based union, and the Korean Federation of Tourism Industry Workers' Unions and the Korean Federation of Commercial Workers' Unions merged to launch the Korean Federation of Service Workers' Unions. The move to change the trade union structure into an industry-based union will strengthen activities of industry-based units, by allowing them to present standard proposals for collective bargaining.

2.1 Migrant workers in South Korea

There was a problem appeared where no one was waiting in the early 1990s, before the 1997 financial crisis, Korea's economy enjoyed rapid growth. The resulting prosperity has, in turn, created new challenges in the form of severe manual labor shortages. Having grown accustomed to

prosperity, Korean workers have demanded and received gradual reductions in their working hours. Furthermore, Korea's well-educated young people balk at performing what are referred to as "3D" jobs - dangerous, dirty, and difficult. Many industries have addressed the problem by looking abroad for the required manual labor. While the use of unskilled labor has never been officially allowed by immigration authorities, hundreds of thousands of unskilled laborers have nonetheless entered the country to fill the demand.

Since the early 1990s, Korea has undertaken a national and international campaign of 'internationalization', proclaiming 'Korea's role in the world community', with the aim of counteracting its xenophobic and isolationist image and fostering an international philosophy more on a par with its global economic power. Korea has transformed from a labor-exporting country to a labor-importing country, and emerged as a leading nation among rapidly industrializing countries. The globalization of its economy has forced Koreans to come increasingly into contact with foreign people and cultures. In an era of free trade and globalization, the problems related to foreign migrant workers may be a test case for Korea.

Korea was host to approximately 693,697 foreign workers, including 304,000 illegal entrants (mostly from Bangladesh, the Philippines, India, Nepal, Pakistan, China, Vietnam), according to the Ministry of Justice. Of these foreign workers, about 60,000 are industrial trainees (MJ, 2005). Most of these workers go to fill the demand in the construction industry or in small- to medium-sized manufacturing companies. Others fill labor gaps in rural areas and the rest consist of low-wage jobs, ranging from textiles and needlework to plastics, leather, computer chip assembly, and injection molding.

Foreign workers are typically recruited by experienced Korean labor brokers, who are often conveniently connected with the construction industry (Choe, 1994). Korean policy that aims to avoid the permanent settlement of unskilled foreign workers makes labor brokering a prominent feature of migrant labor markets in the country. Conditions for these workers are usually harsh. Broken contracts, rampant discrimination, and violation of civil rights, along with legal issues involving marriage and family, make life for migrant workers in Korea difficult. As it was already mentioned according to the Ministry of Labor, migrant workers generally receive at least 60 percent less wages than their Korean co-workers for the same work (Kim, 1995), partly because they are unable to demand full compensation and partly because their employers must pay kick-backs to the brokers who arranged for their employment. In constant fear of deportation and living on tiny budgets, workers typically share one-room apartments with several colleagues and live on a diet of instant noodles and other non-nutritious foods. Even though they work an average of ten to twelve hours a day, according to one source, they neither receive pay for over-time work, based on eight-hour work day, nor receive compensation for working on holidays (JCMK, 1996). Given the

unstable status of migrant foreign workers, their employers also typically relax or ignore common health and safety standards; this problem is exacerbated by the fact that injured workers often receive no compensation for their injuries and may even be fired or deported as a consequence. This situation generally arises because the worker is either too afraid of discovery by the authorities to complain, or was required to waive health and safety coverage as a condition of employment. For similar reasons, many workers quietly endure verbal and physical abuse at the hands of their employers and co-workers. As for health care, most workers are often unwilling and unable to seek out or pay for medical care. This may mean dangerous neglect of serious illnesses or injuries, sometimes leading to debilitation or death. It also has the potential to create broader public health concerns.

Korean and foreign workers are in constant interaction at the workplace. These cross-cultural encounters often lead to cultural conflict. The most significant problem is the language difficulty. The language barrier not only contributes to foreign workers' discomfort, but also shapes a negative interpersonal relationship between them and Korean workers. Due to the lack of mutual understanding of cultural differences, foreign migrant workers are often subject to verbal abuse and physical attack (Yoo, 1995).

Koreans tend to divide the concept of 'foreigners' into two categories: Westerners and non-Westerners. Westerners represent modernity and civilization, whereas non-Westerners symbolize pre-modernity and inefficiency (Yoo, 1995). This dual perception of foreigners fits well with the current composition of foreign workers in the Korean labor market. Workers from Western countries such as the US and Europe mostly work in professional fields such as business, high technology, and language instruction, whereas workers from non-Western countries are engaged in menial physical labor. Korean workers often look down on foreign workers who are engaged in menial physical labor. The personal interaction between Koreans and foreigners in the workplace inevitably leads to an unequal hierarchy, which places foreign workers at the bottom of the social scale (Yoo, 1995). One study shows that Koreans are not so much opposed to the reception of Korean-Chinese as they are to the reception of other foreign workers (JCMK, 1996).

To understand the situation deeper, let's take a close look at Korean immigration policy. The first and foremost principle related to foreign migrant workers derives from the non-discrimination principle. Until very recently, there has been no legislative act in Korea to deal explicitly with the labor rules for foreign migrant workers. This has been one of the major drawbacks in the current Korean legal system. Instead, these workers have been regulated by the Immigration Bureau through the enforcement of a number of immigration laws. The authority exercised by the Immigration Bureau stems from five principal sources: (1) the Constitution of Korea; (2) statutes enacted by the National Assembly, chiefly the Immigration Control Act of 2002; (3) the Presidential

Decree implementing those statutes; (4) published administrative regulations implementing those Decrees; and (5) guidelines by the Minister of Justice.

There is one more problem, as the employment of foreign workers is strictly limited. The principal motive behind this practice is to offer the best employment opportunities to native Koreans (Seol, 1999). While outlawing the practice of hiring foreigners in general, the current law allows the employment of foreigners under special circumstances. Permission is given to hire foreign workers based on occupational categories in those areas where the native Korean population alone cannot satisfy the need.

The most interesting elements of current Korean immigration policy are various informal "back-door" mechanisms for importing unskilled foreign labor, in some cases on a *de facto* permanent basis. This mechanism is a compromise to resolve the two competing concerns: (1) to control a massive influx of aliens; and (2) to meet industries' demand for unskilled labor.

Though the foreign **industrial trainee system** was designed to teach specific skills to foreigners, it has in reality become an invidious tool to import foreign labor. Intellectuals criticize the company trainee programs on the grounds that most jobs held by foreign trainees are those that Korean citizens will not do, that many employers provide very little actual training, and that most companies simply use the trainees as a source of cheap, unskilled labor (Kim, 1995). While it is clear that these industrial trainees are a valuable labor resource for Korean industry, the government treats them merely as 'trainees', taking away all the rights and privileges of being 'workers'. Since foreign trainees are not considered regular employees under Korean labor law, they do not receive regular wages, health insurance, worker's compensation, or other fringe benefits (Kim, 1995).

Part 3. Unions and Migrants: Globally and in South Korea

Migrant workers traditionally were ignored by unions. In countries of origin they have been ignored because they do not become members of unions. Usually everyone powerful agrees that although migrants perform an important function for the economy, as migrants diminish the level of unemployment, meet opportunities for acquisition of skills, and remit foreign currency, they have remained largely outside the interest of unions, normally occupied with other larger and more pressing domestic issues. But what shall be also acknowledged, the role that migrants in receiving countries take as they perform jobs for which sufficient local labour is not available (Radio-interview, 2005). However, migrants have been ignored because they possess little bargaining power. Sometimes they also have been opposed because they diminish the standards and contractual strength of national workers.

Globalization brings about a change of perspective, since unions realize that migrants are

not necessarily in direct competition for jobs with local workers and that increasing the standards for migrants will result in better standards also for national workers. Unfortunately not many unions' leaders understand this. For example, leader of the Federation of the Labour Unions in Russia completely missed the point and talks about threat from the migrant workers and damages that they bring to the wages of the Russian citizens workers (Radio-interview, 2005). This approach requires a change of attitude among union members. So it shall be reaffirmed that migrant workers must be included in the concerns of the trade unions. Not only is the mission of trade unions all encompassing, but also allowing differential treatment among workers does not serve the cause of workers in general. This, for sure, will be accompanied by some difficulties. Such as, problems of unions in receiving countries emerge from the fact that migrants work for many different employers and in a variety of sectors, from the fact that migrants are not very accessible and problems with language and culture do not facilitate accessibility, and from the fact that migrants, who are often not well educated and do not have an informed knowledge on trade unions, do not feel encouraged to become members, particularly if they are in an irregular situation. In addition, there are restrictive policies and practices in receiving countries and widespread pressure from employers not to join trade unions, under the threat of losing the job, a risk that migrants, who have incurred huge migration costs, cannot afford. Unions also suffer from lack of resources, limited networking and a basic aversion from members to extend services to migrants.

Very interesting example of well-manage coexistence of Labour Union and migrant workers is in S. Korea. Korean labour movement in the eyes of many foreigners seemed to be very 'militant' and strong. Although according to Youg Deuk Lee, Presedent of FKTU, Korean unions are presented by media as very militant, cause of 'focus on unionised workers' demonstration or protest actions. This shall be looked at through the Confusionism of Korean workers in general perceive their work place as indispensable to their life, and thus feel more passionate about and attached to their company than workers of any other nation (Lee, 2005). And Yu, Jae Sub adding to this, that 'unlike the widespread misunderstanding that labour movement in Korea is radical and militant, labor relations in our country are now marked by cooperation and co-prosperity'(Lee, 2005).

Most of labour unions in Korea are affiliated with one of the two national organizations: the Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU). It can be said that while FLTU takes a moderate rationalist stance, placing more emphasis on dialogue than on struggle, KCTU has been relatively struggle-oriented in its practice of labour movement.

In Korea any labour union is ready to help its allies. Although there are pretty strong feelings of suspiciousness from Koreans towards all foreign migrant workers that are mainly representers of the India, Pakistan, Iran and other Middle East countries, labour unions are ready to

work together with migrants. For example, latest protest organized by Migrants' Trade Union, that is affiliate of KCTU, showed it well. In April 2002, over 1000 migrant workers protested against the South Korean government's unfair immigration policy in several rallies and demonstrations. As a part of this campaign the Equality Trade Union Migrants' Branch (ETUMB) conducted a sit-down demonstration in front of Myongdeung Cathedral for 77 days and two key leaders of the ETUMB carried out a hunger strike at the Hwa Sung immigration detention center after they were arrested for labor activities (Lorea, 2006).

On July 31, 2003, the South Korean government passed a new migrant worker management system, entitled, the Act on Employment of Foreign Laborers or otherwise known as the Employment Permit System (EPS). The law, which took into effect on August 2004, along with the Industrial Trainee System is basically South Korean's version of a slave system. According to the new law, migrant workers can work in South Korea for only three years and for only one employer. Since migrant workers cannot change their work place, the employer basically has complete control over the wages and working conditions of migrant workers; thus these workers are bound to the employer like slaves. The ETUMB and other migrant workers were outraged by the South Korean government's actions thus they conducted a sit-down demonstration in front of Myongdeung Cathedral from November 15, 2003 to November 28, 2004.

Through these actions, migrant workers who were 'invisible and voiceless' were finally able to have their issues to the forefront of South Korean society. More importantly, it led to the formation of the Migrant Trade Union, an independent union organized and lead by migrant workers.

From the beginning, the South Korean government refused to recognize the Migrant Workers Trade Union (MTU) and publicly announced that the MTU could not have the three basic labor rights – the right to organize, the right to strike, and the right to collective bargaining. In addition, the South Korean government launched an all-out campaign to repress the MTU. During a press conference held by the MTU to announce its formation, immigration officials secretly videotaped the proceedings in an effort to specifically target migrant workers participating in the MTU. Clearly, the arrest of President Anwar is a direct attempt by the South Korean government to repress the MTU and crackdown against migrant workers in South Korea.

The recent repression by the South Korean government is not new. The government has consistently targeted migrant workers activists who have been arrested and deported. In 2003, many migrant workers were labeled as 'terrorists' and forcibly deported. Samar Thapa, a key leader of the ETUMB and the Myongdeung sit-down demonstration was 'kidnapped' in broad day light by immigration officials and deported in an effort to stop the mobilization efforts by migrant worker.

Like all workers in South Korea, migrant workers should be treated with dignity and respect.

Migrant workers should be guaranteed the same fundamental labor rights that are enjoyed by native workers. Despite the government crackdown and threats of deportation, the MTU will continue to organize and fight for the rights of migrant workers. On behalf of more than 400,000 workers in South Korea the MTU calls on the South Korean government to stop the crackdown against migrant workers and recognize the labor rights of migrant workers. The MTU, which is in fact a merger of several migrant workers unions and groups in Seoul, Incheon, Kyongido, is an effort by migrant workers in South Korea to organize and fight for their rights. The roots of MTU can be found in the Equality Trade Union Migrants' Branch formed in 2001, to address discrimination and labor abuses suffered by migrant workers and the unjust immigration policy of the South Korean government (S. Korea, 2005).

Labour Unions shouldn't forget about their basic role and purpose to defend workers, to guarantee their labour rights. That is no matter where those workers are from. The labour rights are guaranteed to everybody according to International Legislation and therefore according to national laws. Although in today global world a lot of political and different countries problem might seemed influential to the different parts of the our life. Therefore to focus on the original purpose of the organization getting even more important. Labour Unions shouldn't set and discuss the political issues that they don't have any influence on. Like it was with one Labour Union that was discussing Iraqi War on its plenary meeting, while there were more related and more essential questions to solve, that have the strong connection with the purpose of the organization.

Part 4. What else can labour unions do about migration?

As trade unions develop both awareness and skills in the understanding of issues, many of these NGOs could provide models of research as well as related data and insights. Trade unions will need to increase their own expertise in making the links between macroeconomic practice and policy and the impact on the ground for workers in the construction, wood and forestry sectors. Reaching out to the unorganized and vulnerable needs to be a key part of ensuring the future relevance of the trade union movement. This requires a new effort on the part of unions, particularly in the case of migrant workers. At times, difficult issues may be involved.

Where possible, it would be helpful for unions in sending and receiving countries to strengthen their contacts concerning migrant labour, through meetings and other regular channels. In today's increasingly connected world, such contacts are easier than ever before and should become a priority. There are some examples of Indonesian migrant workers organizing, with support from trade unions or NGOs. In Hong Kong, Indonesian workers recently marched and demonstrated in front of the Indonesian consulate, raising issues of protection and corruption.

Unions in Malaysia have also made some efforts to organize among migrant workers. However the vulnerability of these workers, when they seek to organize, remains a major problem.

Although the concerns of migrant workers and workers in the formal employment sector may seem far apart, there are in fact some clear linkages and common interests: (1) Many trade union members in the formal urban economy come from villages and areas that also send workers abroad. There are family and community ties linking trade unionists with migrant workers. (2) The key issue of self-organization to promote better working conditions, which applies to the formal sector, can also be applied to migrant workers, but new and imaginative approaches are required. (3) Basic legislative protection and enforcement, which are critical for workers in the trade union movement, are also critical for migrant workers. The skills of unions in seeking to improve labour legislation can be used to advance a legislative framework favourable to migrant workers. (4) Respect for the ILO's fundamental principles and rights at work applies to all workers. Unions need to develop a strategy looking at how they can help migrant workers, the key interventions required, and how those interventions can be made. The strategy should aim to increase protection of workers before their departure, whilst they are working abroad, and on their return.

In developing a strategy for migrant workers, unions need to think about the role of *targeted education*. Unions could use their education activities in areas that send large numbers of workers abroad, as a vehicle for reaching out to communities directly involved in migration. The skills and networks available to trade unions should lend themselves to: (1) working with NGOs and others who have a history of support to migrants; (2) public information campaigns; (3) providing advice to prospective migrant workers prior to their departure; (4) organizing and recruiting migrant workers; (5) organizing support groups; (6) monitoring and reporting abuses; and (7) improving cooperation between trade unions in sending and receiving countries.

Conclusion

It is not a simple task to formulate and implement practical and effective policies around migration, which take into account the needs of both the receiving economic community and the workers who make up a migrant labour pool. Responses may be polarized. One is described as the 'open door', and is based on humanitarian principles of allowing entry to any workers whose lives would be on patterns and movements of workers and networks for the gathering of information.

In response to economic globalization, trade unions are organizing the globalization of solidarity in defence of migrants. In summer 2005, after the Malaysian Government's brutal expulsions of migrant workers, that was reported the inhuman conditions inflicted upon thousands of Filipino and Indonesian migrant workers in detention camps, the Asia-Pacific Regional

Organization of the International Confederation of Free Trade Unions, in cooperation with the Malaysian Trades Union Congress, the Bangladeshi ICFTU-BC and the Trade Union Congress of the Philippines, asked Malaysian Government to review its policy and to ensure the protection of migrant workers, who are vital to the country's construction, plantation and domestic service sectors. Then the major French industrial group was accused of anti-union harassment at one of its American plants, in Indiana. So the French union confederations CFDT, FO and CGT put some noisy public pressure on the parent company. In cooperation with the services and textile workers' internationals UNI and ITGLWF, the French unions denounced the expulsion threats made against workers at the Indiana plant, for the most part Hispanic immigrants, in a bid to stop them from joining a union. If today's migrations know no frontiers, neither do today's unions.

It's difficult to identify specific areas of skill needed as a basis for allowing migration. There is often a time lapse, which can result in problems, particularly given the up-and-down nature of construction booms. However, there is an urgent need to press for review and sensible overhaul of most government policies. These policies are impacting on the lives of many workers in the construction industry in countries around the region. International Conventions and Agreements can provide standards and benchmarks for the treatment of workers. These are particularly relevant and can be applied to legally migrating workers in many countries. Ratification and implementation of these agreements would provide a useful framework for trade policies. However, while discrepancies continue between immigration policies and labour needs, illegal migration will also continue. The causes of this problem need to be highlighted while criminal operations are policed and penalized. Essential to dealing with the role of labour unions in defending and contacting irregular migrants will be recognizing the extent to which Asia-Pacific Governments do or do not ratify established international agreements. There are many national, regional and global networks of NGOs concerned with migration issues. Not all of these have a direct focus on workers in the construction industry.

Both immigration and its social effects to a society are deeply influenced by the nature, operation, and institutional structure of immigration. This structure consists in its ideal form of three main interrelated and complementary components - an immigration policy, an immigrant policy, and an ethnic relations policy - that enhance the selectivity of immigration, shape public conceptions, set up safeguards for social interaction, and provide for required adjustments between the host and immigrant populations.

As immigration flows are often influenced by the nature and degree of economic ties between the sending and receiving states, the new immigration flow into Korea may be seen partly as a consequence of the globalization of Korea's economy. As Korean society expands along with its economy and comes to incorporate increasingly diverse elements, it is important to learn how to

effectively integrate these new elements into the consensus-building process if it is to escape its isolationist image and maintain the integrity of the process itself.

The issues regarding foreign migrant workers represent a unique and profound challenge to the Korean people and their culture. Analysis of the areas of immigration control suggests that many of the socio-political forces that are shaping international migration to Korea today have deep historical and cultural roots. The arrival of substantial numbers of foreign workers may fundamentally challenge some of the cultural assumptions of Korea, particularly the images of social harmony and racial homogeneity.

As in other areas of public policy-making, Korean immigration policy has been primarily shaped by administrative agencies. However, courts have made some significant rulings regarding the specific problem of foreign workers' compensation. A group of public-interest lawyers and some social movement organizations are actively engaged in promoting public awareness in this area. Thus, immigration policy provides some insight into the shifting balance among actors in the policy process. Traditional assumptions of state dominance are being challenged at the margins by courts and civil society.

International norms play an important role in providing standards that can be used in this policy area. Yet the current regime of international human rights law falls short of providing migrant workers comprehensive protection or relief. While the resources necessary to realize such protection can be found in the existing corpus of law, Korea has thus far shown little willingness to implement them. In the short term, then, the effective incorporation of international human rights principles into Korean case law may require an indirect incorporation approach, whereby international norms are used to inform the interpretation of Korean law.

Appendix 1. Countries receiving migrant workers.

Source: *International Organization for Migrants*.

Countries receiving migrant workers		
Country	Migrants	Population
USA	35 million	295 million
Russia	13.3 million	141.5 million
Germany	7.3 million	82.5 million
France	6.3 million	60.7 million
India	6.3 million	1.1 billion

Appendix 2. Foreigners in South Korea

Source: Ministry of Justice, *International Crimes*, 2005, p. 33

	Total	Legal Residence	Illegal Residence		Portion of illegal residence(%)
			16~60 yrs	Total	
Total	693,697	483,746	187,908	209,951	27.1
China (Korean)	142,456	96,311	37,228	46,145	26.1
China (ethnic Chinese)	114,139	66,533	43,354	47,606	38.0
Philippines	35,945	22,080	13,596	13,865	37.9
Indonesia	25,311	19,172	6,099	6,139	24.1
Thailand	28,498	16,611	11,729	11,877	41.2
Vietnam	34,376	23,390	10,944	10,986	31.8
Bangladesh	16,275	1,231	14,880	15,044	91.4
Mongolia	20,578	9,567	10,633	11,011	51.7
Russia	11,944	7,074	3,481	4,870	29.1
Uzbekistan	14,524	7,561	6,888	6,963	47.4
Pakistan	11,365	5,993	5,285	5,372	46.5
India	6,487	3,307	3,123	3,180	48.1
Sri Lanka	9,234	526	2,754	2,768	29.8
Nepal	5,608	3,474	2,131	2,134	38.0
Iran	1,815	472	1,334	1,343	73.5
Kazakhstan	3,378	2,071	1,276	1,307	37.8
Myanmar	3,378	1,550	1,820	1,828	53.9
Nigeria	1,690	661	1,020	1,029	60.4
Other	47,174	45,150	6,403	7,964	13.6

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