

Regional Integration and Migrant Workers' Rights Protection in the Asia-Pacific Region: The Case of the Republic of Korea

Anastasia V. Kouznetsova Sutch

Abstract

Economic globalization exacerbates the fragmentation of labor in many ways, but at the same time it generates commonalities in the experience and aspiration of workers not only regionally but worldwide. This approach gives the phenomenon of what political scientists call "labor solidarity" the new urgency; this gives us the reasonable belief that suggesting labor unions are out of date is inaccurate. The ongoing regional integration and globalization did not open up new issues, but rather transformed an old problem into a broadened arena related to the issues arising from comparative labor law and its application to legal regimes. One of the biggest and the most problematic questions is the legal protection of labor migrants, including illegal labor migrants. While the modern global world provides labor force with many opportunities to move around, it provides little support and protection for the migrant workers.

The entire region of the Asia-Pacific Rim faces a big challenge due to illegal labor migration. Comparative studies, such as this, should help to find fruitful ways to ensure the protection of the labor rights of this group of workers through labor unions. The main hypothesis of the present study is that labor 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 documented (legal) migrant workers are based on the national legislation of the countries examined and the position of international organizations also reviewed in this study. This analysis indicates the need for the implementation of official regional regulations that will help to develop effective inter-regional labor protection in question by national labor unions.

1. Introduction

More than ten years ago Beverly May Carl in her book *Economic Integration among Developing Nations: Law and Policy*¹ wrote about the ups and downs for the integration of developing nations. The depth of their poverty and the extent of their economies' orientation toward the "First World" made regional integration difficult. Compounding this process is the great diversity that exists within the Asia-Pacific region. According to students of economic integration the process of integration will be successful only when the integrating countries are more or less at the same level of development. The diversity and the varied levels of economic development in the Asia-Pacific pose serious problems for regional integration. However, the spirit of integration still lives on. Despite occasional setbacks, the developing countries in this part of the world do manage to come together, revise or rewrite treaties on trade and economic relations, and their movement toward integration inches forward.

With the current trends towards even greater regional integration in Asia-Pacific, labor migration is expected to intensify in order to support the development of regional production networks and supply chains. To facilitate the movement of labor within the region, it is necessary, first, to look at measures to enhance the development of skills in a more concerted manner and,

second, to review the current migration policies and practices to ensure that they are sufficiently supportive of intra-regional labor movement while providing necessary measures to address and minimize possible adverse impacts associated with such movement.

When we discuss integration in the context of migrant workers, the term “integration” can be understood differently. Much of the scholarly discussion is about the social integration of migrants. However, in this paper we will look at integration and the movement of labor in terms of the system integration of migrants following Lockwood’s sociological theory of social systems with particular reference to the concepts of system integration and social integration.² System integration is the result of the anonymous functioning of institutions, organizations, and mechanisms, involving the state, the legal system, markets, corporate actors or finance. Social integration, by contrast, refers to the inclusion of individuals in a system, the creation of relationships among individuals, and their attitudes towards the society. It is the result of the conscious and motivated interaction and cooperation of individuals and groups.

Conceptually integration presumes the stability of relations among the parts of a system-like whole, and the borders of the integrated system clearly separate it from its environment; in such a state, the system is said to be integrated. Three other aspects of integration relate to the processes of integration and the resulting degree of interconnectedness or quality of relations within the whole: (1) the process of single elements relating to one another and, out of this process, forming a new structure; (2) adding single elements or partial structures to an existing structure, and forming an interconnected whole; and (3) maintaining or improving relations within a system or structure. This conceptual understanding of integration will aid our analysis of the movement of migrant labor and its role in regional integration.

Migrants have become highly visible in most developed countries. They tend to occupy jobs at both ends of the scale, in both high-skilled and low-skilled sectors. A 2005 report of the International Organization for Migration (IOM) emphasizes the role of well-managed migration in helping the economy of the host country and points out that, despite fears of migration, foreign workers play an important role in plugging the labor gaps left by falling birth-rates. The report also states that competition between migrant and local workers for the same jobs is, in fact, seldom seen.³ Foreign workers usually cluster around the top and bottom ends of the job market, filling roles that the local labour supply is unable to meet. IOM Director General Brunson McKinley states, “We are living in an increasingly globalized world that can no longer depend on domestic labor markets alone.”⁴

Can it be said that migration is a problem of one country that should be decided by the state? Can the state take a unilateral decision on how it will manage migration when migration is needed not only by that economy but also by other economies? Unfortunately, the unilateral approach no longer works. It is increasingly the case that countries need to join forces to solve migration issues with a view to harmonizing the treatment of migrant workers according to the standards of basic human rights. When we are not able to stop migration, whether it is legal or illegal, we need to develop a legal approach at the national and the international level that will help to protect the rights of migrant workers.

Why do we need to protect the migrants’ rights? First, studies show that labor standards are connected to the performance of an economy. Stephen Flanagan states, “[C]ontrary to the race to the bottom hypothesis, [his] analysis did not find significant linkages between export performance or FDI inflows and the measures of labor standards. In sum, the paper finds no evidence that countries with lower standards gained competitive advantage in international markets. Poor labor conditions often signal low productivity or are one element of a package of national characteristics that discourage FDI inflows or inhibit export performance.”⁵ If the will to protect labor rights does not come from concern for the human rights, then it should be motivated by simple economic reasons.

There are different measures for protecting the rights of the migrant labor. Some researchers believe that it is the responsibility of international organizations.⁶ Others think differently; for example, David empathizes that labor unions' solidarity with migrant workers might help them to get back to the basic principles of the labor movement. That is, we have a win-win situation.⁷ In this paper I will try to suggest some ways to defend the labor rights of migrant workers through labor unions as the main workers' agent for labor rights protection. The issue of migrant labor and the rights of migrant workers are linked to workers' rights in general and, therefore, should be a concern to the labor unions. However, the issue of migrant labor rights is a complex issue for unions, because the nature of migration flows and the legal status of migrants vary. Many migrant workers, including those in the construction, wood, and forestry industries, are effectively invisible. Globalization means that access to travel and awareness of "other places" have increased, and workers are driven to migrate beyond their national borders, legally or illegally. Gaps in the labor market need to be filled, and the most readily available source is often migrant workers, whether authorized or not. Just as labor unions developed historically as an instrument to protect workers' rights, so that instrument should be applied to the modern situation as well. There is no need to invent a new institution that will play the function of labor unions.

At the same time, labor movements around the world are deepening their analysis of globalization, particularly when it comes to free trade. Unions both in developing and developed countries are aware that globalization offers opportunities, but they also realize that globalization can have deleterious effects. It is clear that people want to be part of the decision making process that affects their lives and that the role of unions has been complemented by the role of NGOs. Unfortunately, however, NGOs do not always have the necessary means to perform the protection function for workers in the industrial relations; and this is where the labor unions have to take the lead.

The aim of this study is to address the question of how to protect effectively the labor rights of migrant workers, both legal and illegal, through the labor (trade) unions by a case study of the situation in the Republic of Korea. The hypothesis is that labor unions can provide a more effective protection for the rights of foreign migrants and that such protection will not damage the welfare of national workers.

The following section will offer an historical-institutional analysis that considers the socio-structural context in which the movement towards the protection of migrants' labor rights emerged – sociological opportunity-structure –, followed by a discussion of the possible protection by labor unions of the labor rights of migrants – institutional opportunity-structure. The analysis will use empirical, quantitative, and qualitative methods.

2. International Migration

The causes of international labor migration are numerous and complex, and this section only focuses on what are arguably the principal causes. At the most 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 labor migration process is then facilitated by improving communications, the availability of transportation, and by social or ethnic networks.

Most international labor migration movements are linked to poverty and economic underdevelopment in the countries of origin,⁸ chronic underemployment in the sending countries in contrast with the relative demographic stability in the receiving countries.

The International Organization for Migration observes that the main receiving countries are the United States, Russia, Germany, France, and India. This contradicts the theory of some econ-

omists that developed countries are attractive for migrant workers.

Table 1. Countries Receiving Migrant Workers

| Country | Migrants | Population |
|---------|-------------|--------------|
| USA | 35million | 295million |
| Russia | 13.3million | 141.5million |
| Germany | 6.3million | 82.5million |
| France | 6.3million | 60.7million |
| India | 7.3million | 1.1billion |

Source: UNSG Report on International Migration and Development, 2005; available at: [http://www.un.org/esa/population/hldmigration/Text/Report%20of%20the%20SG\(June%2006\)_English.pdf](http://www.un.org/esa/population/hldmigration/Text/Report%20of%20the%20SG(June%2006)_English.pdf).

The main reason for the high migration flow is demand for cheap labor. Hanson argues that there is no evidence that legal immigration is economically preferable to illegal immigration. Illegal immigration responds to market forces in ways that legal migration does not. The example of the United States shows that illegal migrants tend to arrive in larger numbers when the U.S. economy is booming relative to Mexico and the Central American countries that are the main sources of illegal immigration to the United States, and their main destinations are 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.⁹ This gives us the reasonable belief that, contrary to the common assumption and fear, migration in fact can benefit the economy of the receiving country. In other words, illegal immigration follows a clear economic logic; accordingly, repatriation of all illegal immigrants would reduce the U.S. labor force by 5 per cent and the low-skilled labor force (workers with less than a high school education) by 10 per cent or more. In 2005, illegal migrants accounted for 24 per cent of workers employed in farming, 17 per cent in cleaning, 14 per cent in construction, and 12 per cent in food preparation. Losing this labor would likely increase prices for many types of non-tradable 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 migrants were allowed to remain in the country and obtain legal residence status, 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.¹⁰

As noted earlier, illegal migrant workers are effectively invisible, making it difficult to obtain adequate and reliable data as a basis for useful analysis and planning. The 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 programs have contributed to the loss of jobs, resulting in declines in traditional industries and public sector employment. As earning opportunities drop in these countries, the pressure to move elsewhere for job opportunities mounts. Increased awareness of "other places," a result of globalization, drives workers to migrate, legally or illegally. Developing nations in the Asia-Pacific region continue to have a strong demand for cheap, low-skilled labor. Rather than moving where labor can be found, many companies restructure and subcontract, as part of their search for cheap labor. Labor supply gaps need to be filled, and the most avail-

able source will be migrant workers, whether authorized or not. Moreover, there is a demand for migrant labor to provide additional taxpayers who can contribute to state-run pension schemes in aging societies.

In the Asia-Pacific region migrant labor comes largely from India, Indonesia, Pakistan, the Philippines, and Thailand. In the last two decades, newly industrialized countries (NICs) within Asia drew intra-regional sources of labor 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 for particular projects. However, they are often under unsatisfactory conditions or severe limitations. In some cases, 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 legally prevented from hiring migrant labor. These illegal workers are very vulnerable and it is this illegal status of many individual migrant laborers, particularly in the construction industry, that creates the greatest difficulty for trade unions to act and react in workers' interests.

Labor unions not only need to react to the needs of migrant workers; they also need to be proactive. 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 illegal immigrant laborer 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.

Some migrant workers may come from countries where there are active labor unions. So they may be so used to having unionized protection that they want to obtain it again, if they can overcome the risks involved in becoming visible. These people may constitute a new reservoir of labor union membership. It is essential that 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 labor market demands. Most of these workers were in manufacturing prior to their move, but it is an example of how some governments pick and choose when to turn a blind eye to illegal labor, and how they exploit the availability of an unregulated workforce. Undocumented foreign workers are estimated to receive less than half the wages of average Korean workers doing the same job and have few if any benefits in case of accidents. Labor 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.

3. The Case of the Republic of Korea

Background

Before discussing the precise characteristics of the Korean labor unions and their effect on the labor migrant protection, we will take a brief look at the historical background to the cur-

rent situation in the Republic of Korea (hereafter simply “Korea”). Korea launched democratic reform in 1987, undertaking major changes in its political system, economic structure, and society. The authoritarian regime had been replaced by democratic politics. The economy has been through booms and busts that have reduced the central role of the dominant *chaebol* conglomerates.

As in most 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).¹¹ 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 the 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 the state-centric legal and political structure introduced during the Japanese colonial period (1910-45). During this period, Japan introduced Western notions of law that had, in turn, been borrowed from France and later Germany, i.e., the 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. Korea uses specific judges and lawyers for each area of law such as labor, family, and criminal. 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.¹²

Since the democratization of the 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. One of the centerpieces of the new reforms was the creation of the Commission of Labor, Management, and Government (“Tripartite Commission”). 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 had often prevailed in collective bargaining in the past, geared to devise a new strategy, in the face of the economic crisis that the country experienced during the reform period. Labor 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.¹³

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 have 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' working conditions and unstable employment status, demanding legislative protection and social welfare. This has served as the foundation for the subsequent labor union support for migrant workers. In addition to the private sector, civil servants and college professors have also taken steps to organize trade unions. This goes against the long tradition of constraining such workers' right to organize; so when they have been allowed to do so, it has meant a positive break-through.

The problem with migrant workers in Korea appeared in the early 1990s when very few people were anticipating it. Before the 1997 financial crisis, Korea's economy enjoyed rapid growth, and 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. Although 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.

To understand the situation deeper, let us take a close look at Korean immigration policy. 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 shortcomings in the 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 issued by the Minister of Justice. In addition, the employment of foreign workers is strictly limited as part of the protectionist policy, i.e., to offer the best employment opportunities to native Koreans. While outlawing the practice of hiring foreigners in general, the current law allows the employment of foreigners under special circumstances.

This has led to numerous informal "back-door" mechanisms for importing unskilled foreign labor, in some cases on a *de facto* permanent basis. The most popular back-door channel has been the "foreign industrial trainee system" that was originally designed to teach specific skills to foreigners, but became an insidious tool to import foreign labor. According to one observer, employers provide very little actual training, and most companies simply use the trainees as a source of cheap, unskilled labor.¹⁴ Clearly, these industrial trainees are a valuable labor resource for Korean industry but the government treats them merely as "trainees", depriving them of all the rights and privileges of "workers". Since foreign trainees are not considered regular employees under the Korean labor law, they do not receive regular wages, health insurance, worker's compensation, or other fringe benefits.

Migrant Workers in the Republic of Korea

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. Working towards more regional integration Korea has transformed itself 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 regional integration, the problems related to foreign migrant workers may be a test case for Korea.

Korea hosts approximately 693,697 foreign workers, including 304,000 illegal entrants (mostly from Bangladesh, the Philippines, India, Nepal, Pakistan, China, and Vietnam), according to the Ministry of Justice. Of these foreign workers, about 60,000 are industrial trainees (see Table 2). 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.

Table 2. Foreigners in the Republic of Korea

| | 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 |

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

Foreign workers are typically recruited by experienced Korean labor brokers who are often conveniently connected with the construction industry.¹⁵ The 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. 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,¹⁶ partly because they are unable to demand full compensation and partly because their employers must pay kickbacks to the brokers who have 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 foods of questionable nutritional value. Even though they work an average of ten to twelve hours a day, they receive neither pay for over-time work, based on eight-hour work day, nor compensation for working on holidays. 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 is 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.¹⁷

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.¹⁸

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. 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 United States and Europe mostly work in professional fields such as business, high technology, and language instruction, whereas workers from non-Western countries are typically engaged in menial physical labor. Korean workers often look down on foreign workers who are engaged in menial manual 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.¹⁹ 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.²⁰

4. Labor Unions and Migrant Workers

Labor Unions and Migrant Workers in the Republic of Korea

Unions traditionally ignored migrant workers. Although migrants perform an important function for the economy, as they reduce unemployment rates, meet opportunities for acquisition of skills, and remit foreign currency, they have remained largely outside the interest of labor unions. Trade unions have normally been preoccupied with other larger and more pressing domestic issues directly affecting their welfare. Usually trade unions see migrant workers possess little bargaining power. Sometimes they have also 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, the leaders of the Federation of the Labor Unions in Russia completely miss the point and talk about a threat from the migrant workers and damages that they bring to the wages of Russian workers. A change of attitudes among union mem-

bers is in order. It needs to 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. Changing the attitudes of union leaders will not be easy. First, migrants sometimes work for many different employers and in a variety of sectors. Second, migrants are not very accessible because of the lack of language skills and cultural understanding. Third, migrants are often not educated and do not know about labor unions. In addition, there are restrictive policies and practices in receiving countries together with widespread pressure from employers not to join labor unions under the threat of losing the job. Migrants with huge migration costs cannot afford to take the risk of losing their only source of income. Unions, in their turn, also suffer from lack of resources, limited networking, and a basic aversion among their members to extending services to migrants.

The Republic of Korea presents a very interesting example of well-managed coexistence between organized labor and migrant workers. The Korean labor movement in the eyes of many foreigners seemed very strong, even "militant". According to President of FKTU Young Deuk Lee, the mass media presents Korean unions as very militant, as the cause of the "focus on unionized workers," their demonstrations, and protest actions but this needs to be viewed through the Confucianism of Korean workers, who generally see 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.²¹

Most labor 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 FKTU takes a moderate rationalist stance, placing more emphasis on dialogue than on struggle, KCTU has been relatively struggle-oriented in its practice of labor movement.

In Korea any labor union is ready to help its allies. Although there are quite strong feelings of suspicion among Koreans towards all foreign migrant workers, labor unions are ready to work together with migrants. A protest organized by the Migrants Trade Union, an affiliate of KCTU, in April 2002 demonstrated this. 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's 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.

On July 31, 2003, the South Korean government approved a new migrant worker management system, entitled the "Act on Employment of Foreign Laborers," otherwise known as the Employment Permit System (EPS). The law, which went into effect on August 2004, along with the Industrial Trainee System, provided that migrant workers could work in South Korea for only three years and for only one employer. Since migrant workers could not change their work place, the employer basically would have complete control over the wages and working conditions of migrant workers; thus these workers would be bound to their employer. This outraged ETUMB and other migrant workers, prompting them to carry out 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 put their issues to the forefront of South Korean society. More importantly, their demonstrations led to the formation of the Migrant Workers Trade Union (MTU), an independent union organized and led by migrant workers.

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 gov-

ernment 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 MTU President Anwar was a direct attempt by the South Korean government to repress the newly formed union and crack down on migrant workers in the country.

The repression by the South Korean government is not new. The government has consistently targeted migrant worker activists by arresting and deporting them. 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 mentioned above was “kidnapped” in broad day light by immigration officials and deported in an effort to stop the mobilization efforts by the migrant worker.

Just as all workers in South Korea should be treated with dignity and respect, so should migrant workers in the country. 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 is determined to 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 resulted from the merger of several migrant workers unions and groups in Seoul, Incheon, and Kyongido, is an effort by migrant workers in South Korea to organize and fight for their rights. The roots of the MTU can be found in the Equality Trade Union Migrants’ Branch, which was formed in 2001 to address the discrimination and labor abuses suffered by migrant workers and the unjust immigration policy of the South Korean government.²²

Labor unions should not forget about their basic role and purpose to defend workers, to guarantee their labour rights, regardless of where the workers come from. The labor rights are guaranteed to everybody according to international law and therefore should also be guaranteed by national laws. Labor Unions should not be devoting their energies and resources to the discussion of political issues over which they have no influence. Such was the case with one labor union that was discussing the Iraqi War at one of its plenary meetings, while there were other issues that were more essentially and immediately related to the purpose of the organization.

5. Labor Unions, Migrant Workers, and Regional Integration

As labor unions develop both awareness and understanding of the issues of migrant worker rights, many NGOs can provide models of research as well as related data and insights. Labor unions will need to increase their own expertise in making the links between macroeconomic policy and the impact on the ground for workers in the construction, wood, and forestry sectors, where many foreign workers are employed. Reaching out to the unorganized and the 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 labor, through meetings and other regular channels of communication. 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 the support of trade unions and NGOs. In Hong Kong, Indonesian workers have 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 migrant workers. How-

ever 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. First, many labor 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. Second, 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. Third, basic legislative protection and enforcement, which are critical for workers in the labor union movement, are also critical for migrant workers. The skills of unions in seeking improved labor legislation can be used to advance a legislative framework favorable to migrant workers as well. Fourth, respect for the International Labor Organization's fundamental principles and rights at work apply to all workers. Unions need to develop a strategy for obtaining knowledge about how to help migrant workers, the key interventions required, and how to employ such interventions. The strategy should aim to increase the protection of workers before their departure, during their employment 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 labor 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; (7) improving cooperation between labor unions in sending and receiving countries; and (8) developing deeper working relationships with regional organizations in the Asia-Pacific. All regional organizations should be mobilized to normalize the situation with migration. In this context, we will look specifically at Asia-Pacific Economic Cooperation (APEC).

APEC began as a relatively informal group of government officials, mainly from departments of trade or the equivalent. It claims to be the only inter-governmental group in the world operating on the basis of non-binding commitments, open dialogue, and equal respect for the views of all participants. In contrast to the EU, the World Trade Organization (WTO), and other multilateral trade bodies, APEC does not require treaty obligations of its participants; members make commitments only on a consensual and voluntary basis. This explains why many of APEC's goals are expressed in vague terms, which are more practicable for diplomats to agree on. APEC has become a vehicle for promoting the liberalization of trade and investment around the Pacific Rim. This includes promoting FTAs and other forms of practical economic cooperation, such as the facilitation of economic development, the growth of small- and medium-sized enterprises (SMEs), the mobility of businesspeople, and more equitable participation by women and young people in the labor market. The economic agenda of APEC should include issues regarding the labor markets in the region, but the question is, to what extent?

As noted earlier, the Asia-Pacific includes countries at hugely different levels of development. For easier understanding we can mention three broad categories. First, countries with higher levels of gross domestic product (GDP) per capita, include the United States, Japan, and Australia. Second, "newly industrialized economies" include South Korea, Taiwan, and Singapore. Those countries are moving towards the first category of countries but have not yet caught up. The third category of countries, the "next generation industrializers," includes China, Indonesia, Russia, Thailand, Malaysia, and other countries. In most cases, their GDP per capita is significantly lower than in the first two groups of countries. They have been experiencing growth in terms of their populations and labour forces, but are also confronting labor market issues as there is industrialization and migration from rural areas to the cities.²³

APEC represents the most dynamic economic region in the world, which is fuelled especially by the growth of China and other economies in the region. APEC's decision-making by consensus and the diversity of its membership are at the same time a source of strength and weakness. The main problem for APEC is the diversity among its members as noted above.

APEC has generally not focused directly on employment relations or union-related issues, even though Bob Hawke, former president of the Australian Council of Trade Unions, while being Australian Prime Minister played a leading role in founding APEC. This inability to focus on employment relations is understandable because it is difficult to achieve intergovernmental consensus on such issues. Nevertheless, unions and other representatives of workers' interests continue to demand that more labor-related issues be taken up by APEC. Nigel Haworth and Stephen Hughes identified the key concerns facing labor-market and employment-relations policy-makers in APEC member countries. They included, among many other issues, the following topics: (1) defining and managing an appropriate response to labor migration; (2) managing industrial relations; and (3) responding to the contemporary labor standards debate.²⁴

Several inter-governmental organizations formally recognize input from the relevant social partners: employers and employees and their representatives. This is the case with the EU, NAFTA, ILO, and OECD. APEC recognizes input from employers, via the APEC Business Advisory Council (ABAC), but APEC does not formally recognize input from employees and their representatives (labor unions). By contrast, the EU recognizes input from employees and their representatives, especially via the European Trade Union Congress (ETUC), which exerts considerable influence particularly with regard to social, employment, and labor issues. The ETUC includes all European affiliates of the International Confederation of Free Trade Unions (ICFTU).²⁵

APEC can play a much bigger role helping the labor unions and migrant workers stabilize the labor market situation in the region, just as the EU is doing in Europe. Could APEC become a form of an Asia-Pacific Union, with some parallels to the EU? This is conceivable; however, there are at least four hurdles to such a development. First, APEC covers a much larger terrain and includes more diversity than the EU, for instance, in terms of geography, culture, religions, races, income levels, industrial structure, systems of political economy, and stages of economic development.

Second, despite the growing role of China led by a Communist government, there is a greater propensity toward right-of-center governments in many Asia-Pacific economies than in Europe. Social-Democratic/Labor politicians and labor unions have driven the EU's social chapter. As a generalization, moreover, trade unions are weaker and more fragmented in APEC than they are in the EU. For example, in two of APEC's most highly populated members, neither the All-China Federation of Trade Unions (ACFTU) nor the Indonesian Trade Union Congress (ITUC) is affiliated with the ICFTU. APEC economies are not well positioned to press for the inclusion of an EU-style social chapter in the APEC region.

Third, employers' interests have strong influences on most governments of APEC members and such interests generally do not support APEC or other international inter-governmental groups focusing on the contested terrain of employment relations. Employers' interests oppose any notion that APEC might follow the EU's lead in fostering a social chapter. Therefore, an EU-style Asia-Pacific Union would confront even greater obstacles than the EU social chapter.

Hence the notion of an "Asia-Pacific community" remains more of an aspiration than a realistic prospect. Nonetheless, it seems likely that APEC will continue to develop more influences in labor markets, though such influences will be constrained by prevailing attitudes, ideologies, and political-economy realities.

Fourth, before APEC can make decisions it has to reach unanimity, which is very difficult to achieve among such a diverse group of economies. In the EU, there is less diversity and there is

scope for making some decisions by majority voting.

In terms of its economic power and dynamism, the Asia-Pacific is one of the world's most important regions. If APEC were to pursue even a part of the trajectory that the EU has followed, APEC's influence on economic, political, and social relations between and within the Asia-Pacific nations could become much more significant. The political economy of the Asia-Pacific region is worthy of more research, not least as a context for the practice of employment relations.

6. 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 labor pool. Responses may be polarized.

In response to economic globalization, labor unions are organizing the globalization of solidarity in defense of migrants. Here are two illustrative examples. First, in summer 2005, after the Malaysian government's brutal expulsion of migrant workers, which was accompanied by reports of 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 Trade Union Congress, the Bangladeshi ICFTU-BC, and the Trade Union Congress of the Philippines, asked the 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. Second, there were reports that a major French industrial group was accused of anti-union harassment at one of its American plants, in Indiana. In response, 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, most of whom were 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 is difficult to identify specific skill areas needed as a basis for successful migration for job seekers. There is often a time lapse, for example, and it can result in problems, for migrant workers looking for employment in the construction industry characterized by abrupt shifts. What is clear, though, is that a review and sensible overhaul of most government policies is urgently needed. These policies impact the lives of countless workers in the construction industry around the world. International conventions and agreements can provide standards and benchmarks for the treatment of workers. They are particularly relevant and applicable to legally migrating workers in many countries. Ratification and implementation of these agreements would provide a useful framework for trade policies. However, as long as discrepancies continue between immigration policies and labor 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 labor 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 regarding the rights of workers in general and those of migrant workers in particular. There are many national, regional, and global networks of NGOs concerned with migration issues. Not all of them have a direct focus on workers in the construction industry, however.

Both immigration and its social effects 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: (1) an immigration policy; (2) an immigrant policy; (3) and an ethnic relations policy. Each policy enhances 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 the country is to escape its isolationist image and maintain the process of integration.

The issues regarding foreign migrant workers represent a unique and profound challenge to the Korean people and their culture. Analysis of immigration control in the country 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 the Korean society, particularly the images of social harmony and racial homogeneity.

As in other areas of public policy, Korea's 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 various 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 laws on comprehensive migrant protection. In the short term, then, 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.

Only labor unions originally were created for the protection of workers on the state and the international level. With growing integration of countries of the Asia-Pacific Rim, we see more and more productive and relevant regional organizations. Those organizations are designed to address important political, economic, and social issues in the region. That is why it is important to encourage labor unions to actively participate in consultations with those organizations. No non-labor NGO can represent the workers (national, migrant workers, including illegal migrants) in the international arena as meaningfully as labor unions, which know (or should know) the labor-related problems in their countries. Hence, the urgent need for labor unions to pay more attention to the issue of the protection of migrant workers' rights along with those of the national workers they represent.

Notes

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