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Globalisation, Labour Migration and State Transformation in Japan: The Language Barrier and Resilience of the Japanese State in the 1990s

by

Tomonori Taki

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ABSTRACT

This study aims to ask whether the Japanese state was capable of responding to a challenge from international labour migration as a force of globalisation, and to consider the significance of the subsequent change in the relation between state transformation and the realisation of social justice within the context of globalisation. The focal point of the study is Japan's criminal justice system in the 1990s, with particular attention to the 'language barrier', namely legal and political problems that affect foreigners and state officials. The study analyses how the language barrier emerged in Japan, how it influenced the state, and how state and civil society actors reacted to address the problem. This theoretical and empirical study in International Relations and International Political Economy takes an interdisciplinary approach, drawing insights from Sociology and Gender Studies concerning international labour migration. Documentary research on secondary and tertiary documents of Japan's state and civil society actors has been complemented by sixteen semi-structured interviews with those who were involved in the process of tackling the language barrier. The study argues that, by introducing judicial interpreters over the decade and with inputs from civil society actors, the Japanese state was able to reduce the extent of constraints posed by the language barrier on its ability to control crime. This indicates that an internal sector of the Japanese state that is in charge of political matters, namely law enforcement, has been able to largely solve the challenge of the language barrier, which is a manifestation of international economic force. This study thus counters the claim of the Hyperglobalist thesis of globalisation concerning loss or decline in capability of the state, and extends the plausibility of the Transformationalist thesis in terms of geographical area and the issues analysed.

ABBREVIATIONS

B	Thai Baht
CCP	Code of Criminal Procedure
FDI	Foreign Direct Investment
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GSSC	General Secretariat, the Supreme Court
HOC	House of Councillors
HOR	House of Representatives
ICA	Immigration Control and Refugee Recognition Act
IMF	International Monetary Fund
JICA	Japan International Cooperation Agency
LAC	Legal Affairs Committee
LDP	Liberal Democratic Party
METI	Ministry of Economy, Trade and Industry (Ministry of Trade and Industry up to January 2001)
MHLW	Ministry of Health, Labour and Welfare
MNCs	Multinational Corporations
MOFA	Ministry of Foreign Affairs
MOJ	Ministry of Justice
NIEs	Newly Industrialised Economies
NGO	Non-governmental Organisation
NPA	National Police Agency
ODA	Overseas Development Aid
OECD	Organisation for Economic Cooperation and Development
PARC	Policy Affairs Research Council, the LDP
PPO	Public Prosecutor's Office
PRC	People's Republic of China
SC	Supreme Court
SDPJ	Social Democratic Party of Japan

NOTES ON THE TEXT

In the main text of this study, Korean and Japanese names are presented in the order of 'family name, given name' except when citing a literature written in English. Namely, when referring to an English work by a Japanese author, her/his name will appear in the order of 'given name, family name.' In bibliography, Korean and Japanese authors' names are shown as 'family name, given name.' Thai names are written as in the literature this research relied upon. The long vowels in Japanese are indicated as â, ê, ô and û.

CHAPTER 1

INTRODUCTION

1. Aim, Objective and Background of the Study

The aim of this theoretical and empirical study in International Relations (IR) and International Political Economy (IPE) is to investigate and explain the way the Japanese state responded to a challenge from international labour migration as a force of globalisation, or its international structure in the 1990s. Towards the above aim, the objective of this study is to consider whether the Japanese state was in retreat or not during the above period with regard to a particular problem arising from globalisation. As will be explained later in this chapter, contemporary world politics has been, in particular since the 1990s, characterised as undergoing the process of globalisation. Whereas several different issues are described as a manifestation of globalisation, this study looks at international labour migration. The reason for this focus is because migration connects distant places in the world in an unprecedented way and renders different economic, social and political consequences to different states, societies and people in an uneven manner, parallel to other forces of globalisation. Out of various challenges that arise from international labour migration, this study investigates one of the challenges that emerged in Japan's criminal justice process, namely what this study calls 'the language barrier': it refers to the difficulties in communication and the subsequent problems between investigators, defence

counsel, and judges in Japan's criminal justice system on the one hand, and foreigners as suspects, defendants or witnesses on the other. The study chooses to enquire into this problem as a manifestation of a challenge from globalisation for the following reasons: (i) it is an expression of interconnectedness between international and economic force on the one hand, and domestic and political force on the other; such interconnectedness is significant to world politics because it affects territoriality of the state, which is one of the basic assumptions about the modern nation state as will be explained in Chapter 2. (ii) The language barrier depicts, as will be shown later in this chapter as well as in Chapter 5, the contest between international economic force (often led by non-state actors) and the sovereignty of the state, namely a migrant receiving country in the case of this study. (iii) The language barrier problem casts light on issues relating to social justice in terms of striking the balance between authority and responsibility, as well as obligations and entitlements, within the context of globalisation where territoriality and the constituent population of the state are changing.

Having scrutinised the above problems, this study will inform our understanding of globalisation, migration and the state in the following ways. First, concerning globalisation, the study should be able to tell us about the impact of globalisation, in terms of distribution among the relevant actors, and of frequency of such impact over time. Regarding migration, this study will shed light on: what the state's role is in international labour migration today; whether the migration contradicts the way world politics is organised; and whether the migration is more politically influential than other forces of globalisation. Third, as for the Japanese state, the current study will explain whether theories on the

relation between globalisation and the state, which have often been developed within the context of the West, are applicable to contemporary Japanese state.

(1) Contemporary World Politics and Globalisation

The term globalisation has been used in the mass media, policy making and academia since the 1990s, in order to describe and analyse how the contemporary world works, but also to justify the compilation and implementation of new policies, be they public or private. Though a heavily contested concept, globalisation can be defined in this study as 'transterritorialisation of economic and social impact,'[1] or "the growth of 'supraterritorial' relations between people."[2] The following definition also clearly illustrates developments in current international structure: 'the process of increasing interconnectedness between societies such that events in one part of the world more and more have effects on peoples and societies far away.'[3] This study takes the view that the core issue of globalisation is that, in recent decades the mode of operation of economic force in the world has been changing substantially from the previous one. As will be explained in more detail in the next chapter, economic force used to operate normally within the state border (except for inter-state armed conflict, colonisation and trade), until around the 1970s. Since then, the extent to which economic force could operate in a foreign territory without the political control of

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[1] The author would like to thank Dr. Christopher W. Hughes for this definition.
[2] Jan Aart Scholte, *Globalization: a critical introduction* (Basingstoke: Macmillan, 2000), p. 46.
[3] Steve Smith and John Baylis, 'Introduction', in John Baylis and Steve Smith (eds), *The Globalization of World Politics: An introduction to world politics (Second Edition)* (Oxford: Oxford University Press, 2001), pp. 1-12, p. 7.

the state of its origin or that of where it operates has increased, at least temporarily. Such economic force is capable of affecting the society where it works, often in the South but also to an increasing degree in many parts of the North as well.

Consequently our lives are affected by globalisation today, but the reasons for such effects may not immediately be comprehensible for those who are under their influence. Mittelman described that the impact of globalisation appears as a 'historical transformation [...] of livelihoods; in politics, a loss in the degree of control exercised locally [...] such that the locus of power gradually shifts in varying proportions above and below the territorial state.'[4] The impact of globalisation can be puzzling, because the key decisions to use such economic force that drives the globalisation process are made in places that are distant from where such impact manifests. Because of the above distance between the origin of the economic force and the geographical location where the result of the working of the economic force emerges, there can be (and often is) a discrepancy between the capability to exercise economic force on the one hand, and accountability and responsibility for the use of such force. Within the previous mode of operation of economic force, the aforementioned distance between the capability of and the responsibility for the economic force has been thought to be more manageable, as the state was (at least supposedly) able to supervise the working of the economic force. However, since the state's ability for the above management appears to be decreasing (if not for every state), a new way of

[4] James H. Mittelman, *The Globalization Syndrome: Transformation and Resistance* (Princeton, NJ: Princeton University Press, 2000), p. 6.

managing world politics that entails more than just nation states is much more required today.

In order to investigate how the force of globalisation operates and what are the consequences of the working of such force, this study analyses the process of globalisation at the levels of the state, non-state actors and the migrants as individuals.[5] The reason for this analytical approach is as follows. The force of globalisation can be enabling and constraining, but benefits and detrimental effects of globalisation are unevenly distributed.[6] Analysis of the distribution of the benefits or detrimental effect of globalisation at the state or civil society levels will be inevitably in aggregate terms. The entire amount of gain (or the entire extent of detrimental effects) in society is certainly important, but how it is distributed between the people with different attributes is equally pertinent. An analysis at the level of individuals should be able to depict the uneven character of the distribution of benefits and the detrimental effects of globalisation. The benefits and detrimental effects arising from international labour migration include: economic gain, maintenance of domestic order in the migrant receiving country through law enforcement, and striking the balance between the exercise of state power and justice. Therefore, this research examines the following five types of interactions between the above three levels of actors, which are possible within the process of globalisation. This classification, which is partly inspired by the cob-web view of the world that Burton advanced, exhibits a contrast to the

[5] 'Individuals' will be treated in 'neutral' terms up to Chapter 5. Chapter 6 is going re-assess this assumption briefly in relation to gender and ethnicity.
[6] Smith and Baylis, 'Introduction', p. 10.

billiard-ball view of the world which reflects the state-centric view of the Realist school of International Relations.[7]

Table 1-1. Interactions of the state, civil society and the individuals within international labour migration[8]

	Actors involved	Example of interactions
(i)	State – State	Trade and financial liberalisation
(ii)	State – Civil society	Imported capital creates conditions for labour mobility; international labour migration affects the political economy of the migrant receiving country (Increased influence of international market force on national economies)
(iii)	Civil society – Individuals	Contract between migrants and migration brokers (Employment contract; commercial contract)
(iv)	Civil society – Civil society	Contract between migration brokers; between brokers/employers and migrant workers (Commercial transactions; trafficking of goods)
(v)	State – Individuals (Migrant receiving country and migrant workers)	Immigration control and citizenship politics

(Compiled by the author from various sources referred to in this study)

In order to study the impact of globalisation empirically, this study pays attention to East Asia, in particular, the relation between Thailand and Japan. The reasons for this analytical orientation are twofold: (i) the impact of globalisation forces may be more easily gauged in East Asia than in Western Europe or North America, because the increase in the degree of interconnectedness between political economies in the region increased only after the end of the Cold War. (ii) Economic linkage with East Asia and Japan, particularly between Thailand

[7] John Burton, *World Society* (Cambridge: Cambridge University Press, 1972).
[8] In addition to the above five, an 'individual-individual' relation is possible. This one is excluded from the table, however, because such relationship reflects any one of these five types of interactions.

and Japan, is extensive, since the former country has received ODA and FDI from the latter in the last two decades.[9] For the reasons explained in Chapter 2, such economic linkage is likely to create structural conditions for international labour migration.

(2) Globalisation and International Labour Migration

a. Oversight in the existing literature

The extent of attention that international labour migration has drawn in IR and IPE has been minimal until recently as will be demonstrated below, and especially in the case of Japan, as referred to later in this chapter. Nevertheless, this study discusses the formation of international population mobility and its impact on the state, society and individuals concerned because of the following reasons. First, international labour migration renders a politico-economic challenge to all the parties involved, as Goldstein puts it: '[a]s within any trade issues, migration creates complex patterns of winners and losers.'[10] In other words, international labour migration demands the following core question of IPE posed against it: 'Who gets the opportunities and who is denied an opportunity – whether for goods and services or more fundamentally a share of all the values, not only wealth, but also security, the freedom to choose for themselves, some measure of justice from

[9] Glenn D. Hook; Julie Gilson; Christopher W. Hughes; and Hugo Dobson, *Japan's International Relations: Politics, economics and security* (London: Routledge, 2001), p. 188; p. 210.
[10] Joshua S. Goldstein, *International Relations (Second Edition)* (New York: HarperCollins, 1996), p. 495.

the rest of society?'[11] As will be shown later in this chapter, out of international labour migration, the migrant receiving state often gets more, where the migrant sending state gains less, while the migrants themselves are less advantaged. Second, an investigation into international labour migration from an IPE perspective will hopefully be able to bridge IR and the Sociology of citizenship, by making the former more 'political' in terms of the interests of the migrants themselves in contrast to those of the migrant receiving country, and also by making the latter more dynamic through presenting the process of population mobility which is sometimes assumed as given.

As for the areas discussed in the studies of globalisation, trade and financial liberalisation, environmental problems and telecommunication have often drawn attention as manifestations of globalisation, among other issues. However, migration has received relatively limited attention in comparison to the above. One possible reason for this relative infrequence of recognition can be that the rise in migrations in the last few decades, in quantitative terms, is less substantial compared with that of trade, capital or information. Though a crude comparison, the following figures show the above tendency. Between 1965 and 1985, the number of immigrant populations in the world increased by 1.38 times (less than twice),[12] whereas turnover within the foreign exchange market multiplied by 15 times between 1979 (US$100 billion a day) and 1998 ($1,500 billion a day), while foreign direct investment grew by 61 times between 1960

[11] Susan Strange, *States and Markets (Second Edition)* (London: Pinter, 1994), p. 18.
[12] World Bank, *World Development Report 1995: Workers in an Integrating World* (Oxford: Oxford University Press, 1995), p. 65.

($66 billion) and 1999 ($4,000 billion).[13] In the meantime, the amount of immigrants compared with share of total migrants against the entire human population was approximately 2.5 percent at the end of the twentieth century.[14] But, as will be shown later in this chapter, the above relative slow growth of migrations would not cancel out its political significance for the relevant actors, in particular the receiving country and the immigrants themselves.

The following brief survey of some of major works in the IR, IPE and globalisation studies suggests that the degree of academic interest in international population movements, in particular labour migration, varies among the authors. It is possible to characterise the extent of their interest as: (i) indifference; (ii) limited interest; and (iii) positive interest. First, there are those works whose research simply excluded the issues of immigration, labour, migration or population from their scope of research.[15] Second, there are those works in which the authors were aware of the importance of migration to world politics, but excluded contemporary migration from their focal point of analysis. One reason for this is that the amount of migration worldwide in the twentieth century was

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[13] These figures are taken from Table 24.1 in Jan Aart Scholte, 'Global Trade and Finance', in Baylis and Smith (eds), op. cit., pp. 519-539, p. 523.

[14] Castles and Miller, leading scholars on migration in Australia (now in UK) and the US, reported an estimate of total number of international migrants at around 120 million (based on the 1994 figure by International Organisation for Migration), which was 'equivalent to less than 2 per cent of the world's population' (Steven Castles and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World (Second Edition)* (Basingstoke: Macmillan, 1998), pp. 4-5); in 2001, Iyotani, a leading Japanese scholar on international labour migration estimated the figure at 150 million (Iyotani Toshio, *Gurôbarizêshon to imin (Globalisation and Migration)* (Tokyo: Yûshindô kôbunsha, 2001), p. 53), which would constitute approximately 2.5 per cent of the world's population of 6.1 million (United Nations Population Division, *World Population Prospects, The 2000 Revision Highlights*, ESA/P/WP.165, 28 February 2001, http://www.un.org/esa/population/publications/wpp2000/highlights.pdf (cited 13 March 2003), p. v).

[15] For example, Robert Jackson, Robert and Georg Sorensen, *Introduction to International Relations*. Oxford: Oxford University Press, 1999; the volume edited by Baylis and Smith (Baylis and Smith (eds), op. cit.) contains a limited degree of reference to population movements, despite its otherwise extensive coverage of issues in contemporary world politics.

less then the flow to the US in the nineteenth century.[16] Another example of this approach, though more serious about the significance of the impact of international labour migration on contemporary politics than the above example, is to claim that citizenship politics of people who are already in the territory of the receiving state is relevant to the studies of globalisation, but nevertheless to argue that a significant scale of migration that creates causes of such citizenship politics was over before the 1990s.[17] That may be the case in Western Europe and North America, but not necessarily so in East Asia, where international mobility of population increased since the 1970s.

The above dismissal of international migration from globalisation forces can be questioned in respect to the following: (i) the status of economic development in the countries concerned in the nineteenth century (the US was in the midst of state building during this century); and (ii) the fact that the amount of labour migration today is low because of receiving country's restrictive immigration policies. In other words, whereas '[t]he old liberal regime, assuming relatively free movement of labour across frontiers, one that lasted from the early nineteenth century through to the 1960s, has collapsed,'[18] border control against population mobility has 'rarely been as tight' as the current practice.[19] This is in a

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[16] Robert O. Keohane and Joseph S. Nye Jr., 'Introduction', in Nye, Joseph S. Jr. and John D. Donahu (eds), *Governance in a Globalizing World* (Washington, D.C.: Brookings Institution, 2000), pp. 1-41, p. 3.
[17] Richard Higott and Anthony Payne, 'Introduction: Towards a New Political Economy of Globalisation', in Richard Higgott and Anthony Payne (eds), *The New Political Economy of Globalisation (Volume I)* (Cheltenham: Edward Elgar, 2000), pp. ix-xxiv, p. xii.
[18] Fred Halliday, 'Global Governance: Prospects and Problems', in David Held and Anthony McGrew (eds), *The Global Transformations Reader: An Introduction of the Globalization Debate* (Cambridge: Polity, 2000), pp. 431-441, p. 437.
[19] Jan Aart Scholte, *Globalization: a critical introduction*, p. 140. Similar points are made by the following: Fred Halliday, *The World at 2000: Perils and Promises* (Basingstoke: Palgrave, 2001), p. 88; Dani Rodrik, 'Has Globalization Gone Too Far?', in David Held and Anthony McGrew

sense contradictory to the argument of neo-liberalism.[20] as underlined by the following point that Pronk has raised: there is a lack of international agreement concerning population mobility, in contrast to other issues within the international political economy such as trade liberalisation and capital transaction.[21]

Third, the above shows that, it is less than persuasive to dismiss international labour migration from the force of globalisation just because its volume has been insignificant in recent decades in comparison to other economic forces. Hence this study finds it appropriate to investigate international labour migration and consider its significance to the world today. This third analytical standpoint is becoming increasingly common in IR and IPE literature, as can be seen in the following points: (i) international population movements deserves serious analysis as an issue in world politics, because there are links between economic development and migration;[22] (ii) population mobility is indeed an issue in IR and IPE, because it matters to the management of state border,[23] and also is 'one of the biggest issues affecting North-South relations';[24] (iii) international

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(eds), *The Global Transformations Reader: An Introduction of the Globalization Debate* (Cambridge: Polity, 2000), pp. 323-327, p. 326; and Jan Aart Scholte, 'Global trade and finance', in Baylis and Smith (eds), *The Globalization of World Politics (Second Edition)*, pp. 519-539; p. 524, 535-6.

[20] Scholte, *Globalization: a critical introduction*, p. 34.

[21] Jan Pronk, 'Globalization: A Developmental Approach', in Jan Nederwen Pieterse (ed.), *Global Future: Shaping Globalization* (London: Zed, 2000), pp. 40-52, p. 43.

[22] Brian White; Richard Little; and Michael Smith, 'Issues in World Politics Reviewed', in Brian White, Richard Little and Michael Smith (eds), *Issues in World Politics (Second Edition)* (Basingstoke: Palgrave, 2001), pp. 252-269, p. 255.

[23] Chris Brown, *Understanding International Relations (Second Edition)* (Basingstoke: Palgrave, 2001), pp. 248-252.

[24] For example, Goldstein, *International Relations*, p. 494; Charles W. Kegley, Jr. and Eugene R. Wittkoppf, *World Politics: Trend and Transformation (Eighth Edition)* (Boston: Bedford/St. Martins, 2001), p. 330; and Charlotte Bretherton, 'Contemporary Sources of Armed Conflict', in Charlotte Bretherton and Geoffrey Ponton (eds), *Global Politics: An Introduction* (Oxford: Blackwell, 1996), pp. 100-125, pp. 122-123. Meanwhile, Suhrke is cautious about the validity of the claims that emerged after the ending of the Cold War, which characterised population issues as one of 'traditional security matters' by connecting the environment, migration and development,

population movements constitute a source of external pressure (in particular, but not limited to, the states of the North), similar to such other sources of pressure as the world economy, environment and health, and security;[25] (iv) international migration reveals an 'interconnectedness' between the international and domestic,[26] and '[t]he connection of economics and security';[27] and (v) migrant issues pose 'a fundamental challenge ... [to] governance in contemporary societies.'[28] All of the above five points indicate that international labour migration does matter to world politics. But the last two are in particular related to the essence of globalisation studies, and this is why international labour migration deserves serious analysis.

b. The international political economy of international labour migration

This study analyses international labour migration from two different directions. The first is to show migration as a manifestation of the process of integrating national political economies.[29] This will be dealt with in Chapter 4. In addition,

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thus giving the readers an impression that migrants are primarily 'enemy' and the object of 'defense' against it. The reasons for her assessment are as follows: first, it is implausible to assume 'population growth [as] both a necessary and sufficient cause of migration'; second, contrary to the above characterisation, it is also the case that the migrants can be 'victims or assets.' (Astri Suhrke, 'Environmental Change, Migration, and Conflict: A Lethal Feedback Dynamic?', in Chester A. Crocker; Fen Osler Hampson with Pamel Aall (eds), *Managing Global Chaos: Sources and Responses to International Conflict* (Washington, D.C.: United States Institute of Peace Press, 1996), pp. 113-127, pp. 115-116).

[25] Halliday, *The World at 2000*, p. 88.

[26] Eleonore Kofman, 'Feminism, Gender Relations and Geopolitics: Problematic Closures and Opening Strategies', in Eleonore Kofman, and Gillian Youngs (eds), *Globalization: Theory and Practice* (London: Pinter, 1996), pp. 209-224, p. 215.

[27] Goldstein, op. cit., p. 496.

[28] Ahmet Icduygu, 'Citizenship at the Crossroads: Immigration and the Nation-State', in Kofman and Youngs (eds), *Globalization: Theory and Practice*, pp. 150-162, p. 150.

[29] Saskia Sassen, *The Mobility of Labour and Capital: A Study in international investment and labour flow* (Cambridge: Cambridge University Press, 1988), pp. 36-39; Castles and Miller, *The*

this study also examines international labour migration from a micro perspective in the following terms. This study adopts an IPE approach to analyse and discuss international labour migration. Reasons for the above are as follows. There is a tendency in the existing literature on international labour migration to discuss its implications from the perspective of the receiving country, and in particular, the state of the migrant receiving country.[30] However, international labour migration involves both sending and receiving countries, and the migrants themselves. As such, considering the costs and benefits of international labour migration, including the ones shown in the following table, for example, could provide a fuller understanding of the causes and consequences of the migration.

Table 1-2. Benefits and costs of international labour migration

	Benefits	Costs
Individual migrants	Increased income; working skills; personal connections; self-confidence	Injury; disease; difficulties in reintegrating into the home society; abuse by the employer and customers
Civil society actors of the sending country	Increased income for the family; for the migration industry	Injury; disease; family disintegration
State of the sending country	Foreign exchange revenue	Brain drain; social welfare costs
Civil society actors of the receiving country	Low and flexible labour supply; Inexpensive products and services	Cultural conflicts; contests over low-paid jobs between the indigenous and the migrant workers
State of the receiving country	Low and flexible labour supply; Inexpensive products and services	Social costs; 'security concerns'; transformation of national identity

(Compiled by the author from various sources referred to in this chapter)

Age of Migration, p. 142; Yoko Sellek, *Migrant Labour in Japan* (Basingstoke: Palgrave, 2001), p. 5.

[30] Icduygu, 'Citizenship at the Crossroads', p. 150.

First, to the migrant sending country, international labour migration brings economic benefit through the generation of remittance by those working abroad.[31] But social costs of their nationals' stay in foreign countries are not negligible and tend to be longer lasting than the above benefits. These costs include: lack of return from the investment in human resource development (namely, education and vocational training) of those who migrated after such investment; disruption to familial and social relations; difficulties in reintegration after their return home; and social welfare costs in particular when the returned migrant workers are injured or infected with disease during employment overseas. Though from the perspective of the receiving country, Sassen described these costs of labour migration as the 'externalisation of renewal cost',[32] and 'savings on social services and infrastructure'.[33] The above mismatch between the economic benefit and the social cost is just one example of the problems of globalisation raised earlier in this chapter, namely the discrepancy between the use of power and accountability/responsibility for such use of power.

Second, for the receiving country, one of the benefits from international labour migration is the supply of cheap and 'flexible' labour.[34] However, the presence of foreigners, particularly those who are not registered with the government, raises concerns about the probable influences on national identity.

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[31] Alan Dupont, *East Asia Imperilled: Transnational Challenge to Security* (Cambridge: Cambridge University Press, 2001), p. 160.
[32] Sassen, *The Mobility of Labour and Capital*, p. 37.
[33] Sassen, op. cit., p. 38.
[34] Dupont, *East Asia Imperilled*, p. 160. There are arguments that there will be contest over the low-paid jobs between the indigenous and the migrant workers. For example, Goldstein, op. cit., p. 495.

internal cohesion and domestic stability.[35] Third, for individual migrants, the benefits include possibilities for better income in comparison to these available at home, and obtaining new skills. In the meantime, the costs include the possibilities of being exploited by the migration brokers, employers, and customers; differential treatment by state officials; injury and diseases; disrupted familial relations, difficulties in readjusting themselves on their return home, among others. Costs and benefits to civil society actors at both ends of the population flow are also presented in the table.

c. International labour migration and criminal justice administration

The focal point of this study on international labour migration can be any part of the interactions shown above that render both costs and benefits, but the central area of this study is the response of the migrant receiving state, and its implications to the individual migrants affected by such response. To consider the response first requires identifying the characteristics of the impact of international labour migration on the receiving country. From the perspective of the migrant receiving state, international labour migration renders contradictory forms of impact: whereas migration is indispensable for the sustained operation of the domestic economy where the economic actors' capital is often internationally immobile, the presence of migrant workers is seen by the state (and some parts of the society) as posing potential problems. This second point can be elaborated as follows. Existing studies on the effect of migration to the receiving states have

[35] Dupont, op. cit., pp. 22-23.

identified that the state would see the presence of migrants as a threat in at least the following four terms: (i) to domestic order or internal security;[36] (ii) to social cohesion and cultural integrity;[37] (iii) to economic impact of the migration on domestic labour market and public welfare;[38] and (iv) as an indication of the state's inability to maintain complete control of borders, as if the legal-territorial assumption of state sovereignty is eroding.[39]

In connection with this, the criminal justice system of a migrant receiving state demands careful analysis in this study, because it carries important implications to the issues relating to international migration as a force of globalisation. Maintenance of domestic order is one of the major roles of criminal justice institutions of a country, in particular the control of crime. State laws authorises criminal justice administration to perform the following tasks. Criminal justice system operates 'as an agent of the state' responding to reports of

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[36] Myron Weiner, 'Introduction: Security, Stability and International Migration', in Myron Weiner (ed.), *International Migration and Security* (Oxford: Westview, 1993), pp. 1-35, p. 11; Jonas Widgreen, 'International migration and regional stability', *International Affairs*, 66(4), pp. 749-766, p. 749; Astri Suhrke, 'The "High Politics" of Population Movements: Migration, State and Civil Society in Southeast Asia', in Weiner (ed.), *International Migration and Security*, pp. 179-200, p. 179.

[37] Myron Weiner, 'Introduction', p. 11; Sita Bali, 'Migration and Refugees', in White, Little and Smith (eds), *Issues in World Politics (Second Edition)*, pp. 171-190, p. 172.

[38] Bali, 'Migration and Refugees', p. 172. Myron Weiner, op. cit., p. 11. In addition to the above three points, Weiner also identified potential problems with refugees and labour migrants for the receiving state: (i) threats to interstate relations when refugees/migrants are opposed to the ruling regime of the sending country; and (ii) refugees/immigrants could be used as hostages in the receiving country (Weiner, op. cit., p. 11).

[39] Bali, op. cit., p. 189. Zolberg's view reflects a statist position towards migration issues, and merits attention here to be aware of a view on one end of the analytical spectrum. Zolberg argued that in the sovereign state system, the right of the state 'to restrict the entry of foreigners' has been accepted in order to maintain political sovereignty and social cohesion. He went on to contend that international migration was 'a deviance from the prevailing norm of social organization at the world level' (Aristide R. Zolberg, 'International Migration in Political Perspective', in M. Kritz, C. Kelly and S. Tomasi (eds), *Global Trends in Migration: Theory and Research on International Population Movements* (New York: Center for Migration Studies, 1981), pp. 3-27, pp. 6-7).

suspected crime, recognising them as an 'offence against the state.'[40] In this respect, successful crime control means 'realization of sovereignty.'[41] Meanwhile, the courts, as 'guardians of law and order',[42] make legal decisions on whether the defendant is guilty or not guilty of the alleged offence, and whether and to what extent she or he should be punished. However, it must also be noted that the driving forces of the criminal justice system are manifold: in addition to crime control, they must ensure due process of law, maintenance of legitimacy, and rehabilitation of offenders.[43]

In line with the legal and territorial assumption on the state, the criminal justice system is usually expected to function within its territory (as against the military which primarily operates abroad unless there is substantial internal disturbance), and its task is 'political', in the sense that it applies domestic law to individual cases. However, international labour migration destabilises the above assumption in the following sense: whereas the criminal justice administration continues to operate primarily within the state border,[44] the domestic population now consists of both the nationals and non-nationals such as labour migrants. The above developments mean that, through operating to control crime committed by foreigners, criminal justice administration of the migrant receiving state tries to tackle the consequence of international labour migration as a force of globalisation. This is where the 'domestic' and 'political' sector of the state

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[40] C. M. V. Clarkson, *Understanding Criminal Law (Third Edition)* (London: Sweet & Maxwell, 2001), pp. 269-270.
[41] Rod Hague; Martin Harrop; and Shaun Breslin, *Comparative government and politics: an introduction, 4th edition* (Basingstoke: Macmillan, 1998), p. 249.
[42] Loraine Gelstrope, 'Critical Decisions and Processes in the Criminal Courts', in Eugene McLaughlin and John Muncie (eds), *Controlling Crime* (London: Sage, 1996), pp. 107-156, p. 112.
[43] Gelstrope, 'Critical Decisions and Processes in the Criminal Courts', pp. 111-112.
[44] Inter-state cooperation of criminal justice administration is beyond the scope of this study.

encounters, while in its own geographical territory, a consequence of international labour migration as an 'international economic' force.

The above encounter is a manifestation of blurring of migrant receiving state's border. Significance of the above blurring of the border is explained in the remainder of this section. As has just been noted, the state border has become blurred, but such crossover takes place within the geographical territory of the migrant receiving state. This study takes the view that modern nation states have implicitly assumed that, in the criminal justice system, both the investigators and the investigated would speak the same national language. However, the above assumption does not hold for nation states undergoing globalisation. When the investigators and the investigated speak different languages, there are considerable possibilities where legal decisions, in particular conviction, could be made on false grounding. This causes problems for both of the above parties, namely injustice and questions arise about the legitimacy of the state: the former is one manifestation of the detrimental effects of globalisation on individual migrants; the latter could be an indication that the state was unable to respond effectively to the impact of globalisation. This is why the language barrier problem merits study within the context of globalisation. Consequently, this study examines to what extent the border of the migrant receiving state blurred, and for whom that rendered benefit or detrimental effects. In the meantime, examining whether and in what way the use of power was checked would demonstrate how the rights of those who had been subjected to the state's sovereign power were protected. It is at this juncture where the issues of

citizenship rights and human rights demand attention in a study of globalisation such as this research.

The above interaction between international labour migration and the criminal justice administration within the process of globalisation could be studied in various contexts. However, this study pays particular attention to the case of the migration from East Asia, in particular from Thailand to Japan since the 1970s for the following reasons: first, the language barrier problem clearly reflects the shift in Japan's international relations in recent decades. Post-war Japan had assumed that its society was ethnically homogenous.[45] As such, foreigners' involvement in crime was deemed to have been limited in its extent. In contrast, as will be shown in this study, the increase in the number of migrant workers since the 1980s was accompanied by a rise in the number of crimes committed by foreigners. In other words, one of the reasons for the emergence of the language barrier problem in Japan is because, since the mid-1970s, migrant workers have originated from places where there were no effective colonial linkages in the first half of the twentieth century. Because the acceptance of international migrant workers in Japan was delayed by about three decades in comparison to other developed countries in Western Europe and North America, the challenge that Japan has been facing from migration constitutes an important test case for the relation between migration and the state within globalisation process.

Second, trade and capital mobility between the North and South can contribute to the creation of structural conditions for international labour

[45] For the detailed analysis of implausibility of this assumption, see Michael Weiner (ed.), *Japan's Minorities: The illusion of homogeneity* (London: Routledge, 1997).

migration, for the reasons that will be explained in Chapter 2. Because such a relation does exist between Thailand and Japan, it is possible to expect that there will be international labour migration between these two countries.

Third, the language barrier could emerge most starkly between Thailand and Japan because of the language used in those countries and the characteristics of Thai migrant workers. In the case of Thai migrant workers, it is less likely that they would have command of the Japanese language, in comparison to the workers of other origins. In addition, a considerable amount of Thai migrant workers were, at least up to the early 1990s, women. Dealing with women poses yet another challenge to the receiving state, because, as will be shown in Chapter 2, the state has been thought to be patriarchal in its character, and not necessarily always fully capable of addressing the various interests of women.

Fourth, the language barrier problem will continue to be an important challenge for Japan in the near future, considering the fact that international labour migration is expected to sustain in the region in the coming few decades, due to (i) the potential for demographic[46] and economic growth,[47] both of which could provide structural conditions for labour mobility for the sending countries. (ii) The indigenous labour supply in Japan is expected to decline in the coming few decades because of the aging of the society. Thus issues relating to international labour migration continue to be relevant in the region, in particular for Japan. Because discussing the language barrier problem involves considering the above-mentioned issues, this study will hopefully be able to extend the

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[46] Graeme Hugo, 'The Demographic Underpinnings of Current and Future International Migration in Asia', *Asian and Pacific Migration Journal*, 7(1), 1998, pp. 1-25.
[47] T. J. Pempel, 'Transpacific Torii', in Peter J. Katzenstein and Takashi Shiraishi (eds), *Network Power: Japan and Asia* (Ithaca: Cornell University Press, 1997), pp. 47-82, p. 47.

understanding on the relation between globalisation and Japan, and also the relations between globalisation, migration and the state. More specifically, such relations refer to state's capability to: (i) transform its form and function in the face of challenges from international labour migration as a force of globalisation; and (ii) realise justice among those of the population with different attributes, including nationals and non-nationals, within the territory of the state, during or after the above transformation.

2. Strength and Weakness of the Literature on Globalisation, Migration and Japan

Having confirmed the relevance of current international labour migration to contemporary Japan within the context of globalisation, the following presents the areas relating to recent labour migration to Japan that have been discussed by the existing works in English. In terms of focal points of the study, these existing works have covered proposals for Japan's immigration policy, reports on the formation of migrants' identities in Japan, and accounts of the attempts to extend citizenship rights to migrant workers and their family. In the meantime, for analytical purposes, it is possible to classify the existing works in terms of the notion of the citizenship rights that T. H. Marshall advanced, namely civil rights, political rights and social rights. [48] Such classification is possible, because Japan's response (be it by the state or civil society actors) to the increase in

[48] T. H. Marshall, 'Citizenship and Social Class', in T. H. Marshall and Tom Bottomore, *Citizenship and Social Class* (London: Pluto, 1992), pp. 1-51, p. 8.

migrants directly affects the status of those migrants already in Japan. From this viewpoint, the existing works have discussed the economic and social rights of citizenship, as will be shown below.

The main point of the work by Shimada,[49] one of the leading labour economists in Japan, was to present a new legal framework to allow semi-skilled migrant workers to find fixed-term temporary employment, under which the migrant workers would be supposedly free from exploitation by migration brokers and illegal employers. In contrast to Shimada, who was cautious against accepting large numbers of migrant workers, Oka[50] claimed that an increased degree of acceptance of migrant workers would be unavoidable for Japan in the near future due to its demographics, namely the aging of the society. He then proposed the following points to be included in Japan's migration policy: granting amnesty to those overstaying on their visa; protecting human rights of foreigners, including undocumented workers; reclassification of 'unskilled' worker status; migration-prevention in the sending country through development assistance; and the compilation of 'an overall plan on migration', learning from the experiences of the other migrant receiving countries of the North. Komai's work[51] was one of the earliest works that has described in detail the challenges that migrant workers faced in Japan since the 1980s, namely labour conditions, housing and living conditions, from the perspective of a Sociologist.

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[49] Haruo Shimada, *Japan's "Guest Workers": Issues and Public Policies* (Tokyo: University of Tokyo Press, 1994).
[50] Takashi Oka, *Prying Open the Door: Foreign Workers in Japan* (Washington, D.C.: Carnegie Endowment for International Peace, 1994).
[51] Hiroshi Komai, *Migrant Workers in Japan* (London: Kegan Paul International, 1995).

The chapters in the volume edited by Douglass and Roberts[52] collectively show that a multicultural society arrived in Japan. Issues covered in this volume include the working and living conditions of migrant workers and their families. In addition, the volume documented that, in the early 1990s, there was a clear distinction between the policy response of local governments and central government towards legal migrant workers. Problems that arise from the lack of coordination between labour law or civil law on the one hand, and the Immigration Control Act on the other, were also reported in this volume. Meanwhile, Papademetriou and Hamilton[53] argue that, due to the demographical trend in the coming decades, the Japanese economy will have to accept an increasing number of migrant workers in order to sustain its operation, including social welfare provision to the rapidly aging population. Citing the two documents published by the government in 2000 ('The Frontier Within: Individual Empowerment and Better Governance in the New Millennium' by the Prime Minister's Commission on Japan's Goals in the 21st Century) and 'Basic Plan for Immigration Control (2nd edition)' by the Ministry of Justice, the authors identified an indication of policy change (though not the actual practice) towards a greater acceptance of migrant workers in Japan. They also called for introducing transparent and flexible immigration policies for successful labour immigration in the future.

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[52] Mike Douglass and Glenda S. Roberts (eds.), *Japan and Global Migration: Foreign workers and the advent of a multicultural society* (London: Routledge, 1997).
[53] Demetrios G. Papademetriou and Kimberly A. Hamilton, *Reinventing Japan: Immigration's Role in Shaping Japan's Future* (Washington, D.C.: Carnegie Endowment for International Peace, 2000).

Having outlined extensively the demography and attributes of migrant workers in contemporary Japan, Sellek,[54] the leading scholar in UK on recent labour migration issues in Japan, accounted for the principles of Japan's immigration control policy, including the informal mechanisms for accepting unskilled foreign labour. Her study then finds that, contrary to Japanese government's initial expectations in the early, migrant workers are not staying temporarily but in fact, some are settling down in Japan. Thus foreign workers are changing from 'workers' to 'social beings.'[55] In this context she examined the impact of the presence of migrant workers on Japanese society, with particular attention to problems related to social welfare and medical care, education of foreign children, and international marriage between Japanese nationals and foreign partners. The roles that local governments and NGOs played in addressing the above issues are also reported. Identifying an indication that central government appears to be preparing for a change in immigration policy, Sellek argues that Japan will have to transform its policy to accept an increasing number of migrant workers to sustain its economy and society.

As has already been shown above, the existing literature covers the issues of extension and application of economic and social rights to the migrant workers and their families in Japan. However, the matters related to civil rights, such as the right to a fair trial, or fair treatment before the law, have been less frequently discussed. For example, Komai remarked that 'high-handedness' of Immigration Bureau officials against undocumented migrants 'betray[s] any pretension of

[54] Sellek, *Migrant Labour in Japan*.
[55] Sellek, op. cit., pp. 13-14.

respect for human rights',[56] but the criminal justice process proper was out of the scope of his research. Terasawa reported the cases where the lack of command of Japanese caused a problem for migrant workers: for example, there were reports of Japanese men who took advantage of women migrant workers' illiteracy in Japanese to carry out 'fake' divorce.[57] Roberts recorded a case in which staff of a women's shelter in Japan negotiated with the city social welfare office 'to allow foreign women's children into day-care facilities even if the women are overstayers.'[58] The above accounts by Terasawa and Roberts are certainly related to the language barrier and the extension of citizenship rights to foreigners, but these are related to civil cases rather than criminal cases, in which the roles of the state are substantially different, namely whether it operates as an arbitrator of contending interests, or exercises penal power against convicts.

As far as this study has managed to identify, the following three works in English discussed the language barrier problem. While developing his argument that the notion of 'foreigner crime' was socially constructed and exaggerated, Herbert[59] referred to the language barrier problem as one aspect of issues related to crime committed by foreigners. Drawing on an example of rather primitive confusion that the police officer made during an investigation concerning a migrant worker who was suspected of a crime, Herbert argued that 'interpreting is

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[56] Komai, *Migrant Workers in Japan*, pp. 14-15.
[57] Katsuko Terasawa, 'Labor law, civil law, immigration law and the reality of migrants and their children', in Douglass and Roberts (eds), *Japan and Global Migration*, pp. 219-243, p. 237.
[58] Glenda S. Roberts, 'NGO support for migrant labor in Japan, in Douglass and Roberts (eds), op. cit., pp. 275-300, p. 292.
[59] Wolfgang Herbert, *Foreign Workers and Law Enforcement in Japan* (London: Kegan Paul International, 1996).

the most demanding problem in criminal procedure for foreigners.'[60] Tsuda[61] discussed the status of the language barrier problem in Japan's criminal justice system, and called for close monitoring of the practice in judicial interpretation. He also advocated improving practices to comply with international human rights. The focal point of Hanami's discussion on the language barrier[62] was broader than the above two works, in that he made it clear that the language barrier existed in prison, in addition to the investigation and public trial phases. He also reported that a certain degree of effort had been made by the courts towards reducing the extent of the language barrier problem.

The above existing works provide this current study with invaluable insights into the language barrier problem. As far as the analysis of the language barrier problem is concerned, however, this study is going to fill the existing analytical gaps concerning the language barrier in the following three respects.

(i) Characterisation of the language barrier problem: whereas the existing studies characterise the language barrier solely as a challenge for migrant workers, this study also sees the problem as a challenge to the basic function of the Japanese state, namely the administration of justice.
(ii) Actors responded: whereas the existing studies have investigated into some parts of policy process, such as the reaction of the police and the courts, this study examines other relevant actors, namely public prosecutors, defence counsels and parliament.

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[60] Herbert, *Foreign Workers and Law Enforcement in Japan*, p. 247.
[61] Mamoru Tsuda, 'Human Rights Problems of Foreigners in Japan's Criminal Justice System', *Migration World Magazine*, 25(1-2), 1997, pp. 22-25.
[62] Tadashi Hanami, 'Japanese Policies on the Rights and Benefits Granted to Foreign Workers, Residents, Refugees and Illegals', in Myron Weiner and Tadashi Hanami (eds), *Temporary Workers or Future Citizens?: Japanese and U.S. Migration Policies* (Basingstoke: Macmillan, 1998), pp. 211-237.

(iii) Period of research: whereas the existing studies have covered the first half of the 1990s, this study covers up to 2003.

3. Research Questions, Methodology, Structure and Contributions of the Study to Knowledge

(1) Research Questions

The above background renders the following research questions for this study. The main question to ask is: How did international labour migration and the language barrier as force of globalisation affect the Japanese state, and how did the Japanese state respond to the challenge from the language barrier? The above main question can be broken down into subsidiary questions asked within the current contemporary Japanese context as follows:

(i) In what way is international labour migration a force of globalisation?
(ii) In what way is the language barrier a manifestation of international labour migration as a currently ongoing process of globalisation?
(iii) What is the language barrier, and who will be affected by it?
(iv) Who in Japan responded to the language barrier problem? Was it only state officials in the criminal justice administration, or civil society actors as well? If civil society actors were instrumental to the response, how did they interact with the state actors?
(v) Was the Japanese state capable of responding to the language barrier problem as a force of globalisation by altering a part of its organisation and the way it works? In this study, the capability of the state to respond to consequences of globalisation, in particular the language barrier problem, refers to: *(1)* whether the entire extent of detrimental effects in society were

reduced; and *(2)* in what way the above reduction of the detrimental effects was distributed within the society.

(2) Methodology

In order to answer the above questions, this study employs the research strategy as shown below. While primarily a study in International Relations and International Political Economy, this study takes an interdisciplinary approach, drawing mainly from the insights of Sociology and Gender Studies on migration in Chapters 2 and 6. It also learns from Japanese law concerning criminal justice administration. Because this research examines the events that took place in the relatively recent past, research methods employed here are documentary research of secondary and tertiary documents complemented by semi-structured interviews. Fieldwork trips were conducted for this research in Thailand and Japan in 2001 and 2002, for the duration of six months in total. The documents studied include White Papers and official statistics of the Immigration Bureau, the Police, the Ministry of Justice, and the Supreme Court; case laws; publications by defence lawyers and civil rights campaigners (both in Thailand and Japan); minutes of parliamentary debates, and academic studies on economic development and labour migration in Thailand, and those on Japan's migration, political economy and criminal procedure.

In order to complement the findings of the documentary research, the author also conducted interview with sixteen research collaborators. Starting from a number of key research collaborators, the so-called snow ball method was used to identify the additional interviewees for further information. In the end the

author managed to meet those who performed important roles in the developments over the language barrier problem, including a judge who made a crucial decision concerning the Japanese state's handling of the language barrier problem, another one who was in charge of the compilation and implementation of the training policy for the court interpreters; defence attorneys who have worked in the cases of foreign defendants; civil rights campaigners who noticed the implications of the language barrier problem and made the issue known to the wider Japanese society. In addition, the author was able to meet one civil rights campaigner in Thailand who migrated to Japan earlier; and an attorney at law in Thailand who used to work as a judicial interpreter. The choice of the questions during the interview was sometimes flexible, but in principle the following questions were posed during those semi-structured interviews: first, when and how the language barrier affected the interviewee in her/his tasks? Second, why did she/he address the language barrier? Third, how did she/he tackle the language barrier? Fourth, How did she/he assess the current status of the language barrier problem in Japan's criminal justice system? Fifth, in addition to the interviewee herself/himself, who else contributed to reducing the extent of the language barrier problem? Thus, this study is possibly the first one to discuss the language barrier problem with interviews with judges, defence counsels, and Thai nationals who are involved in the language barrier issue. A full list of the interviewees is presented in the Appendix at the end of this study. The period of research is from the early 1990s when the problem was discovered, and then subsequently addressed by the actors in the Japanese state and civil society, up to the present time.

(3) Structure of the Study

The structure of this study is as follows. Chapters 2 and 3 present a theoretical framework to analyse the language barrier problem and responses to it. In order to identify the implications of foreign crime control for the migrant receiving country, Chapter 2 examines contending theoretical approaches to the following concepts: globalisation, international labour migration, international structure and the state, policy-making in domestic politics, and citizenship and state-building. Chapter 3 carries out similar tasks to the previous chapter, but aims to work out a framework that is specifically applicable to the contemporary Japanese context, since its international and domestic structures are different from those of other countries or regions, which is the case for any other countries or regions.

Chapter 4 and 5 employ the above analytical framework in order to investigate and explain empirically the background of the language barrier problem, its emergence and the responses to it. Chapter 4 studies the relation between Japan's response to its international structure from the 1970s onwards and international labour migration from Thailand, with particular attention paid to the role of international capital mobility as a cause of structural conditions for labour mobility. It will show that recent international labour migration from East Asia to Japan is a manifestation of Japan's re-entry into the region within the context of the progression of globalisation and the ending of the Cold War. Chapter 5 considers the emergence of, and Japan's response to, the language barrier problem in the 1990s. It first identifies the significance of the language

barrier problem within Japan's international context in the post-Cold War years. The chapter then examines the legal and political implications of the language barrier, before reporting the responses that various actors in Japan made concerning the challenge from this manifestation of the globalisation process.

Chapter 6 summarises the findings of the preceding chapters, before moving on to answer the research questions, and to contemplate upon the implications of these findings in a wider context in the later sections of Chapter 6. In particular, the significance of the above findings will be considered in the final chapter with regard to the following relations within the context of globalisation: (i) globalisation and the Japanese state; (ii) state and civil society in Japan; and (iii) the Japanese state and individual migrant workers.

(4) Argument and Contributions

The argument of this study is as follows: Even though it was partially constrained by the language barrier problem, by the late 1990s Japan's criminal justice administration was able to reduce substantially the extent of such constraint, and became able to argue (if implicitly) that its criminal justice administration operates legally in investigating and convicting foreigners suspected of offence. Hence, as far as the language barrier problem is concerned, the Japanese state was able to respond to such a challenge arising from international labour migration as a force of globalisation, and was able to maintain its legitimacy, which will be contrary to the expectation of advocates of the Hyperglobalist thesis. The implications of the above findings to the relation between globalisation, the

changing population that constitutes the contemporary society in Japan, and the Japanese state will be discussed in Chapter 6.

This introductory chapter concludes with the list of contributions this study makes to knowledge:

a. The study is possibly the first to theorise that recent international labour migration to Japan reflects Japan's increasing re-engagement with East Asia after the ending of the Cold War, with capital export from Japan to the region contributing to the creation of structural conditions for population mobility.

b. The study shows that manifestations of globalisation force may vary between different parts of the world during the same period in time, by characterising international labour migration in East Asia since the 1970s as such a force, in contrast to Western Europe or North America where the migration is sometimes dismissed from such a force.

c. The study has theorised that controlling crime committed by foreigner is the migrant receiving state's response to a challenge from international labour migration as a force of globalisation. To show this in the contemporary Japanese context, the study conducted research into Japan's criminal procedure law (Constitution; law regulating immigration control, the police, public prosecutors, defence counsels, court; and parliament). Existing studies on the language barrier problem in Japan have characterised the language barrier as a challenge for foreigners suspected of committing an offence, but not for the state. In this respect, this study approaches the language barrier problem in a way that has possibly not been pursued in English yet.

d. As far as the author of this study is aware, no study has discussed the language barrier problem in such detail. In addition, the study has examined the language barrier problem from an interdisciplinary perspective, this is probably the first piece of literature to discuss the language barrier problem in Japan: being mainly a study in International Relations and International Political Economy, it has also learned from the insights of the Sociology of international labour migration, and gender studies.

e. The study has carried out documentary research on the following materials, and conducted semi-structured interviews with the following people who were involved in the language barrier problem in the 1990s. Also presented are empirical findings concerning the language barrier problem in Japan for the entire period of the 1990s (the existing studies on the problem covered up to the early 1990s), which are probably the first to be reported in English:

(i) Secondary and tertiary documents

- White Papers of Japan's National Police Agency, and of the Ministry of Justice.
- Court administration statistics of Japan's Supreme Court
- Minutes of Japan's parliamentary debates

(ii) Interviewees

- Four judges and five defence counsels in Japan; and more than five leading civil rights campaigners in Japan and Thailand
- A former migrant worker and a former judicial interpreter from Thailand

f. This is possibly among the first studies to discuss globalisation, international labour migration, the state and the problem of justice in contemporary Japan in one single study.

CHAPTER 2

GLOBALISATION, INTERNATIONAL LABOUR MIGRATION, AND THE STATE: MANAGEMENT OF THE STATE-SOCIETY RELATION IN AN ERA OF GLOBALISATION

1. Introduction

This chapter aims to demonstrate an analytical framework for considering implications of the state's response to a force of globalisation, in particular to international labour migration, to the relation between the migrant receiving state and the migrants who are present within the jurisdiction of the state. Such a framework will be carved out through examining the contending approaches to the concepts of globalisation, international labour migration and the state. In section 2, the following question will be asked: is the force of globalisation uncontrollable and unstoppable; if so, has the state become obsolete as an effective institution for managing contending interests, not only between the states but also other actors, in world politics? These questions will be asked in order to present how globalisation is envisaged by this study. The section will show that claims that would answer the above questions in affirmative are less persuasive than they would initially appear.

Section 3 presents this study's understanding on international labour migration as a force of globalisation. For that purpose, the following questions will be posed: are individual migrants and the countries from which they migrate

(migrant sending countries) solely responsible for labour migration? To what extent can various contexts that exist in the country where the migrants arrive (migrant receiving country) be attributed to international labour migration? Are the sending and receiving countries the only actors operating in the context of population mobility? Is international labour migration a consequence of globalisation, or is it a force of globalisation? This section will show that the process of international labour migration is much more complicated than some depictions of common perceptions on migration would suggest. Namely, population mobility is mediated by non-state actors, despite their presence has not fully been acknowledged in some of IR/IPE literature. To conceive international labour migration as a collective force for which each individual migrant is entirely responsible will have implications when considering the relation between globalisation, international labour migration and the state. Section 4 of the current chapter investigates theoretically how could international economic force, a key driving force of globalisation, have impact on the state, and what would be the consequences of such impact. In addition, this section asks the following questions: among the various theoretical approaches to the state in International Relations, which one is more capable of explaining the impact of international economic force on the operation of the state? What actors in a state would respond to new developments in the international and domestic environment, and how? What about the role of civil society actors? Further, what are the implications of the impact of globalisation force upon the state, to the relation between the state, civil society and the individuals that constitute the state? The section will indicate that international economic force does affect operation of the

state both from outside and inside, and different actors of the state and civil society are capable of responding to such effects in different manners. In addition, it will be pointed out that, considering the fact that it is historically contingent, the currently accepted consensus on the relation between individuals, civil society and the state is likely to be reconfigured within the context of currently ongoing globalisation. Findings from theoretical investigations listed above collectively serve as a general framework for analysis for the entire study.

2. Conceptualising Globalisation

(1) Three Approaches to Conceptualising Globalisation and the Role of the State

In Chapter 1, this study characterised the term globalisation as an analytical aid for describing, investigating and explaining the developments in contemporary world politics, which was frequently used in the 1990s. Being aware that it is a heavily contested concept, this study envisages globalisation in the following manner: First, from the viewpoint of those who are influenced by the process, globalisation can be described as:

> '[T]he process of increasing interconnectedness between societies such that events in one part of the world more and more have effects on peoples and societies far away.'[1]

[1] Steve Smith and John Baylis, 'Introduction', in John Baylis and Steve Smith (eds), *The Globalization of World Politics: An introduction to international relations (Second Edition)* (Oxford: Oxford University Press, 2001), pp. 1-12, p. 7.

In contrast, the following definition is helpful in drawing analytical attention to what the causes of globalisation are, and what is at stake:

> '[T]he emergence of a set of sequences and processes that are increasingly unhindered by territorial and jurisdictional barriers and that indeed enhance the spread of trans-border practices in economic, political, cultural and social domains.'[2]

The significance of the changes to distance and territory in world politics, which the above two definitions refer to, becomes clearer when historical forms of the state are taken into consideration. This is because the linkage between political power and territorial demarcation has been one of the core characteristics of the current form of organisation of political community, namely the nation state. The state form that preceded the nation state is the empire up to the fourteenth century, and the boundaries between the empires were overlapping and ambiguous.[3] However, during the development of monarchies in Europe from the fifteenth to eighteenth centuries, the shape of the state was determined in terms of 'its size, external form, ethnic composition, organizational structure, material infrastructure and so on.'[4] This was followed by the establishment and consolidation of the modern nation state from the late eighteenth century, in particular in the nineteenth century onwards. In addition to the territory, major characteristics of the modern nation state that were institutionalised include: (i) monopolistic control of the means of violence; (ii) 'impersonal structure of power' (i.e.,

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[2] Centre for the Study of Globalisation and Regionalisation, University of Warwick, 'Research Agenda', http://www.warwick.ac.uk/fac/soc/CSGR/agenda.html. (Cited November 2002)
[3] David Held, Anthony McGrew, David Goldbratt and Jonathan Perraton, *Global Transformations: Politics, Economics and Culture* (Cambridge: Polity, 1999), pp. 32-35.
[4] Held et al., *Global Transformations*, p. 36.

bureaucracy, as opposed to religious control); and (iii) claim to legitimacy.[5] The above account shows that the assumption over 'autonomy of the self-sufficient nation state', which used to prevail particularly in the 1930s,[6] is historically contingent. What has been taking place in the last few decades is that the importance of land and territory for politics is in relative decline, though not becoming irrelevant. This development is such that it can be described as becoming increasingly difficult to assume 'the separation between the national and international, the political and the economic' as given.[7]

While civil society actors and individuals are by themselves affected by the progression of globalisation, states are also under the influence, thus 'the capacity of the state to cope with the forces of rapid change [arising from globalisation is] being tested.'[8] In addition, such impact on the state further affects its population. Held et al. argue that globalisation's impact on modern nation states includes at least the following four aspects. First, political power is 'shared and bartered' by different levels of governments, namely national, regional and international.[9] Second, even though 'national sovereignty ... [has] ... not at all ... subverted,'[10] 'the notion of sovereignty as an illimitable, indivisible and exclusive form of public power' is being reconfigured by 'criss-crossing loyalties, conflicting interpretations of rights and duties, interconnected legal and

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[5] Held et al., op. cit., pp. 45-46.
[6] E. A. Brett, *The World Economy since the War: the Politics of Uneven Development.* (Basingstoke: Macmillan, 1985), p. 2.
[7] Brett, *The World Economy since the War*, p. 18.
[8] Charles W. Kegley, Jr. and Eugene R. Wittkopf, *World Politics: Trend and Transformation (Eighth Edition)* (Boston: Bedford/St. Martin's, 2001), p. 303.
[9] Held et al., op. cit., p. 80.
[10] Ibid., p. 81.

authority structures, etc.'[11] The increasing significance of regionalisation projects such as EU and NAFTA are cases in point. In addition, political power is also 'shared and bartered' at sub-state (local government) level. While the above two carry much significance for the study of globalisation in general, the following two kinds of impact on the state are also important for the current study. This is because they matter to implications of the state's response to the challenge from globalisation to the population to which the state is responsible, as will be discussed in Chapters 5 and 6 of this study.

Third, the relation between the exercise of state power and accountability is changing. Held et al. wrote:

> 'In a world where powerful states make decisions not just for their own people but for others as well, and where transnational actors and forces cut across the boundaries of national communities in diverse ways, the questions of who should be accountable to whom, and on what basis, do not easily resolve themselves.'[12]

The above point may have assumed a situation where the power of state A extends beyond the geographical territory, reaching the population in the jurisdiction of state B in a distant place. This study will investigate cases where state A's power extends to the population of country B, but who are present within the territory of state A, a situation which could take place after international labour migration. Fourth and related to the above, because of the blurring of the

[11] Ibid., p. 81.
[12] Ibid., p. 81.

domestic/international and political/economic distinctions, world politics is becoming, if only partially, trans-territorial.

> 'Political space for the development and pursuit of effective government and the accountability of power is no longer coterminous with a delimited political territory. Contemporary forms of political globalisation involve a deterritorialisation of political authority.'[13]

As has already been mentioned above, such 'deterritorialisation of political authority' could take place within the geographical territory of one state due to the impact of globalisation, namely international labour migration. In other words, globalisation renders 'change in constituency of the state'.[14] Problems of the accountability of political power merit an analysis in this study in this context. Having seen the above, yet another definition of globalisation, "the growth of 'supraterritorial' relations between people,"[15] where developments in human action are increasingly detached from territorial logic, renders an abstract but persuasive definition.

In the following, this study is going to compare contending approaches to understanding globalisation, in order to justify this study's conceptualisation of globalisation shown above. For the purpose of taking a succinct survey of these approaches, the accounts of Held and McGrew are useful. According to Held and McGrew, the first of the three approaches is what they called the Hyperglobalists. Proponents of this approach tend to see globalisation in terms of globalisation of the economy brought about by 'the establishment of transnational networks of

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[13] Ibid., p. 81.
[14] Jan Aart Scholte, *Globalization: a critical introduction* (Basingstoke: Macmillan, 2000), p. 135.
[15] Scholte, *Globalization*, p. 46.

production, trade and finance', with the possible consequence being 'traditional nation-states as the primary economic and political units of world society' will eventually be supplanted by such globalised economy.[16] Held and McGrew included both neoliberal and radical/neo-Marxist accounts as Hyperglobalists. While there is 'considerable normative divergence' between them, these two accounts share convictions that the developments in economy have been driving globalisation, and globalisation has produced both winners and losers.[17] Advocates of this notion would claim, regarding the socio-economic consequences, that the winners in economic globalisation are "the elites and 'knowledge workers'", and they have established "transnational 'class' allegiances," which was reinforced by the neoliberal economic ideology.[18] The political implication of globalisation could be the emergence of 'a radically new world order [...] which prefigures the demise of the nation state.'[19] Hyperglobalist claims tend to overgeneralise their observations, which will be examined later in this section.

The second approach is sceptical about the claims of the Hyperglobalists. Advocates of this second view would assume an 'ideal type' of globalisation, and claim that the current degree of economic activities is far from meeting the above ideal type of the globalised economy. The sceptics would also contend, according to Held and McGrew, that: 'the historical evidence at best confirms only heightened levels of internationalisation, that is, interactions between

[16] Held et al., op. cit., p. 3.
[17] Ibid., pp. 3-4.
[18] Ibid., p. 4.
[19] Ibid., p. 4.

predominantly national economies.'[20] The dynamics within the 'alleged' globalisation is regionalisation in the world economy, namely in Europe, Asia-Pacific and North America.[21] States have maintained, from this viewpoint, their political significance through regulatory capacities and promoting 'cross-border economic activity.'[22] The sceptics may be effective in cancelling out the overgeneralisation of the Hyperglobalist claims, but by aiming to do so, the sceptic account may overlook the significance of the developments to the political economy during the last few decades.

The third approach, which is distinct from both of the above, is called 'Transformationalist.' Proponents of this thesis would conceive globalisation as a historically unprecedented process where 'governments and societies across the globe are having to adjust to a world in which there is no longer a clear distinction between international and domestic, external and internal affairs.'[23] The dynamics behind globalisation is 'the growing deterritorialization of economic activity as production and finance increasingly acquire a global and transnational dimension.'[24] The socio-economic consequence involves 'new patterns of global stratification', where "North and South, First World and Third World, are no longer 'out there' but nestled together with all the world's major cities."[25] With regard to the political implications of globalisation, the Transformationalists would juxtapose "the ultimate legal claim to 'effective supremacy over what occurs within their territories' [...] with the expanding jurisdiction of institutions

[20] Ibid., p. 5.
[21] Ibid., p. 5.
[22] Ibid., p. 6.
[23] Ibid., p. 7.
[24] Ibid., p. 8.
[25] Ibid., p. 8.

of international governance and the constraints of, as well as the obligations derived from, international law."[26] Adherents of the Transformationalist approach would recognise the 'emergence of powerful new non-territorial forms of economic and political organisation in the global domain, such as multinational corporations, transnational social movements, international regulatory agencies, etc.'[27] In order to adjust themselves to the globalised world, states have 'reconstituted and restructured' their political capacity.[28] As for historical consequences, the Transformationalist would consider globalisation to be 'a long-term historical process which is inscribed with contradictions and which is significantly shaped by conjunctural factors.'[29] The Transformationalist concept is balanced and draws a more accurate picture of the recent and the current developments than the above two would do. There will be a comparison between the Hyperglobalist and the Transfomationalist accounts later in this section.

(2) Comparing the Hyperglobalist and the Transformationalist Theses of Globalisation

This section is going to compare the Hyperglobalist and the Transformationalist theses of globalisation, in order to consider whether and in what respects the notion of the 'demise of the state' in the era of globalisation can be plausible. The reason for making this comparison is because the above notion of the weakening of the state is not so convincing: as far as the relation between the state and the

[26] Ibid., p. 8.
[27] Ibid., p. 9.
[28] Ibid., p. 9.
[29] Ibid., p. 7.

population that migrate internationally is concerned, the former continues to maintain control over this relation. Such continued state's ability to control appears to apply to the case of the Japanese state as well as other migrant receiving countries, as will be demonstrated in Chapter 5.

a. Main claims of the Hyperglobalist thesis

(a) Ohmae's claim

As a part of this comparison, the accounts by Ohmae and Strange are referred here. Both of them are considered to have advanced the Hyperglobalist thesis. In *Borderless World*, Ohmae displayed abundant accounts of multinational corporations (MNCs) that were operating in more than one country. In this new international business environment, it is an imperative of the MNCs to be able to meet demands of customers worldwide, who are able to obtain the information on the available goods and services regardless of their geographical location.[30] Technological developments, particularly information technology, are the driving force of the globalisation of production, marketing and consumption. In addition, the surge in the volume of foreign exchange trade, which became possible because of technological development and financial deregulation in the industrialised countries, was also driving forces of globalisation.[31] In the meantime, states were unable to adapt themselves to the globalising economy, because 'economic

[30] Kenichi Ohmae, *The Borderless World: Power and Strategy in the Interlinked Economy*. London: Collins, 1990, p. 185.
[31] Ohmae, *The Borderless World*, pp. 161-163.

policies based on conventional macroeconomic statistics that compare one nation against another' would not work effectively any longer.[32] Ohmae declared that the arrival of the global economy was as follows:

> 'The global economy follows its own logic and develops its own webs of interest, which rarely duplicate the historical borders between nations. As a result, national interest as an economic, as opposed to a political, reality has lost much of its meaning.'[33]

He then contended that states were becoming obsolete, and that they should minimise their roles in the global economy to night watchers.[34] Ohmae's accounts were based on his working experiences with various multinational companies. His claims about globalisation carry the following characteristics. First, he overgeneralises the facts about some of multinational corporations as if applicable to the entire world economy. Second, his claims contain technological determinism. Third, he tends to give limited historical account and background of economic events. Fourth, his accounts are based the distinct state-market dichotomy. Fifth and finally, he distinguishes economy and politics.

(b) Strange's argument

There is a certain similarity in Ohmae's claims on globalisation and Strange's conceptualisation of it. She found technological developments to be the driving

[32] Ohmae, op. cit., p. xi.
[33] Ibid., p. 183.
[34] Ibid., p. x; pp. 12-13.

force of the globalisation process, [35] and that states (in particular the US) have lost their power in relation to the market. [36] But Strange did not go as far as dismissing the state as totally irrelevant in the international political economy, as Ohmae did. Hence, even though they appear to share certain points in common, Strange's works were out of normative concern. In this respect Strange was much different than Ohmae, who was able to celebrate the increased activities of multinational corporations for the benefits of the 'have's' of the North. From the above two somehow similar but qualitatively different representative cases, the main claims of the Hyperglobalist thesis can be characterised as follows: (i) the emergence of a global economy where businesses operate with their own logic; (ii) technological evolution as the driving force of globalisation, and (iii) states' loss of power to the market. In addition to the above, Amoore et al. found that some of the existing analyses of globalisation tend to depoliticise this process by covering the existence of such social agencies as 'the state, social movements and organised labour' which do operate in the globalisation process. Amoore et al. described the above tendency 'teleology', with a possible consequence being the assumption that the process of globalisation is benign.[37]

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[35] Susan Strange, 'Wake Up, Krasner! The World Has Changed', *Review of International Political Economy*, 1(2), 1994, pp. 209-219, pp. 210-211.
[36] Strange, 'Wake Up, Krasner!', p. 213.
[37] Louise Amoore, Richard Dodgson, Barry K. Gills, Paul Langley, Don Marshall and Iain Watson, 'Overturning "Globalization": Resisting the Teleological, Reclaiming the 'Political'', *New Political Economy*, 2(1), 1997, pp. 179-195, pp. 183-184.

b. Role of the state in globalisation

In the following this study is going to critically assess some of the major claims of the Hyperglobalist thesis in comparison to that of the Transformationalist thesis. This assessment covers these three points: (i) has the world economy 'globalised'?; (ii) is the technological evolution the only driving force of globalisation?; and (iii) does the state really not play an active role in globalisation process?

(a) Internationalisation and regionalisation of the economy

Advocates of the Hyperglobalist thesis would claim that there is now a global economy where 'national difference [has] virtually disappeared.' Weiss counters such a claim by arguing that the world economy was actually 'internationalised' and that 'national and regional differences remain substantial and national institutions remain significant.'[38] The following points substantiate her claim.

(i) In terms of the volume of economic flows, the last few decades are not entirely unique in history. The size of the global flow of trade and capital in the inter-war period was as large as today, while the trend toward greater trade integration was slowing down at the time of her writing.[39]

[38] Linda Weiss, 'Globalization and the Myth of the Powerless State', *New Left Review*, 225, 1997, pp. 3-27, p. 13.
[39] Weiss, 'Globalization and the Myth of the Powerless State', p. 7.

(ii) International economic flows do not operate as 'globally' as the Hyperglobalist thesis would suggest. Foreign direct investment (FDI) does not automatically 'extend economic linkages' between different countries because of the following reasons: much FDI goes into non-manufacturing sectors; FDI in manufacturing tends to be made for renewal of existing assets rather than for new ones; share of FDI is much smaller compared to portfolio investment (18% of the total long-term foreign investment of the major OECD countries in 1992).[40] In addition, wage level is not the only factor that influences decisions of MNCs to invest/disinvest, thus capital investments of MNCs are not as mobile as the Hyperglobalists would assert. There are MNCs that operate in their home countries despite high wage levels. This is because: high premiums are available from utilising high-technology; it is to their advantage to locate their operations close to the market where they can sell products and/or services using high-technology; and they can continuously benefit from domestic linkage for business operations.[41]

(iii) International economic flows do not cover geographical areas globally. The majority (about 90%) of production in OECD countries is within the country; trade occupies about 10% of their GDP. World trade concentrates around OECD countries; the share of those countries accounted for 84% of world trade in 1989.[42]

(iv) There are indications that international economic flows tend to be regional in their reach. Trade and investment of the North tend to be more intra-

[40] Weiss, op. cit., pp. 8-9.
[41] Ibid., p. 10.
[42] Ibid., p. 11.

regional rather than inter-regional.[43] Growth of capital flow since the 1970s is undeniable; but there is a tendency that movement of capital is intra-regional rather than 'global'.[44]

Amoore et al. shared a view similar to the above, and have argued that it does not hold to claim that transnationalisation of business activities undermined the nation state. This is because 'the foundations of the global economy remain largely national in character.' They also claimed that '[s]tates are held to continue to exercise considerable authority in the management of the national economy', including providing the businesses the guarantee for 'the rights of capital, whether national or foreign'.[45]

(b) Historical factors of globalisation

It has been pointed out earlier in this chapter that the Hyperglobalist thesis, such as the claims of Ohmae, tends to relate technological developments as the only reason for globalisation. Amoore et al. saw such analysis as an overgeneralisation.[46] Even though attempts to discuss globalisation in a historical context were not entirely missing from Ohmae's work, the following historical accounts on the developments of the world economy (since the end of the Second World War) helped to conceptualise globalisation in a more balanced and plausible manner than resorting to technological determinism, as in Ohmae's

[43] Ibid., p. 11.
[44] Ibid., p. 12.
[45] Amoore et al., 'Overturning "Globalization"', pp. 185-186.
[46] Amoore et al., op. cit., pp. 183-184.

claim. The accounts by McMichael and Strange tell us that significant changes in the managing principle of the world economy are among the major (though not the sole) factors that have caused globalisation.

McMichael argued that the collapse of the Bretton Woods system meant that the rule of world economic management changed in the 1970s becoming a stricter environment. He saw these changes, including the introduction of Monetarist policies, as the main driving factor of globalisation. The post-war economic order planned by the First World involved 'raising and protecting living standards [of the First World], and to this end [employed] massive (military and economic) assistance programmes.'[47] Management of national economies was left to each state, with free trade 'as a stimulus' for national economy management. A stable trade environment was envisaged when the Bretton Woods agreements were designed, in order to support stabilisation of 'wage relation through rising investment (in mass production) and state subsidies (to promote full employment and rising consumption).'[48] Meanwhile, the development project in the Third World countries was a replica of the national economy management of the First World.[49] The above management of the economies of the West was possible with the existence of the US dollar. Financial aid from the US to Europe, East Asia and Africa, provided within the context of the Cold War, have resulted in making the US dollar 'the international reserve currency.'[50]

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[47] Philip McMichael, 'Globalization: Myth and Realities', *Rural Sociology*, 61(1), 1996, pp. 25-55, pp. 30-31.
[48] McMichael, 'Globalization: Myth and Realities', p. 30.
[49] McMichael, op. cit., p. 31.
[50] Ibid., p. 30.

However, the above economic management was not sustainable. The failure of developmentalism was 'both cause and consequence' of the globalisation project.[51] In contrast to stabilising capitalism 'through national economic management' in preceding decades, the globalisation project 'seeks to stabilize capitalism through global economic management – this time along the lines of specialization, rather than replication.'[52] The transition from the above developmentalism to globalisation was implemented in the following way. Transnational business operations or 'global exchanges' have begun to 'overlay' national economies since around the 1970s. US agribusiness was a preceding example of cross-border operations in Europe and East Asia, within the context of the US aid during the Cold War period.[53] The newly industrialised countries' "participation in the world market" through export-oriented industrialisation meant that the developmentalism has effectively ended.[54]

The presence of the US dollar outside the country in the form of aid, export credit and FDI created the off-shore market. The growth of the off-shore market undermined the Bretton Woods regime, and eventually resulted in the US termination of gold-dollar convertibility in 1971. Consequently foreign-exchange rates were set to float and became unstable. McMichael wrote: '[t]he fundamental monetary relations of the development project unravelled.'[55] In the early 1980s the First World states adapted Monetarism 'as a mechanism of restructuring the balance of power within [those states], putting labor and social

[51] Ibid., p. 31.
[52] Ibid., p. 31.
[53] Ibid., p. 33.
[54] Ibid., p. 33.
[55] Ibid., p. 33.

programmes on the defensive.'[56] It was in connection with this that in 1980 the Federal Reserve Board of the US reduced the monetary supply. The international consequence of this policy included the debt crises of the Third World countries that had received increasing volume of commercial lending from the First World countries in the 1970s.[57]

Strange tells us that the root cause of the collapse of the Bretton Woods system has existed since the years prior to the 1970s. She suggested that, even if it was technically unsustainable in the long run, the Bretton Woods system might have been managed better and the extent of the financial instability since the 1970s might have been less. Strange cited Robert Triffin, who had continued warning 'from 1959 on' that the Bretton Woods system would not be sustainable in the long term, and that eventually the US would have no choice, as the amount of Eurodollars ('dollar IOUs in foreign hands') kept growing, than to raise the price of gold or to devalue the dollar.[58] In addition to the above basic problem, there were two more factors that kept the US balance of payment deficit growing, but also kept credit creation expanding in the post-war years: (a) US military spending in Germany, Europe, Japan and Vietnam; (b) foreign investment in Europe. As the EEC was set up by the 1958 Rome Treaty, it became more sensible for US businesses to invest in the Community and to manufacture there, than to export from the US.[59] The latter contributed to the creation of Eurocurrency markets in the 1960s and 1970s, which 'put such tremendous pressures on the exchange rate system' that by 1973 it appeared to the US that

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[56] Ibid., p. 34.
[57] Ibid., p. 34.
[58] Susan Strange, *States and Markets (Second Edition)* (London: Pinter, 1994), p. 105.
[59] Strange, *States and Markets*, p. 106.

there was no choice other than to float the dollar.[60] The root causes of the economic troubles that appeared after the collapse of Bretton Woods were:

> 'misuse [and exploitation of] the system rather than managing it, giving too much freedom and responsibility for credit creation to the banks [...] It was the pursuit of short-term instead of long-term national interest that sowed the seeds of monetary disorder and financial instability [after the 1970s].'[61]

These historical accounts by McMichael and Strange not only make the technological generalisation regarding globalisation less plausible, but also make it clear that the perception of international capital flow as a benign or neutral force (as Ohmae appeared to have held) is an oversimplified view of the world economy. Distinction between the above analytical approaches (whether being deterministic as in the case of Ohmae's claim, or being aware of historical contingency) is important for this study, as much as any study on globalisation, because political actors would produce different planning for action from a different analysis, including actors of a migrant receiving state when responding to challenges from the international population mobility.

(c) Role of the states in the internationalised economy

It has been found that the Hyperglobalist thesis is less plausible than had initially been assumed, in terms of its explanation on the driving force and the extent of historical analysis. In addition, states may have been able to manoeuvre the

[60] Strange, op. cit., p. 106.
[61] Ibid., p. 104.

globalisation process more than the above thesis suggested. First, states can actively participate in globalisation. Weiss argued that the East Asian economic development experiences since the 1970s indicated that states could compile plans for economic internationalisation and implement them,[62] with representative examples being the cases of Japan, Taiwan and South Korea.[63] Second, states can reformulate the constitution of their operation, which is not necessarily a weakening of the functions. Zysman reported that some states managed to 'reregulate' the economy, not to 'deregulate' it.[64] 'Reregulation' here refers to 'reconceptualization of the rule (of economic management) and redefining the role of government'.[65] Similarly, Amoore et al. argued that many processes of globalisation involve 'reorganization of the state', thus it is not plausible to dichotomise the state and globalisation.[66] Third, states' responses to globalisation are diverse between the countries;[67] whereas impacts of globalisation may be various to different state institutions, inter-ministerial interests and power distribution may change in the globalisation process.[68]

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[62] Weiss, op. cit., p. 4.
[63] Ibid., pp. 21-23.
[64] John Zysman, 'The Myth of a "Global" Economy: Enduring National Foundations and Emerging Regional Realities', *New Political Economy*, 1(2), 1996, pp. 157-184, p. 165.
[65] Zysman, 'The Myth of a "Global" Economy', p. 171.
[66] Amoore et al., 'Overturning "Globalization"', p. 186.
[67] Michael Mann, 'Has globalization ended the rise and rise of the nation-state?', *Review of International Political Economy*, 4(3), 1997, pp. 472-496, p. 494.
[68] Robert W. Cox, 'Global Perestroika', *Socialist Register 1992*, pp. 26-43, pp. 30-31. Marianne H. Marchand and Anne Sisson Runyan, 'Introduction: Feminist sightings of global restructuring: conceptualisations and reconceptualizations', in M. H. Marchand and A. S. Runyan (eds), *Gender and Global Restructuring: Sightings, sites and resistances* (London: Routledge, 2000), pp. 1-22, p. 13.

(3) Globalisation Theses Compared

This section has briefly reviewed the three contending theoretical approaches to globalisation, and it has found that the Transformationalist thesis is most plausible. Consequently globalisation can be conceived as follows.

(i) The state continues to play an important role in managing the national and international economy;
(ii) Globalisation is a historical and political project in which mobility of capital plays a crucial role in the driving the process (hence technological development is not the only force of globalisation);
(iii) States play various active roles in planning and implementing globalisation of the economy; and
(iv) States are not entirely powerless before market forces, and can reformulate their capabilities in the face of the globalisation process.

Among those four points, (ii) and (iv) are particularly pertinent to this study: globalisation is a historical and political project; mobility of capital is a key driving force of globalisation; and the states can respond to market forces and reformulate their capabilities while globalisation progresses. These points will be applied in Chapters 4 and 5 of this study when analysing the developments in globalisation. As a corollary of the above findings, it is possible to make the following points when discussing developments in the international political economy in globalisation.

(i) to link developments in the world that are separated in terms of geographical location and/or time, taking the role of capital mobility as mediator of such events into consideration;

(ii) to assume that there should be some room, however limited, for managing the consequences of globalisation, since globalisation is a historical and political project (not only the 'faceless' technological developments); and

(iii) to expect that the state can operate towards reducing the negative consequences of globalisation.

Having examined the driving force of globalisation, and theoretical capabilities of the state in relation to international economic force, the next section seeks to develop a theoretical framework for understanding international labour migration as a force of globalisation. As has already been indicated in this study, international labour migration is an economic force that could render manifold effects on the migrant receiving country (as well as the sending country and the migrants themselves, but the focal point of this study is on the receiving country).

3. Theorising International Labour Migration in Globalisation

(1) Introduction

This section is going to present a theoretical framework for understanding international labour migration as a force of globalisation. The following accounts are given in general terms that are applicable to population movements throughout the world. However, the body of literature on international population movement

in Asia indicates that such theories are capable of explaining migration in the region, including the flows to Japan, as will be demonstrated in Chapter 4. It will also be shown that capital mobility creates conditions for the migration. Since it has been pointed out that capital mobility constitutes a key driving force of globalisation, the theoretical framework demonstrated in this section should highlight the characteristic of international labour migration as a force of globalisation. Research indicates that theories of international migration can be classified in the following three criteria:

(i) 'Supply-led' and 'demand-led' approaches. Whereas the former claims that individual migrants decide to migrate, the latter find the causes of population movement in the characteristics of such structures as capitalism and patriarchy. This distinction is based on analytical emphasis: whether the supplier or employer of migrant labour is thought to be more responsible for labour migration. The approaches that fall within this 'supply-led' approach are Neoclassical theory, Human Capital theory, Behaviouralist theory, while those of the latter are Dual Labour Market theory, World Systems theory and feminist theories.

(ii) Initiation and perpetuation of migration. Whereas the approaches mentioned in the above (i) intend to explain the initial causes of migration, Migration Networks and Migration Institutions theories can explain qualitatively why international labour migration sustains over time.

(iii) Objective and subjective accounts of migration. All of the approaches in (i) and (ii) can be described as positivist in that a researcher observes migration process without taking into account an individual migrants' subjective view on their movement. In contrast, what this study provisionally calls 'subjective

account' approaches tries to incorporate these individual migrants' insights into research.

This section is going to present the main arguments of each of these theories of migration, accompanied by an assessment of each, in the following order: subsection 2 discusses the 'Supply-led' approaches, which is followed by 'Demand-led' approaches in subsection 3; subsection 4 is about the factors that sustain migration; in subsection 5, subjective accounts of migration, as opposed to the above objective ones, will be mentioned. Calls for integrated approaches to migration will be considered in subsection 6, and some concluding remarks will be presented in the final subsection 7. Research for this section has been guided by theoretical reviews by Boyle et al. and Massey et al.[69]

(2) 'Supply-led' Approaches

a. The Main claims of Neoclassical and Behaviouralist theories

Three major approaches in this grouping are Neoclassical theory, Human Capital theory, and Behavioural theory. These three approaches are similar in that they conceive migration only in economic terms. Neoclassical explanations of migration attribute wage differentials between the sending and receiving areas of

[69] Paul Boyle; Keith Halfacree; and Vaughan Robinson, *Exploring Contemporary Migration* (Harlow: Addison Wesley Longman, 1998); Douglass S. Massey; Joaquin Arango; Graeme Hugo; Ali Kouaouci; Adela Pellegrino; and J. Edward Taylor, 'Theories of International Migration: A Review and Appraisal', *Population and Development Review*, 19(3), September 1993, pp. 431-466.

migration.[70] This approach expects that migration will end when wage differentials disappear; only imbalances between labour markets create international labour migration, and no other markets have any significant effects.[71] Massey et al. noted that the neoclassical macroeconomics theory of migration has provided a 'simple and compelling explanation', has 'strongly shaped public thinking and has provided the intellectual basis for much immigration policy.'[72] Meanwhile, the neoclassical microecnomic theory of migration incorporates actual and expected employment rates in sending and receiving countries, respectively, in explanation.[73] It also assumes that migration will not cease until expected earnings between the sending and receiving countries have become equal; decisions to migrate are made solely in terms of labour market imperfections, and no other markets affect the decisions.[74]

Next, from the Human Capital theory perspective, migrants will consider migration as an investment, and calculate costs and expected short-term and long-term returns of migration. These expected returns could be both economic as well as psychological.[75] This theory is also called 'a family-based risk reduction strategy.'[76] Key characteristics of this perspective include the decision to migrate made by members of families and households, not solely by individual migrants. In this respect, migration is conceived as a strategy to compensate for the lack of affordable insurance and credit programmes in developing countries.

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[70] Boyle et al., *Exploring Contemporary Migration*, p. 61.
[71] Massey et al., 'Theories of International Migration', p. 434.
[72] Massey et al., op. cit., p. 433.
[73] Ibid., p. 435.
[74] Ibid., p. 435.
[75] Boyle et al., op. cit., p. 62.
[76] Ibid., p. 74.

International labour migration is consequently seen as follows: households may decide that members of the family should migrate in order to reduce risks arising from the lack of social insurance and affordable credit, even if there are no wage differentials; government policies that can influence migration are not only those concerning labour markets, but on the above factors.[77] Third, the Behavioural theory accounts for migration, using such terms as 'pull factors (attractions)', 'push factors (expulsions)', and 'intervening opportunities (obstacles)', as a consequence of a series of decisions that a migrant makes in a search for better living conditions.[78]

A characteristic that is common to the above approaches is that they are all micro-level decision/rational choice models, as Boyle et al. found. First, they conceive migration as 'a relatively systematic response', and expect that generalisation can be possible. Second, these approaches explain migration in quantitative terms. Third, these approaches naturalise migration as an action that 'leads to a better living conditions, higher wages and more pleasant residential environments.'[79]

b. Critique and modifications of Neoclassical and Behaviouralist theories

The plausibility of the neoclassical economic theory can be tested first by the statistical significance of the relation between immigration flow and expected earnings gap (= 'real earnings in the country under consideration multiplied by the

[77] Massey et al., op. cit., pp. 439-440.
[78] Boyle et al., op. cit., p. 64.
[79] Ibid., p. 65.

probability of employment there'), but 'not the absolute real-wage differential.' Second, the existence of international migratory flow without a wage gap or the end of it before the wage gap disappears, poses a theoretical challenge for this approach.[80] A similar critique was made by Boyle et al. who argued that 'difference in wage differentials' was a 'poor determinant of migration, because the differentials between and within countries did not disappear after migration ceased to take place.[81] A critique of Human Capital theory is directed against the point that it assumed the availability of acquiring perfect information, which is 'clearly an unrealistic assumption.'[82] In addition, Human Capital variable may negatively affect international migration, because "Human Capital acquired at home generally transfers abroad imperfectly."[83] Thus the explanatory capability of the above approaches is limited, in particular that of the Neoclassical theory.[84] However, a critique of these approaches has shown that migration is 'a highly contextual phenomenon', instead of 'the isolated, objectifying rational act.'[85] Furthermore, it is also acknowledged that migration is 'fundamentally dissimilar to the flow of water';[86] degrees of risk-taking are different between individuals;[87] and that 'asymmetry of information' exists between employers and employees.[88]

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[80] Massey et al., op. cit., p. 455.
[81] Boyle et al., op. cit., p. 61.
[82] Ibid., p. 62.
[83] Massey et al., op. cit., p. 456.
[84] Massey et al. had reservations about explanatory power of neoclassical economic theory of migration. They wrote: 'Only after the historical circumstances have been clearly specified and their influence on the returns to specific forms of human capital clarified, can a critical test of the neoclassical microeconomic model be formulated'. (Massey et al., op. cit., p. 457)
[85] Boyle et al., op. cit., p. 75.
[86] Ibid., p. 74.
[87] Ibid., p. 74.
[88] Ibid., p. 75.

These insights about 'what migration is *not*', would be valuable when considering migration practice.

The extent of modifications to Behaviouralist approaches, and lessons from such modifications, appear to be limited compared with those from the Neoclassical theory. These approaches have been modified through the introduction of multiple decision-making processes or multiple goals for migration. However, Boyle et al. criticised Behaviouralist approach for being deterministic,[89] despite the decision-making process in regard to migration being 'not as systematic' as they would suggest.[90]

To sum up, characteristics of the theories discussed above are as follows: these theories are concerned with individual migrants' decision-making process only in economic terms; while questioning 'how do they migrate?', these theories accept migration as given and do not ask the question 'why does migration occur?' In other words, the above approaches are 'economic' and 'apolitical'. Attempts to explain international labour migration solely from these 'economic' and 'apolitical' perspectives can possibly be unsatisfactory for research from the International Political Economy perspective, which intends to transcend analytical distinctions between economy and politics. This is the case because, as much as it is concerned with demonstrating international labour migration as an international economic force, this study intends to discuss the changes in the constituency of the state, and the subsequent reconfiguration of power relations. For this reason,

[89] Ibid., p. 75.
[90] Ibid., pp. 75-76.

population movement needs to be analysed as a political issue, as will be seen in Chapters 4 to 6.

(3) 'Demand-led' Approaches

a. Assumptions of 'demand-led' approaches

The fundamental difference between 'supply-led' approaches and 'demand-led' approaches lies in the following points. Whereas the former implicitly assumes that there are "pre-given 'laws' of migration" that can be identified by observation,[91] the latter assumes that migration is 'a fundamentally social phenomenon – migration is a product of society.'[92] The latter approaches explain migration in terms of 'the macro-scale conditions within which decision making is undertaken,'[93] asking the question, "why does migration occur?"'[94] Being aware that the answer to this question has an important implication when considering the manner of changes in social relations in the migrant receiving country, notably Japan, this section is going to discuss the two structures to which the 'demand-led' approaches pay attention, namely capitalism and patriarchy.

[91] Boyle et al., op. cit., p. 66.
[92] Ibid., p. 67.
[93] Ibid., p. 66.
[94] Ibid., pp. 66-67.

b. Marxian structuralist theory of migration

From a Marxian perspective, labour migration is the consequence of 'changes in the social relations of production – the way in which participants in the productive process relate to one another – and the uneven development of the economy.'[95] In other words, migration occurs when a new mode of production undermines the traditional mode of production and creates a labour reserve.[96] There are at least three different approaches to international labour migration that are based on a Marxian perspective. The first approach is Piore's theory of dual labour market. Piore argued that international labour migration is indispensable in industrialised countries because a dual labour market exists there. In the labour intensive and poorly-paid sector of such countries, recruitment from the local population becomes increasingly difficult, making it necessary for these employers to recruit workers from poorer countries. This is a demand-led explanation of international labour migration as opposed to 'the supply-led explanations of neoclassical theories' such as those discussed in the previous subsection.[97] Hence international wage differentials are not necessarily the cause of migration.[98] While Dual Labour Market theory may explain why employers in the receiving country need the migrant workers, it will not explain why and how the migrants arrive in the first place.

The second approach is the World System theory, which explains international labour migration as an inevitable consequence during the

[95] Ibid., p. 68.
[96] Ibid., p. 69.
[97] Ibid., p. 69.
[98] Massey et al., op. cit., p. 444.

development of the world capitalist economy that is uneven between core and periphery countries.[99] Insertion of peripheral, noncapitalist societies into capitalist economic relations involves marketisation of availabilities of land, raw materials and labour. This marketisation process that creates displaced population enables them to become a mobile labour force.[100] From this perspective, international labour migration usually moves in the opposite direction of international trade and capital flows, because 'investment and globalization are inevitably accompanied by the build-up of a transportation and communication infrastructure.'[101]

Meanwhile, the structuralist approach to migration has been criticised for being deterministic, and also for being unclear about specific links between capitalist development and migration. For example, one description of the World Systems theory states that this theory characterises international migration as 'a *natural* consequence of capitalist market formation in the developing world.'[102] (emphasis added) It would be an overstatement to argue that migration always occurs under such circumstances. In answering such a critique, Boyle et al. cited Jones, who acknowledged that economic determinism was an implausible explanation since it dismisses the capability of human agency:

> "the destruction of the peasant economy is not an inevitable one-way process but is a contested experience, where the individual can, at least in some circumstances, 'make a difference'."[103]

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[99] Boyle et al., op. cit., p. 69.
[100] Massey et al., op. cit., pp. 444-446.
[101] Ibid., p. 446.
[102] Massey et al., op. cit., p. 447.
[103] Cited in Boyle et al., op. cit., p. 76.

c. Patriarchy as a structure

Another structural factor of migration is patriarchy. Boyle et al. referred to patriarchy as 'a system of social structures and practices in which men dominate, oppress and exploit women.'[104] Patriarchy needs to be analysed independently of capitalism, since it cannot be reduced to capitalism. For example, Anthias and Yuval-Davis argued that 'gender divisions are irreducible to class or other divisions.'[105] This is the case because the concept of class is related to the notion of the mode of production, but this concept does not contain 'non-class, non-economic social relations such as race and gender.'[106] Divisions based on class, race and gender are interrelated and produce different relations depending on the context. Boyle et al. reported that Boyd and Wood were among those who found that gender-specific decisions to migrate are often taken at the household level rather than at individual level. Boyd in particular argued that 'family and friendship sources of approval, disapproval, assistance and information' are 'sex-specific.'[107]

[104] Boyle et al., op. cit., p. 70.
[105] Floya Anthias and Nira Yuval-Davis, 'Introduction', in Nira Yuval-Davis and Floya Anthias (eds), *Women-Nation-State* (Basingstoke: Macmillan, 1989), pp. 1-15, p. 11.
[106] Floya Anthias and Nira Yuval-Davis, 'Contextualizing Feminism – gender, ethnic and class division', *Feminist Review*, No. 15, 1983, pp. 62-75, p. 64.
[107] Boyle et al., op. cit., p. 70. This should read 'gender-specific.'

(4) Factors That Perpetuate Migration

Whereas the analytical focus of the approaches discussed above is on the causes of the beginning of migration, reasons for sustained migratory flow have also been studied. These theories may be able to explain why migration continues when conditions that initiated migration cease to exist and vice versa; and why immigration control by the state is imperfect.[108] Migration Networks and Migrant Institutions theories have been advanced in this context.

Migration networks refer to interpersonal ties between 'migrants, former migrants, and non-immigrants in [areas of] origin and destination through ties of kinship, friendship, and shared community origin.'[109] These networks reduce costs and risks of migration over time, and increase the possibility of successive migrations. This renders migration 'a self-sustaining diffusion process' over time.[110] Wage differentials and migration will not be totally irrelevant, but they are 'not strongly correlated'.[111] It would be difficult for the government to influence these networks through policies to reduce migration, because activities of these networks that prolong the population flow are usually in the 'private' domain and 'outside [governments'] control.'[112] The above fact that the operation of the migration network takes place where the state normally does not reach has some implications when considering the changes in constituency of the migrant receiving state, includes the migrant workers, and subsequent power relations.

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[108] Massey et al., op. cit., pp. 450-451.
[109] Ibid., p. 448.
[110] Massey et al., op. cit., p. 448; Boyle et al., op. cit., p. 76.
[111] Massey et al., op. cit., p. 450.
[112] Ibid., p. 450.

This point will be briefly discussed in Chapter 6, in terms of the implications for the incidence of crime between foreign residents to the authority and responsibility of the migrant receiving state in controlling crime.

Private institutions other than the participants of the above Migration Networks are also thought to have an influence on migration. Migration brokers provide migrants with services, either legally or illegally, that enable migration. Both the above migration brokers and the humanitarian groups can 'support, sustain and promote international movement.' Similar to migration network, it will be difficult for the governments to influence the operations of those institutions.[113]

(5) 'Subjective Account' Approaches

The next approaches to discuss here are those that explain migration using the subjective accounts of migrants themselves. The 'humanist' approach, as Boyle et al. called it, criticises determinist approaches since 'migration cannot be predicted ... [because]... beliefs, aspirations and obligations' of individual migrants are never the same and there will be no 'one-to-one relationship' between the likelihood and actual practice of migration.[114] Thus this approach aims to obtain and present 'subjective understandings' of migration.[115] Building up migrant histories is one way of conducting research from this approach. There can be two different reasons for adopting this approach to explain migration. The first is that use of migrant history enables the researchers to avoid 'problems of

[113] Ibid., pp. 450-451.
[114] Boyle et al., op. cit., p. 71.
[115] Ibid., p. 71.

the averages of aggregated situations, where such averages may not reflect the actual situation of any one case.'[116] The second is based on a more 'strictly humanist philosophy' which claimed that

> 'I am sure they [individual migrants] would appreciate our listening to their stories before we assume behavioural characteristics for them and proceed to solve models and make policy decisions for them.'[117]

However, in either case the advocates of this approach do not intend to produce 'uncoordinated'[118] countless individual stories. Rather, it aims to emphasise 'the need for case studies to illustrate and inform the impersonality of more general accounts of migration trends and patterns', and to point out that 'individual stories are expressed and respected in their own light.'[119] There is another approach similar to the above, which conceives migration as a culture of a certain social group. From this perspective, migration 'tends to have meanings for a given society or for a sub-section of that society' that cannot be explained by economic or social reasons. This approach has been accepted in anthropology.[120] Boyle et al. acknowledged that the amount of research conducted from the 'humanist' approach remains relatively small compared to the 'determinist' approaches.[121] But these accounts on 'humanist' approaches to migration highlight the need to carry out empirical case studies in order to avoid both implausible generalisation and intellectually 'patronising and condescending'

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[116] Ibid., p. 72.
[117] Ibid., p. 72.
[118] Ibid., p. 72.
[119] Ibid., p. 72.
[120] Ibid., pp. 72-73.
[121] Ibid., p. 71.

attitudes.[122] In other words, an empirical case study including interviews is indispensable in confirming and supporting theoretical assumptions and the findings of documentary research, which has been done in Chapter 4 and 5 of this study.

(6) Integrated Approaches

a. The call for an integrated and 'holistic' approach

Massey et al. called for integrated approaches to explaining migration that can account for 'causal processes [that are] relevant to international migration [and operating] on multiple levels simultaneously.' Such analysis of causal processes at multiple levels is necessary because:

> 'it is entirely possible that individuals engage in cost-benefit calculations; that households act to diversify labour allocations; and that the socio-economic context within which these decisions are made is determined by structural forces operating at the national and international levels.'

Consequently researchers are expected to identify which theory produces plausible explanations both empirically and logically.[123] Boyle et al. also claimed that different theoretical approaches can become mutually complementary, and

[122] Colin Hay, 'Structure and Agency', in David Marsh and Gerry Stoker (eds), *Theory and Methods in Political Science* (Basingstoke: Macmillan, 1995), pp. 189-206, p. 195.
[123] Massey et al., op. cit., pp. 454-455.

called for a 'holistic perspective.'[124] But it is also imperative not to overlook 'the issues of power and contrasting resources.'[125]

b. Agency and structure

Boyle et al. reported that the number of works that tried to explain migration relying on the Structuration theory, with an aim of formulating an integrated approach to theorise migration, was increasing. Giddens' Structuration theory has been known as a social theory with which he tried to combine two contending theoretical approaches to explain developments in society (namely the so-called 'agency-structure problem'). However, at the time of this writing, other approaches to this problem were also known. The following paragraphs briefly discuss the agency-structure problem in three respects, namely: (i) Why it is necessary to consider the agent-structure relation; (ii) How can the relation between structure and agency be explained; and (iii) What theoretical approaches are there to explain the relationship?

Explaining the agency-structure relation is a task specific to social science. This is because there is no need to consider the relation between structure and agency in natural science, for the students can assume the existence of metastructure. In contrast, it is not possible to assume metastructure in human society, since the relation between structure and agency changes over time. This is why the relation between structure and agency needs to be explained in social

[124] Boyle et al., op. cit., p. 82.
[125] Ibid., p. 82.

science. Hay argues that, even though explanations in social science used to be made from monocausal perspectives, namely either from 'structuralism' or 'intentionalism,' neither of them a plausible explanation in social science.[126]

There are at least three approaches to theorise the structure-agency relation. Despite their differences, each of these three approaches tries to explain that there is a dialectical relation between structure and agent. In other words: an agent makes a decision under structural constraints; such action has both intended and unintended consequences; as a result, an action of a certain agent affects both the agent herself/himself and the structure, which then creates a new condition for the next action. Following Hay, the above may be put in a slightly more detailed way as follows:

(i) The distinction between structure and agency is 'purely analytical',[127] and this relation can be conceived (using an analogy) similar to two metals in alloyed coin, rather than two sides of a coin.[128]

(ii) Human agency can be conceived 'only in relation to already preconstituted, and deeply structured, settings.' Constituents of structures depend on the 'vantage point' of actors, and these structures both 'constrain and enable' actors;

(iii) The notion of structure is different from determinism. 'Structures do not determine outcomes *directly*, but merely define the potential range of options and strategies.' (Hay's emphasis) The environment in which individual and collective actors choose and carry out their actions 'can be conceived of in terms of a nested hierarchy of levels of structure that interact in complex ways to condition and set the context within which agency is displayed'; and

[126] Hay, 'Structure and Agency', pp. 193-196.
[127] Colin Hay, *Political Analysis* (Basingstoke: Palgrave, 2002), p. 125.
[128] Hay, *Political Analysis*, p. 127; Hay, 'Structure and Agency', p. 200.

(iv) The relation between agent and structure is dialectic, not a unidirectional causation. 'Actions occur within structured settings, yet actors have the potential (at least partially) to transform those structures through their actions.'[129] Consequences of actions by agents can be both intended and unintended.

The three major approaches to theorise the relation between structure and agency that Hay identified are: structuration theory, morphogenetic approach, and the strategic-relational approach. Hay found that explanations provided by the first two were less persuasive than the one made by the last approach. According to him, this was because: structuration theory switches between structuralism and intentionalism, and morphogenetic approach reverts, though unwittingly, to analytical dualism.[130] Consequently Hay argues that the strategic-relational approach is more plausible than the above two.[131] Having claimed the potentials of capabilities of agents to transform their environment, it is also imperative to remind oneself that such capabilities are not necessarily equally available to each actor. Hay argued that systems (composed of structures) 'are not level playing fields – their complex, sloping contours favour certain strategies and actors over others.'[132]

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[129] Hay, 'Structure and Agency', p. 200.
[130] Hay, *Political Analysis*, p. 120.
[131] Hay, op. cit., pp. 115-134.
[132] Hay, 'Structure and Agency', p. 199.

c. Biographical approach

Going back to the possible integrated approaches to explain migration, one of them could be a biographical approach. This approach would argue that the migrant's decision to move is a complex consequence of various events over time; that reasons to migrate are multiple, not singular; and that numbers of people are involved in the decision, thus it is not necessarily an individual migrant's free decision.[133] Consequently, this approach argues for an understanding of migration as concerning identity, rather than 'automatic stimulus-response.'[134] This should enable an analysis of migration conducted from a viewpoint different from theoretical individualism.

d. Political Economy approach

Results of the assessments of different theories of migration conducted in this section so far indicate that the structuralist perspectives, including the political economy one, are clearly suitable for considering the 'fundamental question of power in society and how it links with migration.'[135] In particular, the above assessment has found that the World Systems theory and the Migration Network theory are capable of explaining the way structural conditions are developed both at macro- and micro-levels. Therefore, to pose the following two questions

[133] Boyle et al., op. cit, pp. 80-81.
[134] Ibid., p. 81.
[135] Ibid., p. 82.

(informed by the World System theory perspective) will help identify the way macro-level structural conditions operated in international labour migration:

(i) Whether inflow of foreign capital into peripheral regions corresponds to emigration to core region.[136]

(ii) Whether and how the following factors contribute to the migratory flow: prior colonial relationships, the prevalence of common languages, the intensity of trade relations, the existence of transportation and communication links between the sending and receiving countries of migration.[137]

Likewise, asking the following four questions based on the Migration Network theory will aid finding out the way micro-level structural conditions were instrumental in the migration process. Accounts of these conditions should also provide clues in learning about migrants' decision to migrate, particularly when conducting interviews with the current and former migrants and their relatives:

(iii) Whether the migrant has prior international migration experience.

(iv) Whether the migrant has someone she/he knows in the receiving country that has already migrated.

(v) Whether someone from the family has, or members of the community have, already migrated internationally.

(vi) Whether and how migration control policy, in particular that of the receiving country, is tight. If so, operation of Migration Network is likely to be more powerful than otherwise.[138]

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[136] Massey et al., op. cit., p. 459.
[137] Ibid., p. 460.
[138] Ibid., pp. 460-461.

The above analytical framework will be applied to the empirical case study in Chapter 4 to examine structural conditions for international labour migration from Thailand to Japan in the 1990s.

(7) Conclusion

The assessment of different theories of migration has been carried out in this section in five steps. Firstly, subsection 2 considered Neoclassical and Behaviouralist theories. It has been found that assumptions of these theories tend to be 'economic' and 'apolitical' and thus sometimes can be questionable from the perspective of International Political Economy. Secondly, subsection 3 discussed structuralist approaches to migration that conceive the migration process as being driven by such structures as capitalism and patriarchy. Critiques against Marxian theories are also noted, namely its possible determinism and the lack of non-capitalist structures such as patriarchy. Thirdly, Migration Network and Migration Institutions were the factors studied in subsection 4, which sustain international labour migration even after the initial causes for migration have changed or disappeared. Accounts based on these theories can complement the above structuralist approaches. Fourthly, subsection 5 paid attention to explaining migration through looking at the subjective accounts of migrants themselves. The significance of this approach is that it can possibly underscore the findings of structuralist approaches. Fifthly the necessity for integrated theories of migration was the subject of the final subsection 6, where it is found that the Political Economy approach to migration is possible. One important finding of this section

has been that a critique of the 'supply-led' approach led to a recognition that international labour migration is a process that is much more complicated than is often assumed: for example, wage differentials are not the sole reason for migration; and migration is 'fundamentally dissimilar to the flow of water.'

Consequently it is now possible to argue that international labour migration reflects the mobility of capital, and in this sense globalisation affects the population movement. In the meantime, relevance of the so-called migration industry has been highlighted. Since Japanese capital has been mobile in East Asia in the last few decades, the theoretical framework demonstrated in this section is applicable to the case study in Chapter 4 where Japanese capital served an indispensable role in creating structural conditions for migration.

4. The State in Contemporary International Political Economy

(1) Introduction

It has been argued in Section 2 of this chapter that globalisation is a historical and political project in which capital mobility plays a crucial role. Section 3 then demonstrated that capital mobility contributes to creating structural conditions for labour mobility within the country receiving capital, which sometimes extends beyond its state border. As a next analytical step, this study requires a theoretical framework with which to explain how international economic force such as international labour migration could affect the migrant receiving country's domestic policy. Academic disciplines that have dealt with influence of external

forces on the state are International Relations and International Political Economy. This section therefore examines four major theoretical approaches in IR and IPE in order to identify the one with which it is able to argue that international economic force such as capital mobility and labour migration could affect the way the recipient country works. In other words, this section compares the way each theory conceived the possibility where international non-military forces could influence a state's management of domestic affairs such as the economy, internal order and national identity. The approaches compared here are classical realism, neo-realism, neo-liberal institutionalism, and Gramscian theory advanced by Cox. As a representative argument of each approach, the works of Morgenthau, Waltz and Keohane and Nye, and also that of Cox are investigated here. In the following, these four approaches will be compared in terms of how they perceive (i) the relation between politics and economy; (ii) the relation between international and domestic; and (iii) the possibility of reformulation of characteristics of the state. This theoretical comparison is also informed by the point made by Underhill, who called for reconceptualising the state.[139] He has argued that it is the concept of the state that makes an observer of events in the world distinguish the international and domestic spheres, and also this concept may lead to an assumption that politics is a matter of the state, not the society. In other words, the existing assumptions about the state may not always meet the reality of the contemporary world.

[139] Geoffrey R. D. Underhill, 'Introduction: Conceptualizing the Changing Global Order', in Richard and Geoffrey R. D. Underhill (eds), *Political Economy and the Changing Global Order (Second Edition)* (Oxford: Oxford University Press), pp. 3-24, p. 8.

(2) State Theories in International Relations

a. Morgenthau: autonomy of the political sphere

(a) Power as political interest

One representative case of the analytical distinction between politics and economy can be found in Morgenthau's *Politics Among Nations*. In this work he set out a definition of international politics as pursuit of political interest defined as power. This notion of political interest was contrasted with wealth as economic interest. Starting from the above definition, Morgenthau wrote that Political Realism assigns 'an autonomous sphere of action and understanding' which is distinguished from such other spheres as economy, ethics and religion.[140] The reasons behind his decision to distinguish politics and economy appear to have been at least twofold: first was his conviction from recent history, and second was professional aspiration. First, being seriously alarmed by the failures of foreign policies of European countries in the first half of the twentieth century that took non-political factors such as 'legal-moralistic' issues into account, Morgenthau argued that politics could not be subordinated to law, morality, economy and religion. He claimed that these non-political spheres could be discussed in their own separate places.[141] The second reason for the analytical distinction may be described as professional aspiration. Morgenthau apparently valued the status of

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[140] Hans J. Morgenthau, revised by Kenneth W. Thompson, *Politics Among Nations: the Struggle for Power and Peace* (New York: McGraw-Hill, 1985), p. 5.
[141] Morgenthau, *Politics Among Nations*, pp. 15-16.

economics as a scientific discipline, and expressed his intention to emulate the 'success' of economics in the following words:

> 'It is exactly through such a process of emancipation from other standards of thought, and the development of one appropriate to its subject matter, that economics has developed as an autonomous theory of the economic activities of men [sic]. To contribute to a similar development in the field of politics is indeed the purpose of political realism.'[142]

Consequently the major analytical focus of Morgenthau's theory of international politics was foreign policy of nation states, with such factors as 'political institutions, diplomatic procedures, and legal arrangements' being seen as relevant, excluding economy.[143]

Even though he held the above analytical distinctions between politics and economy, Morgenthau implicitly acknowledged the relevance of industrial capacity with international politics through the building of military capability. He noted that industrial capacity allows building of 'a military establishment commensurate with its foreign policy.'[144] Developments in transportation and communication technologies are significant for military capacity building.[145] Hence:

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[142] Morgenthau, op. cit, pp. 11-12.
[143] Ibid., p. 8.
[144] Ibid., p. 137.
[145] Ibid., p. 137.

> '[T]he leading industrial nations should be identical with the great powers, and a change in industrial rank, for better or worse, should be accompanied or followed by a corresponding change in the hierarchy of power.'[146]

(b) Analytical focus on foreign policy

As for the distinction between international and domestic spheres, Morgenthau argued that 'the ultimate point of reference of contemporary foreign policy' was the nation state.[147] This analytical separation of the international and domestic could possibly have been drawn from the above conceptualisation of international politics. By defining International Politics as a study of foreign policy, it may have been justifiable for him that the discipline deals with only non-domestic and non-economic issues.

(c) Repetitive patterns in history

Morgenthau declared that Political Realism intends to explain international politics in terms of human nature, which has not changed for millennia. This approach to international politics refers to history to learn possible measures for contemporary foreign policy: '[m]an [sic] responds to social relations with repetitive patterns. The same situation, recoginzed in its identity with previous situations, evokes the same response.'[148] He then argued that the notion of power and political interest would be valid over time and space, if contents and use of

[146] Ibid., p. 138.
[147] Ibid., p. 12.
[148] Ibid., pp. 7-8.

power vary according to 'the political and cultural environment.'[149] However, substantial social transformations would be unlikely. Disagreeing with non-Political Realist perspectives, Morgenthau described how the Political Realist would see the future of world politics:

> 'The realist is persuaded that [...] transformation can be achieved only through the workmanlike manipulation of the perennial forces that have shaped the past as they will the future.'[150]

(d) An assessment

The above analysis shows that the main assumption in Morgenthau's theory of international politics includes the following points: politics and economy are clearly distinguished; so are the international and domestic spheres; historical events are thought to be more or less as similar in the future as they were in the past; by extension, the character of the nation state as the analytical unit will not change. This study's assessment of Morgenthau's conceptualisation of international politics and the state consists of the following five points. First, the fact that he assigned the above analytical distinctions has to be deemed understandable given the time and place of his work, where making social science 'scientific' was thought to be desirable. Second, his academic orientation to learn from human history could make sense on several occasions in comparison to starting an analysis solely from a belief in ideals. Third, however, what sort of history a Political Realist refers to will also be a problem, given the general

[149] Ibid., pp. 10-11.
[150] Ibid., p. 12.

tendency that history has often been written from the perspective of those who had power. Fourth, the notion that the same events could repeat themselves in history is less than convincing, because that could lead to deterministic assertions that are theoretically implausible, as this study has already discussed. Fifth, Morgenthau's claim for 'realist defence of the autonomy of the political sphere against its subversion'[151] compared to other modes of thought contains a potential problem. As seen above, Morgenthau's concept of politics is narrow in its focus. However, in the real world many more things take place in addition to the official foreign policy *per se* seen from diplomats' viewpoints. That is why ascending analytical distinctions between politics and the economy, and between the international and the domestic, becomes necessary. In other words, it is possible that his claim could, in practice, be used by policy makers and/or commentators to justify their 'disregard for the existence and importance of these other modes of thought [such as the economy, morality and religion]' despite Morgenthau denying it.[152] Further, his claim that 'each [non-political factor] should be assigned its proper sphere and function'[153] can lead to the following problem; if a certain issue was not covered at the time of policy formulation and implementation, it could be extremely difficult to incorporate that issue into political agenda retroactively. Issues of gender would be such an example, among others. When these non-foreign policy issues were missed out, that could render the Realist approach paradoxically unrealistic.

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[151] Ibid., p. 16.
[152] Ibid., p. 16.
[153] Ibid., p. 16.

b. Waltz: scientific theory of international politics without domestic factors

While intending to create a rational and scientific theory of international politics,[154] as far as methodology is concerned, Morgenthau frequently used historical accounts to substantiate his arguments. Waltz shared the perspective on world politics that was similar to that of Morgenthau:[155] events take place over time in international politics, and in this sense there is stability in world politics.[156] But in contrast to Morgenthau, Waltz applied an explicitly 'scientific' approach to the above assumption to build his theory.

(a) Political theory of international politics

Waltz does not seem to have been interested in seeking linkages between international politics and the economy. His reasoning for this disinterest was that the economic theories of international politics were unsuccessful in explaining developments that took place after these theories were formed. Waltz referred to the theories of imperialism by Hobson and Lenin, as well as the post-war neo-colonialist theories, that 'broaden[ed] ... the definition of imperialism' in their attempt to account for the new events.[157] Waltz wrote:

> "'If capitalism, then imperialism" is a purported *economic* law of politics, a law that various *economic* theories of imperialism seek to explain. Can we

[154] Ibid., pp. 11-12.
[155] Ibid., pp. 7-8.
[156] Kenneth N. Waltz, *Theory of International Politics* (New York: McGraw-Hill, 1979), p. 39.
[157] Waltz, *Theory of International Politics*, p. 33.

find *political* laws of politics and political theories to explain them?'[158] (Waltz's italics.)

Then he characterised the method of theory construction of those economic perspectives as 'reductionist' and attributed this methodology to the failure of being able to explain historical events. Having negatively assessed the plausibility of the reductionist approach in 'economic' international political theories, Waltz claimed that systems theory could provide a more plausible framework for explaining stability in international politics.[159] The reason why Waltz thought systems theory would be appropriate for international politics was as follows: '[w]here similarity of outcomes prevails despite changes in the agents that seem to produce them ... [s]omething works as a constraint on the agents or is interposed between them and the outcome their actions contribute to.'[160] In other words, the same political structure produces similar political outcomes, if not necessarily the same.[161] Waltz wrote: '[s]tructure operates as a cause, but it is not the only cause in play.'[162]

Adopting a neoclassical microeconomic theory, Waltz conceived international politics as consisting of different systems that are operating simultaneously. Each system is composed of structure and units. Waltz then defined that the structure is comprised of: (i) 'the principle by which a system is ordered'; (i) 'the specification of functions of differential units' in hierarchy of the

[158] Waltz, op. cit., p. 39.
[159] Ibid., p. 39.
[160] Ibid., p. 39.
[161] Ibid., p. 87.
[162] Ibid., p. 87.

states; and (iii) 'the distribution of capabilities across units'.[163] The figure of the above conceptualisation of international politics as systems[164] (Figure 5.2 on page 100 of his book) shows that the notions of systems and units can be interpreted as a coalition of the states, and individual states, respectively. It appears that the structure refers to attributes that affect the system but is not assignable to the individual units. Then, it also seems that Waltz introduced the notions of system and structure in order to become able to account for the influence of those structural factors that are non-political, non-domestic, and/or non-international, in international politics.

(b) Exclusion of domestic factors

Similar to his theoretical orientation towards the relation between politics and the economy, Waltz did not seek the linkage between the international and domestic spheres in his theory of international politics either. The reason for this appears to be twofold: out of his theoretical assumption, and technical necessity for his theory building. First, starting from the assumption that states pursue survival under anarchy in international politics,[165] Waltz assumed that each state operates in a similar way, or that 'states remain like units.'[166] Thus he claimed it would be unnecessary to consider how domestic institutions could influence international politics.[167] Second, adoption of systems theory in international politics required

[163] Ibid., pp. 100-101.
[164] Ibid., p. 100.
[165] Ibid., p. 91.
[166] Ibid., p. 93.
[167] Ibid., p. 93.

Waltz to exclude domestic factors or what he called 'unit-level factors' out of his analysis. He wrote:

> 'One must ... keep the attributes and interactions of the system's units out of the definition of its structure. If one does not do this, then no systems-level explanations can be given.'[168]

In other words, 'aims, policies, and actions of states' were a description of international politics from which 'no valid generalization can logically be drawn.'[169]

(c) The state as a stable and static entity

Waltz seems to have assumed that the configuration of the state would be stable. His theoretical presumption as a Political Realist and the characteristics of the theory he built led him to this conclusion, the same as in the cases of his analytical distinction between politics and the economy, and the international and the domestic. As shown earlier in this section, Morgenthau expected that the ways in which state power is exercised could be various, while the characteristic of politics as a pursuit for power itself will be unchanged.[170] In contrast, the extent of variations in international politics, that Waltz anticipated, appears to be more limited compared with that of Morgenthau.

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[168] Ibid., p. 57.
[169] Ibid., p. 65.
[170] Morgenthau, op. cit., p. 10.

Waltz was aware that structural transformation could occur in international politics when there were 'changes in the distribution of capabilities across the system's units.'[171] Such structural changes in international politics could take the forms of war or revolution.[172] But other than the above forms of 'transformation', he did not think that the structure of international politics would be altered. The reason for this is threefold, and they are inter-related. First, because it is distinguished from characteristics of unit factors (domestic politics or personality of political leaders, for example), structure endures over time.[173] Second, while there is no overarching 'ordering' authority in world politics, just like organised market operation derived from actions of individuals participating in the market (as microeconomic theory would argue), '[i]nternational-political systems, like economic markets, are individualist in origin, spontaneously generated, and unintended.'[174] This peculiarly ahistorical remark was followed, however, by the next claim that seems to reflect the Political Realist view on history of the states: 'structures are formed by the coaction of their units. Whether those units live, prosper, or die depends on their own efforts',[175] thus the primary motivation of the state is assumed by Waltz as '[seeking] to ensure their survival'.[176] Third, in addition, international political theory does not require the theory of an individual

[171] Waltz, op. cit., p. 97.
[172] Waltz, *Theory of International Politics*, p. 70; Kenneth N. Waltz, *Man, the State and War: a theoretical analysis* (New York: Columbia University Press, 1954), p. 224.
[173] Waltz, *Theory of International Politics*, p. 80.
[174] Waltz, op. cit., p. 91.
[175] Ibid., p. 91.
[176] Ibid., p. 91.

state's foreign policy, just as the economic theory of markets does not require the theory of an individual firm's management.[177]

Consequently Waltz declared that his theory does not have to explain significant changes in international politics. Waltz thus exempted his theory from explaining changes in international politics; instead he expected his theory to explain 'recurrences and repetitions.'[178] In addition, structures are, by definition, 'static' and 'endure for long periods,' thus there is no need for an explanation of changes in international politics.[179] Because he has only discussed redistribution of the capabilities of the state, which is a change in the structure in quantitative terms, Waltz has not explicitly considered whether the structure or capability of individual states could qualitatively change after such redistribution. Considering this point, and the Political Realist assumption that the characteristics of international politics will remain unchanged, it is unclear whether Waltz expected that characteristics and formulation of the state could change. Earlier, section 2 of this chapter found that states are capable of changing their operation and formulation in order to respond to the forces of globalisation. Then, it appears to be the case that Waltz's conceptualisation of the state is not necessarily helpful for this study.

[177] Ibid., p. 71.
[178] Ibid., p. 69.
[179] Ibid., p. 69.

(d) An assessment

This subsection has shown that characteristics of Waltz's theory of international politics consist of the following: politics and economy were clearly separated, even without implicit reference to the relevance of the economic to foreign policy, as Morgenthau did; assertion that domestic factors have to be excluded from effective systemic analysis of international politics; and the claim that events in history will be stable except for war or revolution, so will the forms of the state. Waltz's theory may be assessed in terms of the following four points. First, it is impossible not to notice that an enormous amount of careful analyses and patience were indispensable in building this 'elegant' theory of international politics. Second, however, it appears that his theory reduces various factors in international politics to the function of systems and units, in order for it to become an 'elegant' theory. Third, considering the point that Waltz shared similar theoretical assumptions with Morgenthau as a proponent of Political Realism, Waltz's theory may be characterised as an attempt to develop a 'better' analytical tool for the 'same' analytical objects that had been already known to them. Fourth, the strength of this theory in explaining the already known facts by reducing various factors could become a weakness, when accounting for events where unknown factors (such as those in which politics and economy overlap, or the international and domestic do so) became relevant. Consequently, it appears to be the case that more than what Waltz's theory offers is needed, as far as the current search for a theory of the state (with which it can be seen as being influenced by external economic force and responding to such a force) is concerned.

c. Keohane and Nye: linking politics and economy in inter-state politics

As a Liberal critique of Political Realist conceptions of international politics, Keohane and Nye advanced a theory in which economic issues could play a role that can be more significant than military power within allied of countries.

(a) Interdependence: power as political and economic interests

Keohane and Nye conceived the characteristics of contemporary world politics as 'interdependence.' They defined interdependence in the following terms: it refers to situations where there are reciprocal and costly effects among countries or among actors in different countries;[180] interdependent relations are not necessarily symmetrical[181] nor necessarily mutually beneficial;[182] it possibly puts constraint on autonomy of the state.[183] Contrary to its appearance as a politically neutral concept which can be used as 'a rhetoric device [...] by publicists and statesman',[184] Keohane and Nye argued that 'asymmetrical interdependence can be a source of power', exercised through one state's control over resources of the counterpart. [185] This conceptualisation of power is very different from the

[180] Robert O. Keohane and Joseph S. Nye, *Power and Interdependence (Second Edition)* (New York: Longman, 1989), p. 8.
[181] Keohane and Nye, *Power and Interdependence*, p. 9.
[182] Keohane and Nye, op. cit., p. 10.
[183] Ibid., p. 9.
[184] Ibid., p. 5.
[185] Ibid., p. 11.

Political Realist perspectives, in that it included an economic element, compared with that of Morgenthau who defined pursuit of political interests as power.

(b) International regime: inclusion of the domestic into the international

Having introduced the notion of interdependence, Keohane and Nye named the organising principles of world politics where complex interdependence exists as an international regime. International regime refers to 'the sets of governing arrangements ... [such as] network of rules, norms, and procedures ... that affect relationships of interdependence.'[186] In other words, international regimes mediate 'the power structure of an international system and the political and economic bargaining that takes place within it.'[187] Here, the structure of the system means 'the distribution of capabilities among similar units.'[188] Based on the above two concepts of interdependence and international regime, world politics can be perceived to have the following three characteristics: first, not only the inter-state relations, but also trans-governmental and transnational relations operate in world politics.[189] Second, issues placed on the agenda in world politics are multiple, and not limited to military issues: '[m]any issues arise from what used to be considered domestic policy, and the distinction between domestic and foreign issues become blurred.'[190] Third, in relation to the second point just mentioned above, military force is given a lower priority as foreign policy option

[186] Ibid., p. 19.
[187] Ibid., p. 21.
[188] Ibid., p. 20.
[189] Ibid., pp. 24-25.
[190] Ibid., p. 25.

than it used to be. In this respect the interdependence approach appears to be different from the Political Realist approach. However, there is a similarity between these approaches: Keohane and Nye acknowledged that military power could remain significant for an 'alliance's political and military relations with a rival bloc.'[191]

(c) International organisation: analytical extension of interface between states

For Keohane and Nye, changes in world politics under interdependence take place in the form of international regime change in international organisations.[192] International organisation refers to the world political structure in which governments are linked together at multiple levels (inter- and trans-governmental ties).[193] Consequently, from the complex interdependence perspective, world politics carried out at an international organisation is seen as a process in which power is exercised to 'control [...] outcomes,'[194] rather than being used explicitly to influence the counterpart in political process. Such control over outcomes can be carried out by linking different issues, formulating a negotiation agenda, and the use of transnational and transgovernmental relations rather solely operating through interstate relations.[195] Since there are various means of exercising political power available for the states as mentioned above, international

[191] Ibid., p. 25.
[192] Ibid., p. 19.
[193] Ibid., p. 54.
[194] Ibid., p. 30.
[195] Ibid., pp. 29-35.

organisation carries more significance in world politics than the Political Realist approach assumes.[196]

(d) An assessment

By developing the theory of interdependence, Keohane and Nye have done the following: first, their perspective attributed more significance to international relations in regard to economic issues than the Political Realist perspective would do. Second, they extended interface in interstate relations to include transgovernmental and transnational (business) relations, in addition to diplomatic relations in the previous analyses; in this sense the distinction between the international and the domestic has become less clear than the Political Realist assumption. Third, the above extended interface and the role of international organisations show that interstate relations are changing. In relation to the current comparison of characterisation of the states in the theories of International Relations, the following two points arise. First, despite referring to the blurring of the international and the domestic, analytical distinction between these two spheres still largely remains. This is because the non-state actors discussed in this work operate at international organisations in the proximity of the state institutions, and it is unclear how those non-state actors affect the domestic. Second, the above-mentioned expansion of interface of inter-state relation is an extension in analytical focus, and is different from discussing the change in the forms of the state. In addition, Keohane and Nye assume that international

[196] Ibid., pp. 35-39.

regimes, which organise the operating principles of the states within interdependence, are stable.[197] Therefore, it does not appear that their theory explicitly covers the question about whether the forms of the state could change. Their theory is effective for explaining inter-state relations through multilateral institutions, in particular over non-military issues. However, this section has been seeking a conceptualisation of the state that can account for interactions between international economic forces (international labour migration and the migration industry) and domestic policy of the state, instead of inter-state relations. Because this study needs a theory that can offer more on the above interactions than Keohane and Nye could, it now turns to Cox next.

d. Cox: state/society complex and world orders

(a) State/society complex as the analytical unit in international relations

Out of his critique of Political Realist theories of international relations, Cox introduced the notion of 'state/society complex' in order to build his theory of international relations in his 'Social forces, states, and world orders.' The key concept that relates the state and civil society is the mode of production. Cox argued that production relates both politics and the economy, and the international and domestic. Production links politics and the economy, because in the production process, 'a power relationship' operates 'between those who control

[197] Ibid., p. 58.

and those who execute the tasks of production.'[198] Here the relation between 'structure (economic relations) and superstructure (the ethico-political sphere)' is reciprocal.[199] The way in which production relates international and domestic spheres is twofold: first, production creates the basis for one state to 'mobilize power behind its foreign policy', thus connecting the international and domestic.[200] Second, the above power relation in production could extend to the international sphere because production can 'overflow state boundaries.'[201] The state/society complex concept led Cox to see international relations as follows, which should enable a researcher to cross the analytical distinctions that this section has been discussing:

> 'The world can be represented as a pattern of interacting social forces in which state plays an intermediate though autonomous role between the global structure of social forces and local configuration of social forces within particular countries.'[202]

(b) World order as a complex combination of social forces and state forms

Cox's assumption about historical events is in contrast with those of the Political Realist perspective that assumes a recurrence of similar historical events. He has argued that events in international relations need to be accounted for within the

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[198] Robert W. Cox, 'Social forces, states, and world orders: beyond international relations theory', in Robert W. Cox with Timothy J. Sinclair, *Approaches to World Order* (Cambridge: Cambridge University Press, 1996), pp. 85-123, p. 96.
[199] Cox, 'Social forces, states, and world orders', p. 96.
[200] Cox, op. cit., p. 96.
[201] Ibid., p. 105.
[202] Ibid., p. 105.

historical context of individual cases.[203] The above assumption is underpinned by Cox's perception that historical events take place as complex interactions of three types of forces that overlap and are influenced by each other,[204] within 'a framework of action or historical structure.'[205] Cox called these three forces social forces, forms of the state and world orders. Social forces are driven by the production process, while forms of the state can change over time and place.[206] World orders refer to how events in world politics usually take place.[207] Here Cox introduced the notion of hegemony to explain contemporary world order. Hegemony is one form of world order, in which order can be maintained without continuous use of explicit power. Whereas power 'takes a primarily consensual form' in hegemonic order, in the nonhegemonic order 'there are manifestly rival powers and no power has been able to establish the legitimacy of its dominance.'[208] This distinction is based on Gramsci's conception of power as 'a combination of force and consent.'[209]

(c) Different forms of the state in the contemporary world

Applying the above theoretical framework, Cox accounted for the world order from the nineteenth to the twentieth century as having three different forms of the state and world order (among the industrialised countries). This includes liberal

[203] Ibid., p. 98.
[204] Ibid., pp. 100-101.
[205] Ibid., p. 98.
[206] Ibid., pp. 100-101.
[207] Ibid., pp. 116-117, Note 2.
[208] Ibid., p. 120, Note 24.
[209] Ibid., p. 119, Note 20.

form of the state during imperialism from the nineteenth century to the inter-war years; the welfare-nationalist form before the 'decline' of US hegemony in the 1970s,[210] and 'the internationalization of the state' since the 1970s.

While the welfare-nationalist form of the state involved 'economic planning at the national level and the attempt to control external economic impacts upon the national economy',[211] internationalisation of the state maintains the current world order[212] through such measures as surveillance, 'policy harmonization' and internationalisation of production. These measures worked in the following ways. First, such international institutions as IMF and the World Bank played the surveillance role, in order to 'reconcile domestic social pressures with the requirements of a world economy.'[213] This 'surveillance' and 'reconciliation' has been carried out, in many cases, in developing countries since around the end of the 1970s. Second, there has also been 'elaborate machinery for the harmonization of national policies' for industrialised countries,[214] an example being 'mutual consultation and mutual review of national policies (through the OECD and other agencies).'[215] One consequence of such surveillance and 'policy harmonization' is that certain state agencies directly relevant to the international economic adjustment 'overshadow[s]' the other state institutions that are in charge

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[210] Cox. 'Social forces, states and world order', p. 106. There are contrasting views on the issue of the 'decline' of the US hegemony, as Hughes notes. Whereas some maintain that the United State has lost hegemony in international economic system, there are others who consider that it remains at 'the centre of the global economy, having transformed its power "into various forms of 'soft' and structural power"'. Christopher W. Hughes, *Japan's Economic Power and Security: Japan and North Korea* (London: Routledge, 1999), p. 49).
[211] Cox, 'Social forces, states and world order', p. 109.
[212] Cox, op. cit., p. 107.
[213] Ibid., p. 108.
[214] Ibid., p. 108.
[215] Ibid., p. 108.

of domestic policies.[216] Third, '[t]he internationalization of the state is associated with the expansion of international production [... and ...] [i]nternational production expands through direct investment.'[217]

(d) An assessment

There are four points to be mentioned as an assessment of Cox's theory discussed in this subsection. First, Cox's theory of internationalisation of production and internationalisation of the state appear to be applicable to research that discusses international migration within the context of globalisation process, because his theory covers both politics and the economy, as well as the international and domestic spheres as its analytical focus; it also assumes that events in international relations are individual in historical character; and from this perspective it is possible to argue that forms of the state can change over time and space. Second, characteristic of Cox's theory in relation to the interdependence theory is that the power relation between various state (and quasi-state) institutions can be clearer in the former than the latter. Cox found that the literature on interdependence often did not discuss how 'mechanisms for policy coordination among states and for [permeation] of external influences within the states' affect the power structure within states. In connection with this he referred to Gourevitch who argued to link the concept of interdependence with 'power struggles among social forces within states.'[218] Third, Cox's analytical focus did

[216] Ibid., p. 109.
[217] Ibid., pp. 109-110.
[218] Ibid., p. 121, Note 29.

not apparently cover ethnicity and gender. This may be seen to be understandable to a certain extent, considering the time of his writing in 1981 and the fact that his theory derives from a critique of Political Realist theories of international relations. This needs to be rectified by different theories. In the meantime, his notion of fragmentation of industrial workers in terms of 'established/nonestablished' and 'national/international capital'[219] could explain the mixed reactions of unionised workers in the migrant receiving country towards the arrival of migrant workers.

e. Theories of the state compared

This section has compared four different approaches in International Relations that dealt with the relationship between politics and the economy, and the international and domestic, and the forms of the state. Basic assumptions of the theories of Morgenthau and Waltz are closer than they may initially appear: both approaches share the conviction that analytical autonomy of the political sphere needs to be maintained if International Politics is to be a 'scientific' discipline. Thus neither of them acknowledged that crossing the analytical distinctions would be necessary. In addition, the assumption that history repeats itself in world politics led them to suppose it to be unnecessary to consider whether forms of the state could change.

Interdependence theory by Keohane and Nye is in contrast with the above Political Realist perspectives, in that it introduced economic issues into power

[219] Cox, 'Social forces, states and world order', pp. 111-112.

politics, which is carried out at international institutions and between the state and quasi-state institutions of the allied countries, unlike inter-state diplomacy and armed conflicts. Its analytical extension of interface of inter-state relation is surely different from the Political Realist views; however, this approach is still largely state-centric analysis of international politics. In other words, their theoretical contribution, namely the introduction of economic issues into power politics, does not necessarily translate into theoretical cross-over of the analytical distinctions between the four spheres in question (politics/economy, and international/domestic).

In the meantime, through the introduction of the notion of production, Cox's theory of a state/society complex has managed to cross over the analytical barriers between the four spheres. His assumption that historical events take place under different conditions can support the fact that forms of the state change over time and space. This is depicted in the argument by Hobden and Wyn Jones, who write that Cox's theory provides '[a] theoretical understanding of world orders that grasps both the sources of stability in a given system, and also the dynamics of a process of transformation.'[220] This notion of reconfiguration of the state form should lead a researcher to give a more plausible explanation to the events in globalisation process, compared with adopting the other approaches discussed in this section. Consequently, as far as the crossing of the analytical distinctions between the above-mentioned four spheres is concerned, Cox's theory clearly provides a suitable and dynamic theoretical framework. In particular, these

[220] Steve Hobden and Richard Wyn Jones, 'Marxist theories of International Relations', Baylis and Smith (eds), *The Globalization of World Politics*, pp. 200-223, p. 212.

developments, which will be presented in more details in Chapters 4 and 5, can be plausibly explained based on Cox's perspective: capital mobility transformed Japan's international economic structure in the 1970s and 1980s, with one culmination being export of Japanese capital since the 1970s, which intensified in the late 1980s. The export of Japanese capital then affected the political economy of the capital receiving country, particularly Thailand, to create structural conditions for international labour migration; the migration then exerted a certain degree of influence on Japan's domestic political economy.

In other words, the significance of Cox's theory is as follows: the fact that the state is a core actor in world politics (which is why the state demands careful analysis) is different from assuming that the role and capacity of the state will be constant over time and place. International labour migration, subsequent change in the population of the migrant receiving country, and political issues that derive from the above change (e.g., national identity) are cases in point. It is possible that an analysis carried out from the neo-neo synthesis perspective may be unable to grasp the variable character of the state unless the analyst is mindful of it. In contrast, Cox's theory enables to see from the outset that constituents of the state, namely members of the society for which the state is responsible, will vary. To expand on this point further, conceiving the state from the Coxian perspective is important for this study for the following two reasons: first, without an understanding that the configuration of the state could change over time and space, the state actors might not be able to acknowledge the 'deficit in delivering collective goods' (justice in terms of equality before law, or of the balance between law-enforcement and provision of security, for example) in globalisation

process, and also the possibilities where such a deficit may be rectified, if to a limited extent. Second and in the meantime, for civil society actors, it is pertinent to be aware that there are occasions when working with the state can advance their interests, such as curbing the negative impact from globalisation. The state may be able to advance interest of civil society actors, depending on the policy agenda at the time (and the political resources available, as will be demonstrated in the next section). The problem related to human smuggling is a case in point: this study has already pointed out that this is one manifestation of globalisation process, namely the contest between non-state actors and the state.[221]

(3) Operation of Domestic Agents of the State

a. Introductory Remarks

Having demonstrated in the previous subsection that international economic force could influence the domestic political economy of a country, the task in this subsection is to specify how such external influence, in particular international labour migration, could affect the working of the domestic actors. To do so first requires learning from theories of the state that have been advanced in Politics, the academic discipline that has examined the functioning of the state and society mainly in the domestic domain. Part b of this subsection is therefore going to give an overview of theories of the state that are applicable to contemporary Western

[221] The problems of human smuggling can only be alluded to in this study, since this is in itself an important issue in globalisation that merits a close attention. The author intends to conduct such a research in the future.

nation states. This part will show that, due to an overlap of the contending theoretical approaches to the state, namely Elitism, Marxism, and Pluralism, it has become possible for analysts to discuss the relation between the society and the state in a more plausible manner than relying on only one of these three approaches. An effort is also made to see the relation between the above convergence and feminist theories of the state. Such analysis is necessary because the ensuing chapters of this study will pay attention to the implications of developments in globalisation on women migrant workers, particularly the 'deficit in delivering collective goods', which was mentioned earlier in this chapter. Further, this section demonstrates what actions of the state are to be investigated in order to discuss the state's response to impacts from globalisation, in particular international labour migration.

b. Convergence of State Theories

Marsh, a Professor of Politics in Britain, argues that there is 'a clear convergence' of three major theoretical approaches to the state.[222] Though the differences in the basic assumptions remain, the extent of theoretical differences between Pluralism, Marxism and Elitism, which were distinct in the first decades of the post-war years, became less distinct today. This is the case because the advocates of each

[222] David Marsh, 'The Convergence between Theories of the State', in David Marsh and Gerry Stoker (eds), *Theory and Methods in Political Science* (Basingstoke: Macmillan, 1995), pp. 268-287, p. 268.

theoretical perspective have acknowledged shortcomings and revised each theory accordingly.[223]

(a) Core arguments of the conventional theories

According to Evans and Martin Smith, the core arguments of each of those three perspectives prior to the convergence are as follows. Whereas Elitists would argue that the state requires elites to rule it, Marxists would claim that the state reflects the interests and ideology of the ruling class, and Pluralists would maintain that the state is a mediator (or the site) of contending interests.[224] The following demonstrates in what respects those perspectives have become closer, what are the remaining differences, and then discusses briefly the implications of these developments to the analysis of the relation between the state and civil society, before moving on to the influence of the theoretical convergence to feminist theories.

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[223] According to Marsh, this theoretical developments and the subsequent convergence are mainly due to the accumulation of academic endeavour, but he also suggests that (at least for Pluralists and Marxists) the events in the post-war world had indirect impact on the above theoretical reformulation. Such influential social events include the following. For Pluralists, the political instabilities in the US in the 1960s 'as a result of anti-Vietnam protest and inner city riots in response to racial inequalities' made it difficult for the theorists to be complacent about the social realities, and to keep maintaining that the US society was entirely pluralistic. It is within this context where the elite-pluralist approach was developed. In the meantime, 'the centralisation and abuse of power in the Soviet bloc' in the post-war years undermined the Marxist argument that abolition of private ownership would resolve political and social problems; plausibility of economic determinism thus eroded. (Marsh, 'The Convergence between Theories of the State', pp. 273-274)

[224] Mark Evans, 'Elitism', in Marsh and Stoker (eds), *Thoery and Methods in Political Sceince*, pp. 228-247, pp. 229-230; Martin Smith, 'Pluralism', in Marsh and Stoker (eds), op. cit., pp. 209-227, p. 211.

(b) The recent theoretical developments in each perspective

Marsh argues that the recent theoretical developments in each of the three state theories include the following. First, Marxist theorists acknowledge the relevance of an intentional agent, ideology, and the state in a political process. Major theoretical developments in this perspective include the following points:

(i) Relations between the economic and the political are contingent, not a causal one (rejection of economism and determinism).
(ii) Theories of the state are multiple and they may vary over locations and time. Marsh wrote that 'relationships between the state and civil society [are] historically specific.'
(iii) Sources of structured inequality manifest in the state are not limited to class; inequalities that can be associated with gender or race can be more significant.
(iv) The state and the social forces operating in it are not unified. '[T]here is a plurality which is mediated, if not resolved, through politics.'
(v) Increasing analytical attention is given to intentional explanation, or operation of the intentional agents who make 'strategic judgements [...] within a context characterised by structured inequality.'[225]

These theoretical developments are due to the following contributions in the last few decades. First is one from Gramsci, who acknowledged the importance of ideology, actions of agents, and the notion of consent under hegemony.[226] Second, Poulantzas advanced the notion or relative autonomy of the state. Though criticised later, this notion provided a crucial starting point for the ensuing

[225] Marsh, op. cit., p. 269.
[226] Ibid., p. 274.

theorists such as that of Jessop.[227] Third, according to Marsh, the debate between Poulantzas and Miliband also contributed to informing contemporary Marxists of the role of agency.[228] Fourth, Jessop has tried to overcome economism in Marxist thought, and also denied the supremacy of class and emphasised 'the importance of other social forces, especially gender.'[229] Fifth, Marsh notes that feminist theorists informed Marxist theorists that power relations operate within the private sphere, not only in the public, the consequence being that men are relatively privileged compared to women (in such terms as the time available to spend in public sphere for the pursuit of interests, for example).[230]

Second, in contrast to the above theoretical developments by the advocates of Marxist positions, pluralists now take structural constraints seriously. Pluralists today agree that access to political process is unevenly distributed to different social groups: 'some groups are privileged by their role in sub-governments or policy networks, while others are excluded.'[231] In addition, the focal point of analysis has expanded from only the official policy-making process to include the preceding agenda-setting process. On this point there was an influence by Elitists who argued that such agenda-setting power was concentrated to certain political actors.[232] However, Pluralists continue to maintain that no one group completely dominates the society or the state, and that the formulation and operation of privileged groups vary over time. Hence, as Marsh describes, 'the influence of

[227] Ibid., pp. 274-275.
[228] Ibid., p. 275.
[229] Ibid., p. 276.
[230] Ibid., p. 276.
[231] Ibid., p. 270.
[232] Ibid., p. 277.

any particular group [in policy-making process] ebbs and flows over time.'[233] Third, even though they would insist that emergence of elites is inevitable, the advocates of Elitist position now acknowledge that there is no universally fixed pattern in which the elite will emerge from the society to rule it, contrary to the claim of the earlier Elitists. Whereas empirical evidence advanced by Elitist against Pluralist contributed to the latter's acknowledgement of power,[234] the Elitists themselves tried to provide theoretical grounds for their position by associating their argument either with Pluralism or Marxism.[235]

(c) Remaining difference between the three approaches

While there is a 'clear convergence', or an overlap, between the three theoretical perspectives, there certainly exist differences in the basic assumptions of each approach. Broadly speaking, these are differences in the focal point of analysis and characterisation of structural inequalities. According to Marsh, the first point, divergence in analytical focus, is rooted in understandings on structural inequalities: namely, Pluralists would not assume such inequalities as given; but Marxism and Elitism presume that there are structural inequalities in political process.[236] Because of this point, Pluralists would play down analytical effectiveness of 'broad social categories' such as gender, putting more emphasis on the different interests that exist within a wide-ranging group such as

[233] Ibid., p. 270.
[234] Ibid., p. 277, p. 285.
[235] Ibid., p. 270.
[236] Ibid., p. 281.

'women.'[237] Consequently, Pluralists would pay more attention to policy networks and sub-governments than structural privilege. In contrast, Marxists would be more interested in: (i) economic/property relations; (ii) gender; (iii) 'political resources, control of agenda and membership of policy networks'; and (iv) knowledge.[238] As for the second point, while both Elitism and Marxism emphasise the existence of structural inequalities in society, the former sees them as inevitable, whereas the latter sees need for change.[239]

To put matters in another way, whereas Pluralists tend to emphasise capabilities of intentional agents, Elitists and Marxists highlight the existence of structural inequalities. Both approaches have explanatory power, but neither of them would be a plausible account on social events on their own. This contradiction derives from an assumption concerning the explanation of events in society that causal relation is one way and one-off. To disentangle the above analytical contradiction, conceiving the relation between structure and agency as a dialectical process would be effective. In this connection, Marsh's argument below makes sense:

> '[W]hile politics may decide outcomes, the process takes place in a context that is characterised by structured inequality [...] rooted in class, gender, race and knowledge as well as control of political resources. As such, the relationship between structure and agency is crucial and the relationship is clearly a dialectical one.'[240]

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[237] Ibid., p. 271.
[238] Ibid., p. 272.
[239] Ibid., p. 282.
[240] Ibid., p. 286.

Therefore it is possible to conceive the characteristics of the state (or, the relation between the state and civil society) as follows:

(i) The state is a continuous social relation.[241]

(ii) The state institution has its own interests, but it can also mediate (if not resolve) different interests.

(iii) No one group completely dominates the policy making process, but political power tends to be concentrate amongst particular groups.

(iv) Because no one group constantly dominates the operation of the state, the boundary between the state and society is blurred, uneven and contingent on the timing and the issue in question.

(d) Feminist theories of the state

In the following this subsection is going to present in what way the above theoretical convergence has affected feminist theorisations of the state. This is necessary, because Chapter 6 will consider the implications of the encounter between women migrant workers and the migrant receiving country, in particular in terms of the delivery of collective goods by the state to the migrant workers. According to Waylen, feminist theorists did not explicitly analyse the state until the 1990s, as there were claims that the state was too large a unit for investigating gender relations.[242] Nevertheless there were some analyses of the state from feminist perspectives. However, most of them were about the liberal democratic states of the First World, and were either over-generalised or focused on minute

[241] George Taylor, 'Marxism', in Marsh and Stoker (eds), op. cit., pp. 248-267, p. 262.
[242] Georgina Waylen, 'Gender, feminism and the state: an overview', in V. Randall et al. (eds), *Gender, politics and the state* (London: Routledge, 1998), pp. 1-17, pp. 3-4.

relationships between actors. Watson pointed out that those analyses implicitly assumed that:

> 'the state is a homogeneous entity and a given which lies almost outside of society rather than being something which is created in part as a result of interaction with different groups.'[243]

In other words, according to Waylen, there has been a dichotomy in feminist theorisations of the state, in which the state is seen 'as either essentially potentially good or bad for women as a group.'[244] Social democratic and liberal feminist approaches tend to see the state as good because it may be able to empower women by providing opportunities for making economic and political gains. The Liberal feminists' view is underpinned by the Pluralists' account that the 'state can be a neutral arbiter between different groups within society.'[245] Waylen cautioned readers on the above view, because the liberal feminists' argument 'cannot provide a very sophisticated understanding of why the state does not always play this role.'[246] The contending characterisation of the state has been that 'it should be avoided,' which was often held by socialist feminists in the 1970s. The reasoning for this argument was that the state represented interests of capital and gender oppression. Meanwhile, radical feminists claimed that the state was 'inherently patriarchal' and it operated solely 'to uphold and defend male interests at the expense of women.'[247]

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[243] Waylen, 'Gender, feminism and the state', p. 4.
[244] Waylen, op. cit., p. 4.
[245] Ibid., p. 5.
[246] Ibid., p. 5.
[247] Ibid., p. 5.

A critique to the above two approaches emerged by the late 1980s, influenced by post-structuralist thinking. From this viewpoint, the state is conceptualised 'as an arena where interests are actively constructed rather than given.'[248] Waylen argued that this approach created a potential for "being 'in' the state."[249] Another approach questioned the assumptions of the state as a unitary actor, as well as the notion of 'a unitary set of women's interest.'[250] Alvarez argued that 'the state is not monolithic', and suggested looking at 'different conjunctures and periods.'[251] Waylen linked the above argument of Alvarez to claims that in some cases local governments can be more 'women friendly' than the central government.[252] Consequently, Waylen conceptualised the state in the following manner. The state is a set of institutions, not a unitary actor; it is 'a differentiated set of institutions, agencies and discourses, and the product of a particular historical and political conjuncture.'[253] The relation between society and the state is thus more complicated than may be assumed from certain viewpoints. Waylen identified mixed capacities of the state for advancing feminist goals, hence 'a site of struggle.' She wrote:

> '[The state does not lie] outside of society and social processes, but [has], on the one hand, a degree of autonomy from these which varies under particular circumstances, and on the other, being permeated by them. Gender (and racial and class) inequalities are therefore buried within the state, but through part of the same dynamic process, gender relations are partly

[248] Ibid., p. 6.
[249] Ibid., p. 6.
[250] Ibid., p. 6.
[251] Ibid., p. 6.
[252] Ibid., p. 6.
[253] Ibid., p. 7.

constituted through the state. The state therefore partly reflects and partly helps to create particular forms of gender relations and gender inequality. State practices construct legitimate gender divisions, and gendered identities are in part constructed by the law and private discourse which emanate from the state.'[254]

This subsection has found that the contending theories of the state on its domestic operation have become convergent, and that consequently it is possible to argue that there are possibilities for agents to advance their political interests, while it is also the fact that the political resources necessary for such action are unevenly distributed within society. This can be largely applicable when discussing the relation between women and the state; whereas the political resources are often distributed disproportionately more so for women than men, there are possibilities in which a certain branch of the state could advance some parts of certain women's interest, depending on the timing and the kind of interests pursued.

c. Gauging the state's response to globalisation

In order to gauge the state's response to challenges from globalisation, in particular international labour migration, the making and implementation of policy, and also accountability of such policy implementation are briefly examined below. First, the state would respond to the developments from globalisation through: (i) responses of the bureaucracy with the authority already given to them by the existing law; and (ii) if that is insufficient, the state responds

[254] Ibid., p. 7.

through making a new law and giving new power to the bureaucracy.[255] Second, one of the assumptions about the operation of the modern nation state is that the bureaucracy, which is delegated the policy implementation by parliament and through cabinet, should be able to limit 'the abuse of power' as opposed to the rule by the monarchy or charismatic leaders.[256] This check is important not only for protecting the population of that country from the misuse of the power, but also because it matters to the continuation of that state. Hence the notion of legality and legitimacy are relevant. This study conceives these notions as follows. First, legality refers to 'whether the law was made ... following regular procedures.'[257] Second, legitimacy refers to whether an entire system of government is acceptable, as opposed to the authority of an individual official.[258] Legality and legitimacy are different matters, as '[r]egulations can be legal without being legitimate.'[259] The significance of legitimacy to the state lies in the point that it could affect 'how a regime gains and sometimes loses the people's belief in its right to rule.'[260] Evans, a British Political Scientist, also explains the relevance of legitimacy for the state as follows. As 'the major authoritative association' within the territory, it is crucial for the state to maintain 'a monopoly of the legitimate use of force.'[261] Evans argues that state domination requires 'a minimum of voluntary compliance; an acceptance of commands as valid norms;

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[255] Gabriel A. Almond; G. Bingham Powell, Jr.; Kaare Strom; and Russell J. Dalton. *Comparative Politics Today: A World View (Seventh Edition)* (Harlow: Longman, 2000), p. 104.
[256] Rod Hague; Martin Harrop; and Shaun Breslin, *Comparative governments and politics: an introduction (4th edition)* (Basingstoke: Macmillan, 1998), p. 11.
[257] Hague et al., *Comparative governments and politics*, p. 12.
[258] Hague et al., op. cit., p. 12.
[259] Ibid., p. 12.
[260] Ibid., p. 12.
[261] Evans, 'Elitism', p. 232.

and a belief in the legitimacy of the form of domination.'[262] In other words, for the stability and survival of the state, 'a source of legitimation for their form of governance' is indispensable in addition to force.[263]

(4) The Impact of Globalisation on the Relation between the State and Society

a. Globalisation, migration and the state

In the previous subsection it has been found that international economic force is capable of affecting the operation of the state, namely compilation and implementation of policies of the state. To gauge how international labour migration as a force of globalisation influences the relation between the society and the state of migrant receiving country first requires articulating social relations in a way that did not assume the presence of foreign individuals as migrant workers. The following three assumptions have been maintained, according to Giddens, within the border of nation states. First, the state authorised capital to operate within the state border, and in return, the state relied on tax income from capital. States assisted capital to operate within their territory by providing 'the legal conditions for the establishment and maintenance of property rights, which are defined in private terms within capitalism.'[264] The role of the state in capitalist societies has also included providing, though in some cases

[262] Evans, op. cit., p. 233.
[263] Ibid., p. 233.
[264] Stephen Gill and David Law, *The Global Political Economy: Perspectives, Problems, and Policies* (London: Harvester Wheatsheaf, 1988), p. 84.

indirect, assistance for economic activities such as community services and 'surveillance' activities.[265] In return, 'revenue [of the state] is dependent upon the accumulation process,' but the modern state does not control the process directly, in contrast to the feudal state.'[266] The state utilised revenue from capital, by taxing or borrowing, in order to 'help finance state expansion.'[267] Second, businesses pay wages to employers, and in return use the labour of the employees under certain working conditions agreed between the employers and employees (and supervised by the state). Third, individuals are entitled to receive protection from the state, and in return they are supposed to fulfil certain responsibilities for the state. Such conjunction is characterised by 'the relationship between people and government which [is] mediated through the institution of citizenship.'[268] The presupposition of these assumptions was that the above three actors (the state, capital (= social forces), and the individuals) operate within the self-contained space of the nation state; this is where the legal-territorial definition of the state appeared to be more applicable. However, forces of globalisation bring about developments that are contradictory to the previous relationship between the state and society, or the destruction of 'domestic social arrangements' due to globalisation.[269] Consequences of globalisation include destabilisation of the

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[265] Anthony Giddens *A Contemporary Critique of Historical Materialism: Vol. 1. Power, property and the state.* (London: Macmillan, 1981), p. 214.
[266] Giddens, *A Contemporary Critique of Historical Materialism*, p. 212.
[267] Robin Cohen and Paul Kennedy, *Global Sociology*. (Basingstoke: Macmillan, 2000), pp. 44-45.
[268] Stephen Castles and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World (Second Edition)* (Basingstoke: Macmillan, 1998), pp. 297-298.
[269] Richard Devetak and Richard Higgott, 'Justice Unbound? Globalization, states and the transformation of the social bond', *International Affairs*, 75(3), 1999, pp. 483-498, pp. 488-489.

consensus over management of society and polity.[270] Devetak and Higgott described the challenges we face caused by the above destabilisation as follows:

> 'a deficit in the relationship between the *de facto* market led process of economic liberalization and integration and *de jure* state generated mechanisms that underwrite the international fora for the delivery of collective goods.'[271]

Such a discrepancy can take the form of the relation between the state and its population, whose constituents are changing as international labour migration proceeds. Problems relating to the status of the migrant population in the migrant receiving country, such as the following, are a case in point. This population has not acquired full membership in that polity, and their entitlements (such as social welfare and political participation) are limited in comparison to the nationals and long-term residents. Some limitation of such entitlements may be justified on the basis of the length of her/his stay in that society. However, there could be other entitlements that should (ideally) be available indiscriminately, such as certain kind of security (bodily security and civil liberty, for example). Chapters 5 and 6 of this study pay particular attention to availability of such entitlements to migrant workers in terms of justice in legal process.

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[270] Devetak and Higgott, 'Justice Unbound?', p. 497.
[271] Devetak and Higgott, op. cit., p. 495.

b. The Nation state and citizenship

This section is going to review how citizenship has developed in relation to the modern Western European nation states, where an alternative source of social cohesion was required during industrialisation. By looking at this process, it should be able to find out why the relation between entitlements and obligations of both the state and the constituent population is currently being questioned in globalisation. According to Cohen and Kennedy, development of the modern Western European countries can be characterised as a reconfiguration of the feudal political economy to a capitalist political economy. This reconfiguration process was followed by industrialisation and expansion of military capability. Developments in Western Europe between the sixteenth and eighteenth centuries have been named 'modernity', with the following three as its major constituents: the emergence of the nation state;[272] the development of science; and the rise of a body of universal secular thought, or 'the Enlightenment.'[273] While the ideas of the Enlightenment criticised feudalism in political terms, the feudalist mode of production was replaced with the capitalist mode of production. Major changes that allowed the transition from feudalism to capitalism were the creation of 'a fully commoditzed economy' where land and labour are also sold as commodities,

[272] Emergence of the nation state involved use of the following measures, and is closely related to the establishment of capitalism in Western Europe: increasing tax revenues; improving communications; partially taming nobility by making it more dependent on the perks derived from the state; centralizing the nation by suppressing regional identities; monopolizing the most efficient means of violence for conducting wars; encouraging and subsidizing technological and craft development; investing in naval and army strength; and nurturing local trading classes whose wealth could be taxed or borrowed to help finance state expansion. (Cohen and Kennedy, *Global Sociology*, pp. 44-45.)

[273] Cohen and Kennedy, op. cit., p. 44.

and the dislodging of 'self-sufficient peasants and craft producers from their farms and workshops.'[274]

In the eighteenth and nineteenth centuries, inter-state rivalry between the European countries acquired nationalist and industrialised characteristics. One representative example of the emergence of nationalism can be found in the French Revolution: whereas the universal rights of humanity were proclaimed to justify citizens' rights against the French feudal regime, the Revolution 'further centralized the French state and, by unleashing citizen armies, propelled nationalist fervour across Europe's territories.'[275] Meanwhile, the political significance of the Industrial Revolution, that started in eighteenth century Britain, was that industrialisation could lead to greater military capabilities of the state. Cohen and Kennedy argue that the European states took the initiative in industrialisation partly because it was a matter of military security for those states.[276]

The consequence of industrialisation for the domestic society of modern West European nation states included the emergence of the need for an alternative source of social cohesion to the one that already existed in feudal society. Reconfiguration of European society in the modernisation process involved the perceived loss of social cohesion that hitherto existed, which led to the advancement of nationalism. According to Cohen and Kennedy, sociologists of nineteenth century Europe thought that social consequences of the modernisation process were the growth of 'materialism, class conflict, egotism and

[274] Ibid., p. 47.
[275] Ibid., p. 79.
[276] Ibid., p. 79.

individualism', accompanied by 'the declining hold of Christianity.'[277] Among such sociologists, Durkheim advanced the notion of the 'conscience collective', or 'a new set of universally significant moral bonds' [...] 'that championed mutual respect for human rights and the sanctity of the individual' in order to respond to the above-mentioned problems in the then current society.[278] Despite his initial interests in developing universal moral links, after France's defeat in war with Prussia in 1817, Durkheim advanced nationalism as a potential 'substitute for declining moral certainties and societal incoherence.'[279] Cohen and Kennedy noted that the surge of socialism in the nineteenth century and the First World War also contributed to the building of nationalism. Development of the welfare state was linked to the emergence of citizenship, "which simultaneously excluded 'foreigners' and deepened the commitment of the 'natives' to the state."[280]

Nationalism as we know it today consists of various factors that were added over time in the modern Western European context. According to Halliday, despite claims of a 'long historical tradition' that its advocates would have us believe, nationalism is an ideology which has been developed since the eighteenth century. During the French Revolution,

> "the opponents of the monarch called themselves *la nation*, i.e. 'the nation', meaning by this the community of all French people irrespective of previous title or status. [...] The concept of 'nation' was, ... tied to the principle of

[277] Ibid., pp. 80-81.
[278] Ibid., p. 81.
[279] Ibid., p. 81.
[280] Ibid., p. 82.

> equality of all those living within states, to an early concept of democracy".[281]

In addition to the above political implication to the nation, the communitarian idea was also added. Herder and Fichte promoted the idea of 'the *Volk* or people, a community based not so much on political identity but on history, tradition and culture',[282] whereas Mazzini advanced a moral conception of the nation, or an idea that each member of a nation 'owes the nation unquestionable obedience.'[283] Halliday also suggested that linkage between Rousseau's idea of self-determination of communities, and J. S. Mill's idea of representative government, have also contributed to the emergence of nationalism.[284] The notion of an 'unconditional contribution to the community' attached to nationalism will become relevant to gendered analysis of citizenship, because this notion assisted limiting provision of citizenship to women.

Having seen the historical background of the development, this section now turns to the analysis of the concept of citizenship. According to Cohen and Kennedy, citizenship is a 'modern, western invention'[285] consisting of two principles. The first is a notion of universal rights which every member of a

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[281] Fred Halliday, 'Nationalism', in John Baylis and Steve Smith (eds), *The Globalization of World Politics: An Introduction to International Relations* (Oxford: Oxford University Press, 1997), pp. 359-373, p. 362.
[282] Halliday, 'Nationalism', p. 362.
[283] Halliday, op. cit., p. 363.
[284] Ibid., p. 362. Consequences of ideology of nationalism in international relations are at least fourfold. First, claims of representing the nation, together with the self-determination doctrine, provided justifications for the Westphalian states system. Second, nationalism has served as a source of 'common identity and consciousness' within societies. Third, nationalism has motivated various claims for re-drawing territories. Fourth, nationalism has also been source of armed conflicts and wars, particularly in the twentieth century. Halliday noted that nationalism can be salient in such forms as 'protests about migration and free trade', and it is one way of 'reaction against globalization' (Halliday, op. cit., p. 360; pp. 365-366).
[285] Cohen and Kennedy, *Global Sociology*, p. 82.

society is entitled to; the second is that in return for the above entitlements, citizens are supposed to accept obligations and duties for the society to which they belong. Such obligations include 'the willingness to accept military conscription, to pay taxes, to seek employment and to obey the law.'[286] Thus it is evident that the notion of citizenship reflects the developmental process of the modern West European states and nationalism. T. H. Marshall was among those who first theorised citizenship, arguing that citizenship consists of three sets of rights as a result of developments since the eighteenth century. The first type of citizenship right is civil rights, which include 'the right to own property and arrange contracts, to free assembly, speech and thought and the right to expect justice from an impartial legal system based on laws which apply equally to everyone.'[287] The second type is political rights, including the right to vote in elections and the right to conduct political activities. The third is social rights or the rights to social welfare provisions.[288] This classification provides an effective analytical tool for discussing citizenship rights. Meanwhile, the notion of citizenship has been challenged from at least two perspectives. One of those is from right-wing thinkers who have argued that in the last two decades citizens' entitlements, such as social welfare provision, exceeded their obligations to the society and thus put disproportionate burden on the state. Another criticism is posed against the principle of excluding certain members of society as beneficiaries of the entitlements. Among the domestic and indigenous population, 'disabled, women

[286] Cohen and Kennedy, op. cit., p. 82.
[287] Ibid., p. 82.
[288] Ibid., p. 82.

and children'[289] are more likely to be excluded from citizenship rights: in addition:

> "in a globalizing world, where disadvantaged migrants increasingly seek work or political asylum in the prosperous countries, many will encounter racism and discrimination from officials or host members and will become 'non or partial citizens'."[290]

In other words, citizenship provision will be denied by the state if someone is unable to discharge obligations expected by the state, because: (i) the contribution she/he can make to the society and the state is different from what the state expects, or (ii) she/he is not legally accepted as a member of the nation. However, the above has shown that provision of citizenship has been extended with the development of the nation state, which itself was undergoing a state transformation at the time. If globalisation involves the transformation of the contemporary state, including Japan, it is at least theoretically possible to expect that the relation between the state and its population could change accordingly, broadening the reach of citizenship entitlements to the population who were not assumed to be members of the polity in the nation state, in particular foreign residents including migrant workers.

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[289] Ibid., p. 83.
[290] Ibid., p. 83.

c. Women migrant workers and the nation state

In the following, the relation between women migrant workers and the nation state is briefly considered. This point requires attention here, because the growing number of women migrant workers who are present in Japan causes manifold concerns for civil society actors, and also unprecedented challenges for the Japanese state. It appears to be the case that, contrary to their previous 'invisible' status up to the late 1980s, it has become almost impossible for the society and the state to (pretend to) ignore the presence of women migrant workers in Japan today. Because of the increase in the immigrant population, even if each migrant's stay was temporary, there is constantly a sizeable number of immigrant population at around two million. This fact should require contemplating upon the relation between the state and its population within the progression of globalisation.

Pettman identified two contrasting risks that women migrant workers could face in the migrant receiving country. First, women migrant workers may not always be able to expect that the state of their home country would support them when they were involved in troubles while in the receiving country. This is because the home state may be concerned more about foreign currency revenue that the women migrant workers remit to the home country than security of those workers as their nationals abroad.[291] Second, there are possibilities that women migrant workers face (as with male migrant workers) scapegoating by the

[291] Jan Jindy Pettman, 'Gender Issues', in Baylis and Smith (eds), *The Globalization of World Politics* (1997 edition), pp. 483-497, p. 491.

indigenous population of the receiving country, particularly during 'rising unemployment and social distress.'[292]

Meanwhile, Steans' analysis shows that women migrant workers have at least two characteristics, which the state of the receiving country could take advantage of: first, as a woman who is a 'second-rate citizen'; second, as a foreigner who appears not to share any common identity with the members of the nation state. Concerning the first point, kinship imagery that Anderson identified in nationalism plays an important role. Steans argued that nationalism contains

> "the powerful imagery involved in merging the idea of national community with that of the selfless/devoted mother. This automatically triggers the response that one should ultimately prepared to come to her defence or die for her".[293]

Thus the state and nation are fused through "a profoundly gendered conception of 'kinship' and 'home'."[294] The perceived gendered role of women, as those to be protected, or those who depend on men, contributes to justify limited citizenship granted for women.[295] This point dovetails with the characterisation of citizenship by Cohen and Kennedy that was referred to earlier in this section. Second, the notion of the nation state as a source of identity has been established so strongly that it has been assumed as 'the single irreducible component of identity.'[296]

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[292] Pettman, "Gender Issues", p. 492.
[293] Jill Steans, *Gender and International Relations: An Introduction* (Cambridge: Polity, 1998), p. 67.
[294] Steans, *Gender and International Relations*, p. 67.
[295] Steans, op. cit., p. 68. According to Steans, Western political thought has linked citizenship and military service since Aristotle (p. 82). What is relevant here is that citizenship was extended to significant part of male population in the modern nation states as opposed to the ancient Greek City-states, where citizenship was limited to far smaller number of population.
[296] Ibid., p. 61.

While such an assumption has contributed to the development of the modern nation state, another consequence is that alternative sources of identity other than this, such as 'gender, along with class, race or other facets of identity', have been ignored.[297] Therefore it is possible that the interests of women migrant workers may not be taken seriously by some of the population of the migrant receiving country, including officials of state institutions. For example, there were occasions where circumstances arising from ethnic and gender identities were not fully taken into consideration (at least in the viewpoint of some) when women migrant workers were put on public trial, in particular, exploitation of and violation against women migrant workers by migration brokers, employers and customers, which preceded the commission of crime by migrant workers. As will be discussed in Chapter 6, questions were raised during these public trials as to whether justice was fully realised both for the 'victim' (represented by the Japanese state) of the alleged offence, and for those women migrant workers who were also victims of violence before the commission of the above-mentioned offence.

(5) The State within the Globalisation Context

This section has compared different conceptualisations of the state in order to identify the one that can explain the impact of globalisation on the state and society. As a result, the section has found that the notion of a state/society complex is effective for this purpose. Having confirmed theoretically that

[297] Ibid., p. 62.

international economic forces affect the operation of the state, the section then considered in what way such forces influence the state. Among several possible factors, the study paid attention to the relation between the state and the population that constitutes the society. It has also become clear that the state is supposed to provide security to its population, including equality before law. However, this provision is linked to the institution of citizenship, which is based on the building of the nation state. While international labour migration as a globalisation force brings foreign individuals to the receiving country, it is unlikely that citizenship (including security provision such as equality before law) will be automatically extended to these foreign individuals, since the notion of citizenship is linked to nationhood. This can particularly be the case for women migrant workers, because of the historical characteristics of the notion of citizenship. Even though the extent and the manner of the operation of nationalism varies across the countries, the above possible insufficiency in equality before law to foreign residents could exist in contemporary Japan, as will be seen in Chapters 5 and 6.

5. Conclusion

The first task of this chapter was to conceptualise globalisation. It has been found that globalisation would be more plausibly understood as a historical and political project. Technological development is an important factor, but not the only driving force of globalisaiton. Hence there should be some, at least theoretically and however limited, room for managing the consequences of globalisation. The

state, one of the core actors in world politics, has surely been influenced by the forces of globalisation, but it has not become obsolete as some of the Hyperglobalists would contend; it should retain capabilities to respond to the negative consequences of globalisation force, with the possibilities for representing the population within the territory. The second task has been to demonstrate international labour migration as a force of globalisation. A review of the theories of migration has found that capital mobility, a core force of globalisation, creates structural conditions for international labour migration. In addition, the operation of the migration industry is also important in explaining the continuity of migration. It has been found in this chapter that it is possible to see international labour migration itself as a force of globalisation. This is based on the finding that capital mobility, operation of the non-state actors such as the migration industry, and also the fact that technological developments in transportation and telecommunication are likely to have contributed to the operation of the migration industry.

The third task is to conceptualise the relation between forces of globalisation and the state. In order to account for the developments in the world in recent decades, where international economic forces have been playing a crucial role, it is necessary to transcend the analytical boundaries that were assumed in the existing theories of International Relations. This chapter has identified that the notion of state/society complex enables an analysis that can overcome the analytical boundaries between the international and domestic spheres, and the one between politics and economy. What followed the above was that the consensus over the management of the state and society are

destabilised because of globalisation forces. Such destabilisation is manifest in the fact that the state's provision of various entitlements to its population (including the civil rights, such as equality before the law) may not automatically be extended to those who are physically present in the society, but not the member of the polity or the nation. This problem can be exacerbated for women migrant workers because of the historical characteristics of citizenship.

This chapter has thus examined the above three main concepts in a general context, and the theoretical framework presented in this chapter should largely suit the contemporary Japanese context. However, considering the fact that the process of its building of a political economy has been different from those of the West, and also from those in East Asia (including its history of labour migration in the twentieth century, as will be shown in next chapter), a theoretical framework that is specifically developed for contemporary Japan is necessary. This is the task to be carried out in the next Chapter 3.

CHAPTER 3

GLOBALISATION, INTERNATIONAL LABOUR MIGRATION AND THE STATE IN JAPAN

1. Introduction

Chapter 2 found the following points concerning interactions between international labour migration as a force of globalisation and the state: (i) globalisation is a historical and political project in which capital mobility performs a key role; (ii) international labour migration is a force of globalisation, because capital mobility creates structural conditions for population mobility, thus connecting political economies that are geographically distant and legally different; (iii) international economic forces affect the operation of a state, including that of the state sectors primarily in charge of domestic and political/legal issues; (iv) different sectors of the state can produce a response to the force of globalisation, namely administrative, legislative and judicial branches of the state; and (v) the impact of international labour migration as a globalisation force could be manifold: for example, fulfilling domestic economic needs on the one hand, and causing perceived threats to domestic security, on the other. In other words, as a consequence of the above long and complicated process, international labour migration as a force of globalisation can cause reconsideration of the relation between the state and the population within the territory.

This chapter applies the above theoretical framework to the specific context of contemporary Japan in order to produce a firm foundation for the analysis in the

empirical case studies that ensue in this chapter. For that purpose, the chapter examines the following: (i) the Japanese state's response to its international structure and the subsequent development of its domestic institutions; (ii) the Japanese state's response to international and domestic conditions relating to labour migration; (iii) a theoretical framework for explaining the Japanese state's maintenance of domestic order through controlling crime in response to one of the consequences of international labour migration; and (iv) whether and how could the Japanese state counterbalance its actions in the maintenance of domestic order, in particular in its relations to its foreign residents. This chapter argues that Japan's response to the language barrier problem merits enquiry and analysis for the following three reasons: first, the language barrier emerged in Japan in the early 1990s as the detected number of crime committed by foreigners increased as a natural consequence of growth in the foreign population: in this respect the language barrier is one manifestation of international labour migration in Japan. Second, the language barrier posed Japan's criminal justice administration partial constraints unknown until the early 1990s. Third, while the language barrier thus embodies a force of globalisation, the criminal justice administration of a state has been an internal (domestic) and political sector; therefore, the way Japan's criminal justice administration addressed the language barrier problem shows how the domestic and political sectors of the state tackled the challenge from an international economic force, namely that of globalisation.

2. Japanese State's Response to International Structure

Chapter 2 found that, in comparison to the other approaches of International Relations, the notion of the state/society complex advanced by Cox provides a more plausible explanation concerning the operation of the state: it can demonstrate that the impact of globalisation forces permeates the legally defined state border both from outside and inside, and also can explicate the linkages between economic and political matters. In this connection, Hook and others' argument on Japan's international relations is pertinent. They argue that (i) Japan's international relations are a consequence of a dialectical relationship between international structures and active domestic policy-making agents;[1] and (ii) international structures 'can impinge actively upon the policy-making process within Japan itself.'[2] Drawing from the above theoretical findings, the significance of the Japanese state's response to issues in international labour migration (namely, the language barrier problem) is that the operation of the criminal justice institutions of the Japanese state which has been assumed hitherto as 'domestic' and 'political' has become to a certain extent 'international' and 'economic'. In order to identify the characteristics of contemporary Japan's response to globalisation, this section is going to demonstrate how external forces have constituted international structures for Japan since the late nineteenth century, and how this has affected the domestic configuration of the state.

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[1] Glenn D. Hook, Julie Gilson, Christopher W. Hughes and Hugo Dobson, *Japan's International Relations: Politics, economics and security* (London: Routledge, 2001), p. 25 and p. 41.
[2] Hook et al., *Japan's International Relations*, p. 40.

(1) 1868-1945: From Meiji to Showa

Globalisation and the ending of the Cold War pose Japanese society and the state challenges that are comparable to previous ones from the international system which existed from the mid-nineteenth century. Such considerable changes in Japan's international relations took place twice, in the mid-nineteenth and mid-twentieth centuries. The first one was the transition from being within a Chinese world order to an imperial one. From the seventh century to the mid-nineteenth century, Japan aligned itself with the Chinese world order.[3] After self-imposed international isolation for two centuries, Japan was 'dragged into a new imperial world order by the early-starters of Europe and the United States' in the mid-nineteenth century.[4] In order to maintain its independence, Japan imported the superior administrative and military technology of an external civilization, and unified the country from the late nineteenth and the early twentieth centuries.[5] In place of China, Japan thus sought alignments with the 'leading global powers of the day': Britain in 1902 (the Anglo-Japanese alliance) and Germany in 1940 (the Tripartite Pact).[6] Japan simultaneously created a contradictory relationship with East Asia: despite claiming to be a part of it, Japan colonised the East Asian region to acquire resources, thereby sustaining its independence against the West. The notion of *datsua nyûô* [abandonment of Asia, and joining with Europe] gave justification to this practice.[7] It is within this context that Japan caused the extreme damages both in

[3] Hook et al., op. cit., pp. 25-27.
[4] Ibid., p. 27.
[5] Ibid., p. 27.
[6] Ibid., p. 28.
[7] Ibid., p. 28.

material and psychological terms in various areas in Asia as well as in Japan during the Asia-Pacific War.

The core characteristic of pre-war Japan was that it was an absolute monarchy. The institutions of the Meiji state (the cabinet, and the civil and military bureaucracy) were responsible to the Emperor 'who did not really rule.'[8] Ishida and Krauss argue that in the Meiji Japanese state:

> 'no one was completely accountable to anyone [in the Japanese state], least of all to the people. [...] What kept the system functioning was, within the government, the quiet coordination of the *genrô*,[9] and, vis-à-vis society, the mobilization of popular support through the ideology of complete obedience, loyalty, and sacrifice to the emperor, propagated in the schools, the media, and the armed forces.'[10]

This imperial rule which was legitimised by the 1889 Constitution and the opening of the Diet in 1890[11] shifted in the 1920s, to a certain degree, towards representative democracy. Japan introduced male suffrage and a two-party political system where 'the principle was temporarily established that the prime minister should at least be the head of one of the major parties in the Diet.'[12] However, it was also in this period when the Peace Preservation Law was passed, and the repression of the Left was enforced by the Ministry of Interior and the secret police.[13] The above tilting

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[8] Takeshi Ishida and Ellis S. Krauss, 'Democracy in Japan: Issues and Questions', in Takeshi Ishida and Ellis S. Krauss (eds), *Democracy in Japan* (Pittsburgh: University of Pittsburgh Press, 1989), pp. 3-16, p. 6.

[9] According to Neary, '*genrô*' refers to 'small group of senior statesmen from Satsuma and Chôshû who played a critical role in politics between 1890 and 1940, acting as a link between the emperor and government. They intervened in all major political decisions but especially on the choice of a new prime minister' (Ian Neary, *The State and Politics in Japan* (Cambridge: Polity, 2002), p. xii).

[10] Ishida and Krauss (1989), 'Democracy in Japan', pp. 6-7.

[11] Ishida and Krauss (1989), op. cit., p. 6.

[12] Ibid., p. 7.

[13] Ibid., p. 7.

towards popular democracy was overcome by the advent of ultra-nationalism in the 1930s. The emergence of ultra-nationalism can be attributable to at least the following two factors: first, frustration within Japanese society with the impact of the worldwide depression, particularly manifest in the living conditions of the rural poor. Second, a political inability to address the above economic impact on society because of the malfunctioning of the party system, as the two main parties discredited each other for voter support, rather than defending parliamentary democracy. In addition to these two factors, Japan was internationally isolated after its invasion of Manchuria in 1931. Economic as well as international difficulties and subsequent anxiety 'led to even greater emphasis on a mystical, emperor-centered concept of a collective, unique "national polity" and the rise of antiliberal, anti-individual, and anti-Western ideas and groups.'[14] By 1937 the army took over the Japanese state along fascist lines. The assassinations and terrorist attacks by small right-wing groups and the coup attempts by young military officers did not achieve their original goals, but provided 'opportunities and excuses' for military bureaucrats to accumulate political power within the state.[15] Hence Ishida and Krauss argue that one of the most important characteristics of pre-war Japan was the fact that 'the idea of popular sovereignty was never legitimised under the imperial system.' Even Japanese fascism was one 'from the above', in contrast to the German and Italian cases which were 'mass fascist movement[s].'[16]

[14] Ibid., p. 8.
[15] Ibid., p. 8.
[16] Ibid., p. 8.

(2) 1945-1970: Post-war Re-entry into the International System

The second challenge for modern Japan came in the mid-twentieth century. After defeat in the Asia-Pacific War, Japan relied on 'the hegemonic power of the day' again, this time the US. Although unarmed neutrality and non-alignment were discussed in Japan, before the alliance with the US was institutionalised,[17] the consequence of the above alliance was favourable to Japan's national interests until the 1960s. According to Hook and others: "[t]he development of Japan's post-war domestic policy and international relations took place [...] within the protected, and at times restrictive, framework, or 'greenhouse' of US hegemony."[18] But the 1970s saw the decline of US economic power and the 'erosion of the international post-war economic order.'[19] The effects of these developments on Japan's political economy since the 1970s will be discussed in Chapter 4, including the beginning of capital export.

In comparison to the pre-war ones shown above, there is a clear contrast in the domestic political institutions that operate in Japan today. The most significant changes in comparison to the Meiji Japanese state are: the change from a reliance on military force as the main policy instrument to the use of economic power; [20] and the change from 'absolute imperial rule'[21] to popular sovereignty. The 1946 Constitution of Japan stipulates that sovereignty resides with the people.[22] As 'the highest organ of state

[17] Hook et al., op. cit., p. 38.
[18] Ibid., p. 31
[19] Ibid., p. 31.
[20] Iokibe Makoto, *Senryôki: shushô tachi no shin Nippon (The Occupation Years: Prime Ministers of the New Japan)* (Tokyo: Yomiuri Shinbunsha, 1997), p. 35
[21] Ishida and Krauss, op. cit., p. 6.
[22] Article 1, Constitution of Japan; Ishida and Krauss, op. cit., p. 9.

power',[23] the power given to parliament (the Diet) increased. The Diet chooses the cabinet,[24] while the cabinet is 'responsible to the Diet, and the bureaucracy responsible to the cabinet.'[25] In the Meiji Constitution, the power to determine the prime minister and the cabinet members was given to the emperor and his advisors, not to the Diet.[26] In addition, local governors were appointed by the central government in Meiji Japan.[27] In contemporary Japan, however, local governments and the courts are subject to electoral control.[28] Further, the post-war political and economic reforms under occupation included the encouragement of the growth of political parties, women's suffrage, land reform and the break-up of the *zaibatsu* business associations. These reform measures certainly set up the institutional structures for the contemporary Japanese polity, despite the fact that this revolution from above continued for only about two years,[29] as the Occupation Force's focus shifted from democratisation and demilitarisation, to stability and 'making Japan an ally of the United States in the Pacific'.[30]

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[23] Article 41, Constitution of Japan
[24] T. J. Pempel, 'Prerequisites for Democracy: Political and Social Institutions', in Ishida and Krauss (eds), *Democracy in Japan*, pp. 17-37, p. 22.
[25] Ishida and Krauss, op. cit., pp. 9-10.
[26] Pempel, 'Prerequisites for Democracy', p. 19.
[27] Pempel, op. cit., p. 20.
[28] Ibid., p. 22.
[29] Michael Schaller, *The American Occupation of Japan: The Origin of the Cold War in Asia* (Oxford: Oxford University Press, 1985), p. 51
[30] Ishida and Krauss, op. cit., p. 10.

(3) Japan and Globalisation from the 1970s Onwards

a. Japan's Responses to Globalisation in International and Domestic Spheres

The progression of globalisation and the ending of the Cold War constituted Japan's international structure from the 1970s onwards. Internationally, Japan responded to the new international structure by re-engaging with Asia through 'soft' regionalisation,[31] and an increasing degree of commitment to political and security roles in the region. Industrial restructuring was on the domestic political agenda, and while internationally competitive sectors called for economic liberalisation, uncompetitive sectors resisted it. This needs mentioning because industrial sectors' attitude to migrant workers is different from the above contrast, as will be shown later in this chapter. Recent international population movements to Japan can be seen as one of the consequences of Japan's re-entry to the region, as the next chapter will demonstrate. As a result, the reconfiguration of political institutions to respond to the increase in the international population flow became a domestic issue. This dovetails with the argument by Hook and others on the significance of the current ongoing globalisation to Japan: '[globalisation] may over time come to challenge the very notions upon which the constitution of that state is founded.'[32]

There are contrasting responses among Japan's domestic actors towards economic liberalisation. Despite their perceptions on globalisation largely coinciding with those of the Hyperglobalists,[33] the ministries' arguments about Japan's possible

[31] Hook et al., op. cit., pp. 33-34.
[32] Ibid., p. 35.
[33] Ministry of Foreign Affairs (MOFA), *Diplomatic Bluebook 2001*, Chapter 2, Section 2.

responses to globalisation are various. Those ministries more often exposed to international affairs tend to favour economic liberalisation,[34] but those ministries with domestic jurisdiction tend to resist it.[35] A similar contrast between advocacy and resistance to globalisation also exists within the industrial sectors. There is a common understanding in Japan, as far as the management of the domestic political economy is concerned, that globalisation is manifested as '[d]omestic deregulation, international division of labour, and the entrance of foreign companies'.[36] Industrial sectors that are internationally competitive (such as the electric, electronics and automobile industries) approve of economic liberalisation, but the sectors that are internationally uncompetitive do not, being more concerned about possible social consequences. Examples of industrial sectors that have been identified as internationally uncompetitive include: cement, pharmaceuticals, agriculture, retail, many rural residents and

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http://www.mofa.go.jp/policy/other/bluebook/2001/chap2-2-a.html (cited 5 February 2003); Ministry of Economy, Trade and Industry (METI), *White Paper on Trade and Commerce 2001*, Chapter 3, Note 42. http://www.meti.go.jp/hakusho/tsusyo/soron/H13/CHU042.html (cited 5 February 2003); METI, *White Paper on Trade and Commerce 2001*, Chapter 3, 2-5-2. http://www.meti.go.jp/hakusho/tsusyo/soron/H13/03-02-05-02.html (cited 5 February 2003); Ministry of Health, Labour and Welfare (MHLW), 'Gaikokujin koyô mondai kenkyûkai hokokusho (Report on Foreign Employment Issues)', July 2002, http://www.mhlw.go.jp/topics/2002/07/tp0711-1.html
(cited 8 February 2003).
National Police Agency (NPA), 'Kokusai soshiki hanzai taisaku ni okeru kokusaikikan tono renkei (Cooperation with international organisations against transnational organised crime)'.
http://www.npa.go.jp/kokusai2/renkei.htm (cited 6 February 2003)
http://www.moj.go.jp/SPEECH/INSTRUCTION/instruction0104-008.html (cited 6 February 2003)
http://www.moj.go.jp/PRESS/000300-2/000300-2-2.html (cited 6 February 2003)

[34] MOFA, *Diplomatic Bluebook 2001*, Chapter 2, Section 2. http://www.mofa.go.jp/policy/other/bluebook/2001/chap2-2-a.html (cited 5 February 2003); Pempel 2000, op. cit., p. 213.; METI, (*White Paper on Trade and Commerce 2001*), Chapter 4. http://www.meti.go.jp/hakusho/tsusyo/soron/H13/04-00-00-00.html (cited 5 February 2003)

[35] Pempel 2000, op. cit., p. 213.

[36] Takenaka Heizô and Chida Ryôkichi, 'Japan', in Charles E Morrison. and Hadi Soesastro (eds), *Domestic Adjustments to Globalisation* (Tokyo: Japan Center for International Exchange, 1998), pp. 76-102, p. 97.

semiskilled workers, insurance, brokerage and banking,[37] as well as chemicals and mining, forestry, fishing, transportation and telecommunication.[38]

b. Attitudes towards International Labour Migration

Similar to other aspects of globalisation, there are those who approve of, and those who are opposed to, international labour migration. Unlike the responses to the economic liberalisation discussed above, however, some of the domestic sectors implicitly accept this form of globalisation. Japan's current labour migration policy was presented in the Cabinet Resolution of August 1999, which includes the following aims:

(i) To promote the immigration of highly skilled workers to revitalise the Japanese economy.
(ii) To remain cautious against officially introducing non-skilled migrant workers.
(iii) An increase in labour immigration should be a last resort, only after all other measures available have been exhausted, namely mobilisation of the elderly and women; improving efficiency through automation; and flexible labour management.
(iv) If and when increasing labour immigration, a migration control system should be institutionalised that responds to developments in the domestic labour market, including any increase in unemployment among Japanese nationals.[39]

The Ministry of Justice (MOJ) and National Police Agency (NPA) have considerable influence on the implementation of Japan's policy on migration, because

[37] T. J. Pempel, *Regime Shift: Comparative Dynamics of the Japanese Political Economy (with a new preface)* (Ithaca: Cornell University Press, 2000), p. 212 and p. 215.
[38] Takenaka and Chida, 'Japan', pp. 83-86.
[39] Dai 9 ji koyôtaisaku kihon keikaku (Cabinet Resolution on the Ninth Basic Plan on Employment), Section 9 (4), 13 August 1999. http://www.mhlw.go.jp/topics/2002/07/dl/tp0711-1a1.pdf (Cited 7 March 2003) Author's translation.

they are capable of enforcing the law on those actors involved in population movements. The Ministry of Foreign Affairs (MOFA) is more inclined toward the internationalisation of population mobility than other ministries. In its 1999 report, MOFA argued that immigration control should be relaxed for those who are eligible for elderly care work and nursing,[40] including workers from the Philippines.[41] The Ministry of Health, Labour and Welfare (MHLW) acknowledges the possibilities where migrant workers may be increased, but it was extremely careful in its statements on actual implementation, as illustrated by the following possible measures: (i) to forecast the number of workers required in each industrial sector before starting to accept workers; (ii) to accept such workers for a limited period of time; (iii) to introduce taxation on employing migrant workers; and (iv) to conclude treaties with the countries concerned.[42]

MOJ's account shows that the Ministry envisages two contending tasks, namely fulfilling domestic labour needs, and the maintenance of domestic order, social cohesion, and national identity. The Ministry's 'Basic Plan for Immigration Control' published in 2000 identifies the core objectives of Japan's immigration control as: 'smooth acceptance of foreigners' and 'rejection of unfavorable foreigners.' MOJ's cautious view on the increase in the population flow in Japan is evident in the following:

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[40] MOFA, 'Ajia keizai saisei misshon hôkokusho: 21 seiki no ajia to kyôsei suru nihon o mezashite (Report of the Mission for Revitalization of Asian Economy: Living in Harmony with Asia in the Twenty-first Century) (November 1999), Part I-II-1. http://www.mofa.go.jp/mofaj/area/asiakeizai/saisei/hokoku.html (Cited 7 March 2003)

[41] MOFA, 'Ajia keizai saisei misshon hôkokusho (Report of the Mission for Revitalization of Asian Economy), Part II-6-(2).

[42] MHLW, '*Gaikokujin koyô mondai kenkyûkai hôkokusho (Report on Foreign Employment Issues)*', July 2002. http://www.mhlw.go.jp/topics/2002/07/tp0711-1.html (Cited 7 March 2003)

> 'the internationalization of the Japanese society and facilitation of the acceptance of foreigners should be promoted only on conditions that social safety and order would be maintained.'[43]

Finally, NPA is most concerned about the negative consequences of the inflow of foreigners. In its interaction with foreign residents, the Agency sees crime control as a central (though not only) task. The White Paper on the Police characterised undocumented foreign residents as an 'incubator of foreign crime,'[44] which is 'an important issue for domestic security.'[45]

As to the industrial sector, their perceptions and interests concerning possible capacity reduction as economic restructuring coincided with that of the ministries with jurisdiction. With regard to international labour migration, the ministries whose jurisdiction is within the domestic society resisted international labour migration, or are at least cautious about it. Nevertheless, the domestic industrial sectors whose capital is internationally immobile and uncompetitive would accept the need for migrant labour. In other words, the internationally uncompetitive sector resists the entry of foreign business, but it would choose to accept migrant labour in order to survive. The service industry, to which the migrant women concentrate is a case in point, as will be shown in Chapter 5.

This section has examined Japan's response to its international structure and the subsequent re-organisation of the domestic structure. Even though some references were made to international labour migration, it is important to clarify in the next section

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[43] MOJ, Basic Plan for Immigration Control (Second Edition), March 2000, Part I. http://www.moj.go.jp/ENGLISH/IB/IB2000/ib.html (Cited 7 March 2003)
[44] NPA, *Keisatsu hakusho (White Paper on the Police) Heisei 12 nenban (2000 edition)* (Tokyo: Ôkurasho insatsukyoku, 2000), p. 245.
[45] NPA, *Keisatsu hakusho (White Paper on the Police) Heisei 6 nenban (1994 edition)* (Tokyo: Ôkurasho insatsukyoku, 1994), p. 97.

the significance of the international labour migration for the management of the political economy of modern Japan.

3. Japanese State's Response to International Structure: International Population Movement

(1) Holistic Approach to Analyse International Labour Migration to Japan

Parallel to the developments in the theory of migration demonstrated in Chapter 2, international labour migration in contemporary Japan is increasingly explained from a holistic approach rather than solely individualistic or structuralist perspectives, as shown below.

In the last two decades, it has been common among some scholars to attribute international labour migration to contemporary Japan to income differences, labour disparity between the sending and receiving countries, and population growth in the sending country.[46] However, this approach is increasingly seen as simplistic and with only a limited degree of explanatory power.[47] Some Japanese scholars working on international labour migration, including Tezuka and Kuwahara who have been aware of this problem since the late 1980s, call for a more holistic approach. Tezuka saw that explaining labour migration requires accounting for various factors such as gaps

[46] For example, Haruo Shimada, *Japan's "Guest Workers": Issues and Public Policies* (Tokyo: University of Tokyo Press, 1994), pp. 33-34; Hiroshi Komai, *Migrant Workers in Japan* (London: Kegan Paul International, 1995), pp. 157-160.

[47] Robin Cohen, 'Introduction', in Robin Cohen (ed.), *Theories of Migration* (Cheltenham: Edward Elgar, 1996), pp. xi-xvii, p. xv; Stephen Castles and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World (Second Edition)* (Basingstoke: Macmillan, 1998), pp. 20-22; Paul Boyle; Keith Halfacree; and Vaughan Robinson, *Exploring Contemporary Migration* (Harlow: Addison Wesley Longman, 1998), chapter 3.

between countries in terms of demography and labour supply, income difference, and the institutions that promote migration.[48] In the current Japanese case, the lack of labour supply of Japanese nationals for the external labour market constituted the pull factor for labour migration.[49] Meanwhile, labour mobility emerged as the subsistence economy in the agricultural community broke up as a consequence of permeation of the commodity economy; some of the labour that accumulated in large cities in the same country would eventually convert to international migration.[50] These operate as the push factors.

Kuwahara also noted problems with a neo-classical economic approach in explaining international labour migration.[51] Towards an alternative approach, he suggested that the following facts about migration should be taken into consideration: migration is a time-consuming and complicated process; domestic migration serves as a precursor for international migration; migration involves decision making of individual migrants; migration requires initial costs to be paid to migration brokers.[52] Further, following Sassen's theory, Kuwahara argued that the Japanese economy itself has created conditions for the recent international labour migration.[53] His point is important for comprehending international labour migration as a process of the regionalisation of the political economy in which Japan is actively involved, rather than assuming it is merely an external force to which Japan did not contribute.

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[48] Tezuka Kazuaki, *Gaiokujin rôdôsha (Foreign Workers)* (Tokyo: Nihon keizai shinbunsha, 1989), p. 117.
[49] Tezuka, *Gaikokujin rôdôsha*, pp. 113-116.
[50] Tezuka, op. cit., p. 122.
[51] Kuwahara Yasuo, *Kokkyô o koeru rôdôsha (Workers Crossing the Border)* (Tokyo: Iwanami shoten, 1991), pp. 177-180.
[52] Kuwahara, *Kokkyô o koeru rôdôsha*, pp. 94-102.
[53] Kuwahara, op. cit., p. 190.

Sellek and Iguchi are among those who in the 1990s urged the building of a more holistic theoretical approach to international labour migration. Sellek, the leading scholar in Britain on international labour migration in Japan, agrees with Sassen's argument that capital mobility contributes to inducing labour migration through industrial and social transformation of the South.[54] Sellek notes that economic development since the 1970s until the economic crisis in 1997 was 'the dominant cause' of 'mass migration from and within Asia.' Japan has played a significant role in creating a structural linkage between East Asian countries and Japan itself by injecting capital in the forms of official development assistance and foreign direct investment. Japanese capital exported abroad assisted recipient countries' export oriented industrialisation. This economic development process contributed to the generation of international labour migration, since the impact of economic development on the domestic population, such as the transition from an agrarian economy to wage labour in export oriented industry, tended to be uneven. Hence the recent international labour migration to Japan 'reflects not only Japan's regional economic hegemony, but also highlights an important structural characteristic of the world capitalist economy.'[55]

Iguchi, a prominent labour economist in Japan, also identified a linkage between economic development in East Asia and international labour migration. He argued that although income difference and labour disparity are contributing factors to labour migration, they are not the only ones. Iguchi claimed that the existence of immigration brokers induces potential immigrants to go to Japan, even when there is relatively high unemployment among the domestic population. It is therefore unlikely that

[54] Yoko Sellek, *Migrant Labour in Japan* (Basingstoke: Palgrave, 2001), pp. 2-3.
[55] Sellek, *Migrant Labour in Japan*, pp. 5-6.

unemployment among Japan's domestic population is due to the presence of immigrant workers.[56] Having proposed to discuss international labour migration in terms of regional policy coordination rather than the migration control policies of one country,[57] Iguchi noted that regional economic integration in East Asia produces a potential immigration flow, in particular in manufacturing sectors where industrial restructuring could occur.[58] In this connection, economic development in East Asian countries in recent decades tended to create domestic (*not* international) income differences, which could result in international population movement.[59]

The arguments of the above two scholars show that international labour migration is a manifestation of the increasing interconnectedness of political economies in East Asia, or of a progression of globalisation. In other words, for Japan, international labour migration is both a consequence and cause of globalisation. It is a consequence, because the export of Japanese capital created structural conditions for population mobility. It is also a cause of globalisation, since the migration affects Japan's political economy by sustaining domestic economic sectors whose capital is immobile internationally, and in turn reveals the need to accommodate problems of migrants, and also affects the configuration of Japanese national identity.

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[56] Iguchi Yasushi, *Gaikokujin Rodosha Shinjidai (Foreign workers in a new era)* (Tokyo: Chikuma Shobo, 2001), pp. 134-139

[57] Iguchi, *Gaikokujin Rodosha Shinjidai*, pp. 16-17.

[58] Iguchi, op. cit., pp. 166-167. Iguchi went on to argue that '[i]ntegration of regional economy does not reduce excess labour and chaotic international labour mobility in a linear movement.' (Iguchi, op. cit., p. 168)

[59] Ibid., p. 170

(2) 1868-1945: Prevalence of Migration in Imperial Japan

Sellek writes that 'the recent problems associated with foreign workers are not new', for 'Japan has experienced streams of both immigrants and migrants for a very long time.'[60] The following very brief outline of Japan's labour migration in the nineteenth and twentieth centuries demonstrates that management of the political economy in modern Japan almost always involved either emigration or immigration of labour. Understanding the above should enable the appreciation that in the long run (instead of focusing on Japan's three decades during the post-war years), international mobility of labour is an integral part of the operation of the international political economy, rather than 'a deviance from the prevailing norm of social organization at the world level.'[61]

During the 1868-1945 period, a substantial number of both emigrants and immigrants existed in Japan. Labour migration was required for Japan's economic and war management during these years, and the state was often directly involved in migration projects. Between 1868 and 1941, the Japanese state promoted emigration in order to counter the perceived population growth.[62] Major destinations of the Japanese emigration up to the 1910s included Hawaii, California and Canada, as well as various locations in Asia. From the 1920s, emigration to Brazil, Peru and other South American countries began, with half a million Japanese estimated to be living in North and South America by around 1940. Another destination from 1932 was Manchuria ('Manchukuo'). This emigration was designed partly to accommodate Japan's

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[60] Sellek, op. cit., p. 15.
[61] Aristide R. Zolberg, 'International Migration in Political Perspective', in M. Kritz, C. Kelly and S. Tomasi (eds), *Global Trends in Migration: Theory and Research on International Population Movements* (New York: Center for Migration Studies, 1981), pp. 3-27, pp. 6-7.
[62] Yoko Sellek, 'Nikkeijin: The phenomenon of return migration', in Michael Weiner (ed.), *Japan's Minorities: The illusion of homogeneity* (London: Routledge, 1997), pp. 178-210, p. 187.

territorial expansion, but also to reduce domestic population pressure after the economic depression in the 1930s. Approximately 1.8 million Japanese settled in Manchuria in 1937.[63] Table 3-1 shows that more than one million Japanese emigrated from the late 1860s to 1945. These migrants (except for those who went to 'Manchukuo' but later managed to return to Japan) became the first generation of overseas Japanese. Table 3-2 indicates that as many as 2.5 million Japanese lived abroad, about half of them in Korea and Taiwan under Japanese control.[64]

Table 3-1. Japanese immigrants, 1868-1945

	1868-1898	1899-1924	1925-1931	1932-1941	1942-1945
North America	89,962	302,772	14,417	4,258	--
Middle and South Americas	--	70,588	82,285	91,063	--
Southeast Asia	--	37,060	25,376	25,740	--
'Manchukuo'	--	--	--	180,534	89,473
Total	89,962	410,420	122,678	301,595	89,473

(Source: Tanaka Hiroshi, *Zainichi gaikokujin (Foreigners in Japan)* (Tokyo: Iwanami shoten, 1991), p. 189, Table VIII-2)[65]

Table 3-2. Japanese expatriates, 1900-1944

	1900	1910	1920	1930	1940	1944
In Korea	15,829	171,543	347,850	527,016	707,742	712,583
In Taiwan	--	98,048	166,621	232,299	346,663	397,090
Subtotal	15,829	269,591	514,471	759,315	1,054,405	1,109,673
Other destinations	--	275,745	541,784	740,774	1,421,156	--
Total	--	545,336	1,056,255	1,500,089	2,475,561	--

(Source: Tanaka, *Zainichi gaikokujin*, p. 193, Table VIII-3)[66]

Immigration was also frequent in pre-war Japan. During the Meiji period, skilled foreigners (the majority of them were merchants) from Europe, America and

[63] Sellek, *Migrant Labour in Japan*, pp. 16-17.
[64] Table 3-1 shows flow of emigrants during each period. In contrast, Table 3-2 presents the stock of overseas residents at each year. In addition, Korea and Taiwan are not included in Table 3-1, while 'Manchukuo' is included in 'Other destinations' in Table 3-2.
[65] Tanaka compiled this table from the data published by MOFA and JICA in 1979.
[66] Original sources which Tanaka relied on for this table include MOFA's data published in 1988.

China arrived in Japan.[67] Koreans also migrated between 1910 and 1939 and supplied labour in Japanese industries.[68] According to Michael Weiner, there were both 'push' and 'pull' factors for Korean migration to Japan after the 1910 Annexation. The push factors included '[e]conomic deprivation and political suppression in Korea', whereas a pull factor was an '[a]ctive recruitment of colonial labour to meet the labour demands in [post World War I] economic expansion.'[69] He also found that a 'labour recruitment system' had been established in Japan by 1917.[70] Consequently, Weiner's explanation of Korean labour migration to Japan largely overlaps with the theory demonstrated in Chapter 2 (population growth and domestic income difference on the part of the sending country; demands for flexible labour supply on the part of the receiving country, and the role of the migration industry).

Following the enactment of the *Kokka sôdôinhô* (National General Mobilisation Law) in 1938, Japan officially began importing labour from Korea and China.[71] After decades of 'voluntary' migration, Japan started to conscript Koreans from 1939.[72] Among the 724,727 Koreans who were drafted, 342,620 of them worked in coal mines, 67,350 in metal mines, 108,644 in construction work, and 206,113 in factories and other jobs,[73] resulting in approximately two million Koreans living in Japan by 1945.[74] Meanwhile, from 1942 to 1945 about 40,000 men were drafted from China and sent to

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[67] Sellek, *Migrant Labour in Japan*, p. 18.
[68] Sellek, op. cit., p. 18.
[69] Michael Weiner, 'The representation of absence and the absence of representation: Korean victims of the atomic bomb', in Weiner (ed.), *Japan's Minorities: The illusion of homogeneity*, pp. 79-107, p. 84.
[70] Michael Weiner, *Race and Migration in Imperial Japan* (London: Routledge, 1994), p. 56.
[71] Tanaka Hiroshi, *Zainichi gaikokujin (Foreigners in Japan)* (Tokyo: Iwanami shoten, 1991), p. 194.
[72] Kan Chunja; Kim Puja; Kim Hunja; Kim Yunam; and Kim Chinja, *Motto shiritai 'ianfu' mondai: sei to minzoku no shiten kara (Learning more about the 'Comfort Women' issue: from the perspectives of sexuality and ethnicity)* (Tokyo: Akashi shoten, 1996), p. 52.
[73] Tanaka, *Zainichi gaiokujin*, p. 195, Table VIII-4, which is based on the data published by MOF in 1947.
[74] Sellek, op. cit., p. 19.

135 factories and mines in Japan.[75] The actual number of Chinese people forcibly drafted by Japan must have been larger than the above-mentioned figures, according to Sugihara, drafted Chinese were detained in China before being transferred to Japan proper, and some of them died during detention.[76] Japan's industrial sectors where the Chinese workers were posted include construction, mining, shipbuilding and dock work.[77] Among them, seven thousand are reported to have died in Japan.[78] Further, Japan carried out the 'Comfort Women' policy from 1932, in which more than 200,000 were forced to serve as 'Comfort Women'.[79] The Japanese military asked private brokers to conscript women for sexual slavery,[80] and the military controlled the migration of the women and provided transportation.[81] For many of the 'Comfort Women' who managed to survive the war, the transportation turned out to have been one way.[82]

[75] These figures are based on the report compiled by MOFA in 1946. Chûgokujin kyôsei rôdô jiken fukuoka soshô genkoku bengodan, *Ayamachi o mitome, tsugunai, tomoni aymu ajia no rekishi o (Admit the guilt and compensate toward the history that Asia and Japan can share)* (Fukuoka: Rîgaru bukkusu, 2001), p. 16; Sugihara Tôru, *Chugokujin kyôsei renkô (Forced Labour Migration of the Chinese)* (Tokyo: Iwanami shoten, 2002), p. 2; p. 31.
[76] Sugihara, *Chugokujin kyôsei renkô*, pp. 58-72.
[77] Tanaka, op. cit., p. 195, Table VIII-5.
[78] Chûgokujin kyôsei rôdô jiken fukuoka soshô genkoku bengodan, *Ayamachi o mitome, tsugunai, tomoni aymu ajia no rekishi o*, p. 16.
[79] United Nations, Economic and Social Council, *Commission on Human Rights, Contemporary Forms of Slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict by Special Rapporteur Gay J. McDougall (E/CN.4/Sub. 2/1998/13)*, p. 38.
[80] Yoshimi Yoshiaki and Hayashi Hirofumi (eds), *Kyôdô kenkyû nihongun ianfu (Japanese military 'Comfort Women': a joint research)* (Tokyo: Ôtsuki shoten, 1995), p. 36.
[81] Cabinet Councillors' Office of External Affairs, Cabinet Secretariat, 'Statement concerning the so called Comfort Women issue (4 August 1993)', in Ishide Norita, Kim Puja and Hayashi Hirofumi (eds), *'Nihongun ianfu' o dô osieruka (Teaching the 'Japanese Military Comfort Women' at School)* (Tokyo: Nashinokisha, 1997), pp. 148-149.
[82] Yoshimi Yoshiaki, *Jûgun ianfu ('Comfort Women')* (Tokyo: Iwanami shoten, 1998), pp. 211-213; Kan et al., *Motto shiritai 'ianfu' mondai*, p. 76.

(3) 1945-1970: the 'Absence' of Migration in the Post-War Japan

Migration flows from and to Japan continued after its defeat in the Asia-Pacific War and up until the beginning of the post-war economic growth. The most significant migration outflow was the return migration of the Japanese from the former colonies and the occupied areas. This amounted to 5.7 million in the few years after the defeat in the war.[83] On the other hand Japanese people continued to migrate to the US, Canada, Argentina, Paraguay, and other South American countries until the 1960s, reflecting 'the economic difficulties experienced in Japan at that time.' But a few years later, demands for domestic labour increased as the Japanese economy began to grow.[84] The availability of domestic labour is among the main reasons why Japan's post-war economy managed to grow rapidly without resorting to migrant labour, unlike the cases of Western Europe or North America from the late 1940s to the beginning of the 1970s.[85] However, demographical characteristics of Japan's post-war economic growth exhibit a stark contrast with its previous war economy management, in which Japan conscripted the Koreans and the Chinese to supply labour.

Korean migration was also significant in the post-1945 years. Out of the two million Koreans who lived in Japan in 1945, approximately two-thirds returned to Korea. But 600,000 either did not return to Korea at all or came back and settled down in Japan again after a brief stay in Korea, because it was extremely difficult for them to re-establish their lives there.[86] Similarly, some of the Taiwanese residents in Japan at the end of the Asia-Pacific War remained in Japan because of civil war and for

[83] Sellek, *Migrant Labour in Japan*, p. 17.
[84] Sellek, op. cit., p. 17.
[85] Ibid., pp. 21-25.
[86] Ibid., p. 19.

economic reasons.[87] A further example of population movement occurred between 1959 and 1984, when Koreans who were resident in Japan returned 'permanently to their homeland in North Korea.'[88] The emigration numbered 93,000, including '1,831 Japanese-born spouses' who accompanied the resident Koreans leaving Japan.[89] According to Neary, this is 'the first and only mass migration from a developed industrial country to a communist state.'[90] In addition, because most of the Japanese-born spouses are women (thus called '*Nihonjinzuma*'), their living conditions in North Korea have become 'a major humanitarian and bilateral issue between Japan and North Korea in the late 1990s.'[91] Concurrently, another migration flow in addition to the post-war population movements were the Korean 'stowaways', which continued to exceed 500 cases a year after 1965. This is why "the term 'illegal foreigners' generally implied Koreans who had entered Japan as stowaways" before 1975.[92]

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[87] Andrea Vasishth, 'A model minority: The Chinese community in Japan', in Weiner (ed.), op. cit., pp. 108-139, p. 131.
[88] Hook et al., op. cit., p. 177.
[89] Ibid., p. 177.
[90] Neary, *The State and Politics in Japan*, p. 210.
[91] Hook et al., op. cit., p. 177. A number of those *Nihonjinzuma* have reportedly returned to Japan in 2003. According to Miki Emiko, an attorney-at-law and civil rights campaigner, resettlement of those returnees in Japan could potentially render important impact on Japan's national identity in the future, in particular if the number of the resettlements increased with the arrival of their siblings as well. Miki Emiko, e-mail posting on mailing lists, 31 January 2003.
[92] Sellek, op. cit., p. 19.

(4) 1970s onwards: the 'Return' of Migration to Japan

The characteristics of the flows of international migration that Japan has experienced since the 1970s reflect the events related to the ending of the Cold War and the progression of globalisation. For example, from 1975 Japan began to accept Indochinese refugees;[93] 'the number of foreigners working on tourist visas started to increase around 1975';[94] and the first round up and deportation of women migrant workers without authorisation was in 1979. However, the Japanese public became aware of increasing immigration only in the late 1980s, when the number of male labour migrants surpassed that of the women migrants. The debate in Japan on whether and how to accept migrant workers followed the above recognition. Japan subsequently revised the Immigration Control Act in 1989 and implemented it in 1990. The revised Act sanctioned a limited number of migrants to work in Japan legally, while banning the brokering and employment of undocumented migrant workers.

By the late 1990s the volume of immigration inflow to Japan became largely stable. Approximately 4 to 5 million foreigners stay in Japan for less than a year, and another 2 million stay for more than a year. In contrast to the late 1980s when the core issue of migration was whether or not to accept migrants, the central matter concerning migration in the 1990s is the extent and the manner of accepting migrants in Japan. This coincides with the increasing understanding that the population of Japanese nationals of working age continues to decline. These developments, however, do not

[93] Tanaka, op. cit., p. 144.
[94] Sellek, op. cit., p. 19.

necessarily imply that the Japanese government would legally and openly allow more migrants to come to work, as explained earlier in this chapter.

4. Maintenance of Domestic Order: Controlling Crime

There are at least two main implications of the increase in the number of foreign residents in Japan: first, some industrial sectors benefit from being able to employ cheap labour; second, in contrast, the state institutions, in particular the criminal justice institutions, have conceived that the presence of foreign residents is a potential threat for domestic order and internal cohesion. This section presents a theoretical framework for explaining the Japanese state's operation in crime control.

At the outset, however, two points concerning the characteristics of crime in Japan committed by foreigners need mentioning. First, more than half of the 'crime by foreigners' is related to immigration control offences, and is not immediately threatening to the Japanese population, as will be shown in Chapter 5. Second, the so-called 'New Comer' migrant workers who arrived in Japan since the late 1980s, are less likely to commit criminal offences in comparison to Japanese nationals and long-term foreign residents in Japan, except for very small number of organised criminals who commit robbery and other crimes.[95] Hence it is implausible to contend that the migrants arrived in Japan in the last decade are more likely to commit offences than other groups in Japan.

[95] Nakamura Shinichirô, '"Keisatsu hakusho" no gaikokujin hanzai bunseki hihan (The Analysis of crime committed by foreigners in the White Paper on the Police: a critique)', *Migrants'-netto*, No. 22, October 1999, pp. 5-7; No. 23, November and December 1999, pp. 5-7; '2001 nenban "Rainichi gaikokujin hanzai no genjô to taisaku" eno hihanteki kenkai (Critical Comments on "Crime Committed by Foreigners: the Present Situation and the Measures")', *Migrants'-netto*, No. 41, August 2001, pp. 10-16.

(1) Policy-making Process

A theoretical analysis of the Japanese state's response to an international impact of migration, namely the language barrier, begins with the policy making process. This is the process where an authority to exercise state power, which will then be given to an administrative branch of the state, is created. This research takes an holistic approach as advanced by Hook and others, in which the following actors are analysed: the 'iron triangle' of the central bureaucracy, LDP, and the business community, which influences policy-making;[96] non-LDP political parties (whose role has become more important since 1993), and civil society actors such as mass media, think tanks, sub-state political authorities, and pressure groups, NGOs, social movements and public opinion.[97] In particular, the Diet, the bureaucracy, and the civil society actors demand analytical attention in this research for three reasons. First, as the 'highest organ of the state', the operation of the Diet reflects Japan's response to globalisation, namely international labour migration. Second, the Diet grants authority to the bureaucracy to operate in accordance with the law,[98] including the branch of the state in charge of controlling population flow and crime. Third, civil society actors can cooperate with and assist bureaucrats, or even be partially delegated to operate the bureaucracy, and they can also hold the bureaucracy responsible for its operation.

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[96] Hook et al., op. cit, p. 61.

[97] Ibid., pp. 41-65. Big business and large trade unions are excluded from this analysis because they are 'invisible' with regard to the foreigner crime issues. Local branches of Immigration Bureau and the judiciary could correspond to the 'sub-state political authorities', but in comparison to the prefectural governments, they are more coherently controlled by the central bureaucracy. The role of mass media seems to be relatively limited in this particular issue of the language barrier.

[98] Frances Rosenbluth and Michael F. Thies, 'Politics in Japan', in Gabriel A. Almond; G. Bingham Powell, Jr.; Kaare Strom; and Russell J. Dalton, *Comparative Politics Today: A World View (Seventh Edition)* (Harlow: Longman, 2000), pp. 327-370, pp. 333-336.

The notion of 'patterned pluralism' is effective to analyse Japan's policy making process, since it applies the convergence of state theories discussed in Chapter 2 to the specific contemporary Japanese context. Muramatsu and Krauss argue that there are three main characteristics of Japan's policy-making process. First, political parties and interest groups permeate the government and participate in the policy-making process; thus the boundaries between the state and society are blurred.[99] Second, the above integration between society and the state is possible because only one party has almost always been in power in post-war history; the LDP as a 'catch-all' party tries to respond to different social interests.[100] Third, the party-interest group alliances are divided by 'ideological cleavage' which means that there will be an antagonistic relationship between the alliances 'over important value issues.'[101]

Japan's law-making process will now be described. In a parliamentary democracy, the law-making process would normally include: (i) discussion of an issue which culminates in a bill; (ii) the introduction of the bill to parliament; and (iii) the enactment of the law. The law-making process in Japan's Diet follows these steps:

(1) A group of Diet members (at least 20 lawmakers in the House of Representatives, 10 in the House of Councillors) can propose a bill.[102]
(2) The Speaker of the House refers the bill to the appropriate committee.[103]

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[99] Michio Muramatsu and Ellis S. Krauss, 'The conservative policy line and the development of patterned pluralism', in Kôzô Yamanaka and Yasukichi Yasuba (eds), *The Political Economy of Japan Volume 1: The Domestic Transformation* (Stanford: Stanford University Press, 1987), pp. 516-554, p. 537.
[100] Muramatsu and Krauss, 'The conservative policy line and the development of patterned pluralism', pp. 537-538.
[101] Muramatsu and Krauss, op. cit., p. 538.
[102] Article 56, *Kokkaihô*, author's translation. Examination and negotiation of the bill by the ministries concerned and the policy board of the ruling party (most frequently the Policy Affairs Research Council of LDP) that precede the submission to the Diet play a crucial role in the lawmaking process (Neary, op. cit., pp. 131-139), but these are out of the scope of the current study.
[103] Article 56, *Kokkaihô*.

(3) The committee examines the bill to decide whether the bill should be put to the vote in the plenary session of the House.[104]

(4) If approved by the House, the Speaker sends the bill to the Cabinet. The Cabinet reports the bill to the Emperor.[105]

(5) The law will be promulgated within thirty days after the report to the Emperor.[106]

It can be seen that Diet committees perform a key role in the legislative process, for bills cannot be discussed in the plenary session unless the relevant committee decides to send them to the full house. The constitution and the role of Diet committees are defined by law as follows:

(1) There are standing committees and *ad hoc* committees in the Diet.[107]

(2) A standing committee examines bills, resolutions and petitions that fall within its jurisdiction.[108]

(3) A member of the Diet will be assigned to at least one standing committee post.[109]

(4) Each committee may submit bills to the plenary session.[110]

In addition to examining the bills, the committees perform another role, namely to hold 'the ministers to account and scrutinize their operations.'[111] The committees are

[104] Article 56, *Kokkaihô*.
[105] Article 65-1, *Kokkaihô*.
[106] Article 66, *Kokkaihô*.
[107] Article 40, *Kokkaihô*.
[108] Article 41-1, *Kokkaihô*.
[109] Article 42, *Kokkaihô*.
[110] Article 50-2-1, *Kokkaihô*.
[111] Jonathan Bradbury, 'Parliamentary question', in Ian McLean (ed.), *The Concise Oxford Dictionary of Politics* (Oxford: Oxford University Press), p. 361.

authorised to conduct 'investigations in relation to government.'[112] Procedures for questions at the Diet committees are as follows:

> *(1)* A member of the Diet can, with the permission of the Speaker, pose questions to the Cabinet and the member is normally required to submit the prospectus of her/his question to the Speaker.
> *(2)* The Speaker transfers the prospectus to the Cabinet.
> *(3)* The Cabinet must answer within seven days.[113]

Consequently, through the Diet committee debates, (i) the administrative branch of the state is held officially accountable for its operation to the lawmakers as representatives of the Japanese citizens; and (ii) lawmakers can communicate to the administrative branch of the state any new interests emerging in civil society. Stockwin thus writes: '[t]he committees of each house are [...] the most important forum for parliamentary debate.'[114] This aspect of the parliamentary committee's function is relevant for this research,[115] and it is reported in Chapter 5 that the Diet committee debate on judicial interpreters formed the beginning of an important law-making process.

In the 1990s the significance of multi-party coalition in the 1990s emerged. After 1993, it became unavoidable for the ruling party to consult coalition partners in the policy-making process. Such consultation continued even after 1996 when the LDP regained the parliamentary majority. Between 1996 and 1998, the LDP consulted the

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[112] J. A. A. Stockwin, *Governing Japan: Divided Politics in a Major Economy (Third Edition)* (Oxford: Blackwell, 1999), p. 114.
[113] Articles 74 and 75, *Kokkaihô*.
[114] Stockwin, *Governing Japan*, p. 120.
[115] This study is aware of the critical role that LDP's Policy Affairs Research Council (PARC) plays in Japan's policy-making process (Muramatsu and Krauss, op. cit.; Rosenbluth and Thies, 'Politics in Japan'; Hook et al., op. cit., pp. 40-55; Neary, op. cit., pp. 132-139; and Stockwin, op. cit., p. 150). But this study does not probe into its working, not because it is irrelevant (on the contrary, it is indeed so), but because the fact that the PARC has such a strong influence does not contradict with the legal stipulation of the Diet as 'the highest organ of the state' in relation to the Cabinet and Bureaucracy.

SDPJ and Sakigake, and then the Liberal Party (the New Conservative Party from 2000) and the New Kômeitô after 1998.[116] As a result this party-political environment, where smaller coalition partners were influential in the policy-making agenda, may have made it possible for those parties to place the issues that they were interested in, such as the language barrier, on the agendas of the parliamentary committee debates.

The final point of this section demonstrates the way in which the following state institutions operate when addressing suspected offences by foreigners: the immigration bureau; the police; public prosecutor; defence counsel; and the courts. The subsection above showed that the Japanese state's response to a challenge from globalisation, namely the language barrier, could be identified in debate at the Diet committees, or through the making of a new law. The responses of the administrative and judicial branches to the language barrier will be described for each of the above five institutions.

(2) Immigration Bureau

a. Core goals of the Immigration Bureau's operation

The Immigration Bureau aims to defend and promote Japan's national interests through the control of the flow of people into and from its territory, and of the stock of foreign residents. The Bureau grants permission for foreigners to enter and stay in Japan for limited periods of time on the condition that they engage only in activities specified at

[116] Neary, op. cit., p. 138.

the time of such permission.[117] The Bureau does not allow foreigners to enter Japan if it suspects that those foreigners could pose a threat to Japan's domestic security and national interests.[118] Foreigners will be detained by an Immigration Control Officer for primary inspection upon arrival if they were suspected to be ineligible for entry, or if there are irregularities in their residential status (namely illegal entry, employment, or overstay). The Officer will, within 48 hours of detention, send the suspected foreigner to an Immigration Inspector for further inspection. There are three stages for an examination into an offence of the Immigration Control Act (ICA) – the inspection referred to the above is the first stage. In the second stage, a foreigner who does not agree with the Immigration Bureau's finding can appeal to a Special Inquiry Officer, and then to the Minister of Justice.[119] If found to have violated the Act, that foreigner will be deported.[120] However, when an appeal was found to have reasonable grounds, the Minister of Justice can grant a special residential permit.[121]

Foreigners with the following capacity and qualifications will be permitted to enter Japanese territory and work: diplomats and their families; officials of a foreign government or international organisation and their families; university and college teachers; artists; priests; journalists; investors and business managers; lawyers and accountants; doctors; researchers; school teachers; engineers; persons with special knowledge of trade, marketing, translation, interpretation, language instruction and designing; intra-company transferees; entertainers; artisans; cultural activists; short term

[117] Article 2, Immigration Control and Refugee Recognition Act (ICA).
[118] Article 5, ICA.
[119] Articles 44-49, ICA.
[120] Article 24, ICA.
[121] Article 50, ICA.

visitors; university and college students; students; technical trainees; and. those who visit Japan to stay with their family who are already in Japan.[122]

b. Major developments in the Immigration Bureau's history

As Hatano and others (the current or former senior level immigration officers at the time of writing) indicate, Japan's immigration control in the post-war years was affected by the consequences of Japan's policy in East Asia in the first half of the twentieth century, and the onset and the ending of the Cold War in the region. Immediately after the Asia-Pacific War, Japan's immigration control was under the control of the Occupation Force.[123] The current immigration control system was thus institutionalised by the US military. Authority over immigration control was partially transferred to the MOFA in 1948 and then full authority was given to the MOJ in 1952 after the conclusion of the San Francisco Peace Treaty.[124] US service personnel were exempted from the subject of Japanese government's immigration control after 1945, and this legal status has remained the same since 1952.[125] The control of Koreans and Taiwanese was the Immigration Bureau's main task during the Cold War years.[126] Matsumoto wrote that the subject of Japan's foreign resident control in the post-war years was technically that of the Koreans and the Taiwanese;[127] Sklar notes that the post-war immigration law,

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[122] Annexes 1 and 2 to Article 2-2, ICA.
[123] Hatano, Isamu; Kurashima Kenji; Tanaka Shinya; Shigemi Kazutaka; and Ishizaki Yûichi, *Gaikokujin no hôteki chii: kokusaika jidai to hôseido no arikata (Foreigners' Legal Status: how the legal system should be in the era of internationalisation)* (Tokyo: Shinzansha, 2000), p. 67.
[124] Hatano et al., *Gaikokujin no hôteki chii*, p. 107.
[125] Hatano et al., op. cit., p. 105.
[126] Ibid., pp. 67-175.
[127] Matsumoto Kunihiko (comment and trans.), *GHQ Nihon senryôshi dai 16 kan: gaikokujin no toriatsukai (The History of Japanese Occupation by GHQ, volume 16: Treatment of Foreigners)* (Tokyo: Nihon tosho sentâ, 1996), pp. ix-x.

institutionalised by the US military, was designed to protect Japan against possible infiltration by Communists.[128] The Japanese state has changed the legal status of Korean residents several times before finally granting rights to permanent residency.[129]

In the 1970s, the origins of foreigners who arrived in Japan diversified compared to the preceding two decades. In 1978 Japan ratified the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The impact of the beginning of the end of the Cold War manifested with the arrival of Indochinese refugees. As it began accepting those refugees from the mid-1970s, Japan ratified in 1981 the Refugee Convention and the Protocol.[130] The ratification was primarily aimed at laying the groundwork for accepting the Indochinese refugees, but another implication was the subsequent improvements in social welfare provision to Koreans (and Taiwanese) who had seriously been excluded due to limitations based on Japanese nationality.[131] Another important development since the 1980s concerning the treatment of Korean and other long-term residents was the abolition of the fingerprinting requirement for foreign residents. The Alien Registration Law required foreign residents in Japan to be fingerprinted at the time of the first registration and subsequent re-registrations. The discriminatory character of this practice was challenged mainly (though not solely) by Korean residents in 1988. After

[128] Deborah Sklar, 'Testing Japan's Anti-Korean Law', *The Nation*, June 25, 1990, at 866; reprinted in Curtis J. Milhaupt; J. Mark Ramseyer; and Michael K. Young (eds), *Japanese Law in Context: Readings in Society, Economy and Politics* (Cambridge, MA: Harvard University Press, 2001), pp. 213-216, pp. 215-216.
[129] Removal of Japanese nationality in 1952; (Hatano et al., pp. 102-104) Law No. 126 in 1952 (Hatano et al., pp. 106-107); *Kyotei eijûken* of 1965 (Hatano et al., p. 111); *Tokubetsu eijû kyoka* in 1981 (Hatano et al., pp. 150-154).
[130] Hatano et al., op. cit., pp. 137-150.
[131] Ibid., pp. 149-150.

modifications to the requirements, the fingerprinting requirement was finally abolished in 1999.[132]

c. The Immigration Bureau's current basic policy

From the late 1980s onwards, the increase in the number of foreign workers originating from places other than Korea or Taiwan became evident even to the majority of the Japanese.[133] After a number of years of domestic debate that followed the above recognition, Japan revised the Immigration Control Act in 1990. Major points of the revision included the expansion of the qualifications for legal entry and the prohibition of the entry and employment of unskilled workers.[134] The Act was revised several times in the decade for a number of different purposes: the criminalisation of human smuggling in 1997; the acknowledgement in 1998 of Taiwanese travel documents as a valid passport; the criminalisation of illegal stay and the extension of the period of refusal of re-entry against former deportees from 1 year to 5 years, in 1999;[135] and the criminalisation of hooliganism and violent demonstrations in 2002.[136]

The goal of Japan's immigration control, namely, to accept 'foreigners welcomed in Japan' while not accepting 'unskilled' and/or 'illegal' foreign workers, was reconfirmed in 'The Basic Plan on Immigration Control (Second Edition)' in

[132] Ibid., pp. 168-175.
[133] It is possible to speculate that some sort of patriarchal power operated to make the presence of the migrant workers 'invisible' (Cynthia Enloe, *Bananas, Beaches and Bases* (London: University of California Press, 2000), p. 198), considering the fact that substantial parts of migrant workers in Japan from the 1970s to the mid-1980s were women.
[134] Hatano et al., op. cit., pp. 155-161.
[135] Ibid., pp. 165-168.
[136] Immigration Bureau, Ministry of Justice, 'Shutsunyûkoku kanri oyobi nanmin ninteihô no ichibu kaisei (Immigration Control and Refugee Recognition Act Partially Revised)', *Kokusai jinryû*, January 2002, p. 19.

2000.[137] There are some indications of probable change in the policy. First, even though the Immigration Bureau continues to claim that it would not implement an amnesty for undocumented foreigners, it does grant special residential permits to illegal visa overstayers with 'good' behaviour.[138] Second, at the level of official statements, the Immigration Bureau claims that it takes illegal foreign workers' human rights into consideration when processing them for deportation.[139] An account by Sakanaka, a high-ranking immigration official, merits attention in this context.

> '[I]llegal foreign workers refer to foreigners who violated the Immigration Control Act by being solely engaged in unauthorised work, or who are employed after entering Japan illegally, or who illegally overstayed in the country. Such offenders must be treated strictly in accordance with the Act. But in the meantime, since they are present in Japan, even for the illegal foreign workers, the basic human rights stipulated in the Constitution of Japan are guaranteed to them; because they are workers for businesses in Japan, the labour laws such as the Labour Standard Law and the Minimum Wage Law are applied in the same way as Japanese nationals. Therefore, sufficient considerations must be made in order to guarantee those rights [when the government officials treat those illegal foreign workers].'[140]

A further complicating issue is that the Immigration Bureau operates under resource constraints, in particular in terms of the number of immigration officers. In

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[137] MOJ, 'Syutsunyûkoku kanri kihonkeikaku (dai 2 ji) (Basic Plan for Immigration Control, Second Edition)', 24 March 2000, www.moj.go.jp (cited 21 August 2001); Sakanaka Hidenori, 'Gaikoujin no nyûkoku, zairyû, taikyokyôsei o meguru shomondai (Issues concerning entry, residence and deportation of foreigners)', in Sakanaka Hidenori, *Nihon no gaikokujin seisaku no kôsô (A Scenario for Japan's Foreigner Policy)* (Tokyo: Nihon kajo shuppan, 2001), pp. 135-160, p. 138.
[138] MOJ, 'Syutsunyûkoku kanri kihonkeikaku (dai 2 ji)'.
[139] MOJ, op. cit.; Sakanaka, 'Gaikoujin no nyûkoku, zairyû, taikyokyôsei o meguru shomondai', pp. 150-151, 153.
[140] Sakanaka, op. cit., p. 151. Translated by the author of the dissertation.

1995, the total number of Immigration Officers was approximately 2,400.[141] The ICA allows the Bureau to request the Police and the Coast Guard to assist in detention and deportation.[142] Sakanaka argues that Japan's Immigration Bureau was probably one of the most efficient compared to other countries that have received large numbers of immigrants, refusing 15,000 entries and making 65,000 deportations in 1994.[143] This resource limitation, however, could constrain the Immigration Bureau from moving towards the ideal presented above.

(3) The Police

a. Core goals

The core goals of the police are to protect the rights and liberty of individuals, and to maintain public safety and order.[144] Their responsibilities towards the above goals include: to protect the life, body and property of individuals; and to prevent, suppress and investigate crime, arrest suspects, and maintain public safety and order.[145] Consequently, police officers are authorised to investigate suspects and uncover evidence when they consider there has been a crime committed.[146]

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[141] Sakanaka Hidenori, 'Tairyô shutsunyûkoku jidai ni okeru shutsûnyûkoku kanri no aratana tenkai (New Developments in Immigration Control Policy in the Era of Large Number of Emigration and Immigration)', in Sakanaka, *Nihon no gaikokujin seisaku no kôsô*, pp. 161-190, p. 164.
[142] Articles 39 and 52, ICA.
[143] Sakanaka, 'Tairyô shutsunyûkoku jidai ni okeru shutsûnyûkoku kanri no aratana tenkai', p. 175.
[144] Article 1, *Keisatsuhô*, author's translation.
[145] Article 2, *Keisatsuhô*.
[146] Article 189-1, *Keijisoshôhô* (Code of Criminal Procedure).

b. Control of the police and the role of the police in crime investigation

Similar to other aspects of post-war reform, Japan's police forces underwent democratisation, and then followed a reverse course from the late 1940s to the 1950s. Post-war reform measures of the police directed by the Occupation Force included the abolition of the Peace Preservation Law, dissolution of *tokkô keisatsu* (secret police) and the Ministry of the Interior, since parts of the Ministry supervised the operation of the pre-war police. The 1947 *Keisatsuhô* devolved its authority to maintain a police force to local government and municipalities, but the 1952 revision of the law technically reverted authority to maintain a force back to both the central and local governments.[147] Meanwhile, 'civilian control' of the police is institutionalised in *Keisatsuhô*: the Prime Minister appoints and dismisses members of the National Public Safety Commission;[148] those who were police officers or public prosecutors in the past five years cannot be appointed as members of the Commission.[149] The head of the Commission appoints, with the approval of the Prime Minister, the Commissioner General of the National Police Agency. The Agency then directs and supervises the prefectural police force.[150]

Despite the above democratisation, there is a certain degree of continuity in the police. According to Aoki, a researcher on the Japanese police, the Ministry of the Interior argued in 1946 before its dissolution that,

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[147] Aoki Osamu, *Nihon no kôankeisatsu (Japan's Security Police)* (Tokyo: Kôdansha, 2000), pp. 42-67.
[148] Articles 7 and 9, *Keisatsuhô*.
[149] Article 7, *Keisatsuhô*.
[150] Article 16, *Keisatsuhô*.

'The functions of the police are twofold. One is to serve the public as official vigilantes for the protection of the life and property of individuals. The other is to operate with authority in order to enforce the execution of the law, which is the manifestation of the will of the state, for the guarantee of security and the maintenance of the unity of the state.'[151]

Operational sections of the police today normally consist of those in charge of criminal affairs, traffic control, civil safety (*seikatsu anzen*), and guard, in addition to administrative and support sections.[152] The first tasks mentioned in the above quote largely fall within the responsibility of the criminal affairs, traffic control and civil safety sections. Aoki argues that, the guard section in today's police force carries out the second task mentioned above.[153] If the police actually continue to conceive their role as protecting the interests of Japanese nationals and the state, it would not be surprising if the police conceived the foreigners as entirely outside of the constituents of the Japanese polity.

The role of the police in crime control is to detect possible crime, investigate suspects and evidence, arrest and interview suspects, and to decide whether or not to send suspects and cases to the public prosecutor. While the police have discretion over it, they have to make this decision within 48 hours of an arrest. Such limitation in time is one of the resource constraints for the police. In addition, they also operate in collaboration with other branches of the state: police officers are required to cooperate with the public prosecutor; and the prosecutor in turn can instruct and direct police

[151] Aoki, *Nihon no kôankeisatsu*, p. 46.
[152] NPA, 'Keisatsu no shikumi (Organisation of the Police)'. http://www.npa.go.jp/koho1/sikumi.htm (cited 10 February 2003)
[153] Aoki, op. cit., p. 20.

officers on a criminal investigation.[154] Also, as mentioned above, immigration officers can ask the police to detain suspects of, and deport those convicted, an Immigration Control Act offence.

c. Policy on controlling crime committed by foreigners in the 1990s

The National Police Agency's *White Paper on the Police* indicate key policy issues identified by the Agency.[155] An overview of the White Paper's description on crime committed by foreigners in the 1990s suggests that the focal points of controlling the crime have changed in the late 1990s in comparison to the early 1990s. The 1989 version expected that the police would have to watch closely trends in crime committed by foreigners. In the 1990 version, published almost simultaneously with the revision of the Immigration Control Act, the White Paper associated foreign workers with potential criminals in a blanket manner. It used such terms as 'foreign workers', 'illegal residents', 'illegal workers' and '*rainichi gaikokujin* (foreigners visiting Japan)' in almost interchangeable ways.

After 1993, the focal point shifted to human smuggling from China, and professional criminal organisations. The *White Paper* ceased to associate 'foreign workers' categorically with crime. The shift in the conceptualisation largely coincides with the time when the number of entries from Bangladesh, Pakistan and Iran decreased in the early 1990s. Aoki reported that, in the 1990s, the foreign affairs section of the police (which constitutes a part of the security police) was working on the issue of

[154] Article 76, *Keisatsuhô*, Articles 192 and 193, Code of Criminal Procedure.
[155] NPA, *Keisatsu Hakusho (White Paper on the Police)* (Tokyo: Ôkurashô insatsukyoku,1989-2000).

crime committed by foreigners, including undocumented Iranian workers, and human smuggling from China.[156] The Japanese government suspended the visa waiver agreement with those countries in 1991 and 1993. Between 1994 and 1998, the *White Paper* repeatedly reported the high incidence of crime among the *rainichi gaikokujin* in comparison to the entire population in Japan. This has been criticised as weakly substantiated.[157]

The *White Paper*'s description of crime committed by foreigners varied in the last decade. The 1997 version of the *White Paper* began presenting three categories, namely (i) illegal residents and illegal workers; (ii) *rainichi gaikokujin* criminals; and (iii) foreign/international crime organisations as the target for controlling foreign crime. The term international professional criminal group first appeared in 1993, and foreign/international criminal organisations have been a subject since the 1997 version. From 1997 onwards the White Paper reports that international organised crime has entered the agenda of the G8 Summit Meeting. The *White Paper*'s conceptualisation of crime relating to women migrant workers has apparently changed since 1999, when it began to use the term 'sexual exploitation of women and children.' Until then, the issue was seen as one aspect of 'illegal employment.' The recent characterisation may possibly be suggesting that the police see the issue as a human rights problem of women migrant workers. Such a shift in the characterisation of controlling the crime committed by foreigners is similar to that of the Immigration Bureau reported in the previous

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[156] Aoki, op. cit., pp. 157-158.

[157] For example, Nakamura Shinichirô, 'Kenshô ishihara hatsugen: keisatsuchô no rainichi gaikokujin hanzai bunseki hihan (Validity of Mr. Ishihara's remark examined: a critique of National Police Agency's analysis of the rainichi gaikokujin crime), in Utsumi Aiko et al. (eds), *'Sangokujin' hatsugen to zainichi gaikokujin ('The Third Party Nations' and the Foreigners in Japan)* (Tokyo: Akashi shoten, 2001), pp. 94-120; H. Richard Friman, 'Gaijinhanzai: Immigrants and Drugs in Contemporary Japan', *Asian Survey*, 36(10), 1996, pp. 964-978, p. 975.

subsection. Whether and in what way the human rights of women migrant workers were addressed by the police are the matters of future research.

(4) Public Prosecutors

a. Power given to Public Prosecutors

The power and responsibilities authorised to the public prosecutor include the following: first, to bring an indictment against a criminal suspect and to request the court to justly administer criminal law to the defendant. Second, to supervise the execution of a sentence. Third, to act as a representative of the public interest as authorised by other relevant laws.[158] The public prosecutor is authorised to investigate any crime,[159] and she/he can direct police officers to investigate a criminal case.

b. Significance of interpretation in the investigation

Prior to pressing criminal charges against a suspect, a public prosecutor interviews the suspect and compiles a record of the interview into an interrogation protocol: the protocol is an edited record of interrogation, not a verbatim record. As David Johnson writes, Article 321-3 of the Code of Criminal Procedure,

> 'enables prosecutors to *shape the form* of confessions [...] by permitting them to compose written summary of statements (*kyôjutsu chôsho* or dossiers) of what the

[158] Article 4, *Kensatsuchôhô*, author's translation.
[159] Article 6, *Kensatsuchôhô*.

> suspect says during interrogation. Thus, prosecutors are not required to record the suspects' words verbatim.'[160]

As will be explained in Chapter 5, the protocol technically serves as evidence that constitutes the alleged crime. Prosecutors are required by law to compile the interrogation protocol in Japanese, not the language of the suspect. This may appear to be solely beneficial to the prosecution, but compiling the protocol in Japanese is in fact a double-edged sword. From the viewpoint of a foreigner suspected of an offence, there is a possibility of their statements being incorrectly registered due to imprecise interpretation, which could lead to a possible miscarriage of justice. The prosecution may also inadvertently compile an inaccurate protocol because of the possible incompetence, or bias of, the interpreter. This could possibly lead to a failure to convict the defendant, with two possible implications: first, it would be devastating for the public prosecutor who is likely to be proud of herself/himself for practicising the so-called 'precise prosecution.' This is clearly illustrated by an account by Ômori Reiko, who used to be a public prosecutor from 1987 to 1994, and who investigated a number of foreigners suspected of offence. She wrote:

> 'It would probably be the toughest challenge for a public prosecutor if the outcome of a criminal case is affected by a factor that is beyond the control of the investigator herself/himself.'[161]

The second implication refers to the perception of the migrant receiving state, in which migrants are considered as potential threats to domestic order. Failure to convict the

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[160] David Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (Oxford: Oxford University Press, 2002), p. 39. Emphasis in original.
[161] Ômori Reiko, 'Gaikokujin jiken ni okeru shihô tsûyaku no genjô (The Present Status of Judicial Interpretation for Foreigner Cases).' http://reiko-ohmori.com/reiko/home.html (cited 13 January 2003).

defendants could mean that the state (i.e., the criminal justice institution representing the state) is not entirely successful in controlling crime. In other words, not being fully operational in responding to international labour migration as a force of globalisation. The significance of interpretation in criminal investigation will be discussed further in Chapter 5, where Japan's criminal law is examined in order to elucidate the basis of legal decisions by the court in criminal cases as to whether the defendant is guilty or not.

(5) Defence Counsel

a. Lawyers' status in Japan's judiciary

Lawyers in Japan are independent from, but have a close relationship with, the state. The mission of a lawyer is to protect basic human rights, to realise social justice,[162] and to endeavour to maintain social order and to improve the legal system.[163] Under the Meiji Constitution, lawyers used to register with the *Shihôshô*, which retained the authority to take disciplinary action against lawyers, and Bar Associations were under the supervision of the *Shihô daijin* (the Minister of the *Shihôshô*).[164] Lawyers and the Bar Associations became independent of the Ministry of Justice after the introduction of the current Constitution.[165] The law requires lawyers to set up a Bar Association within the jurisdiction of a District Court,[166] and the Bar Associations collectively form the

[162] Article 1-1, *Bengoshihô*, author's translation.
[163] Article 1-2, *Bengoshihô*.
[164] Watanabe Fumiyuki, *Hômushô (Ministry of Justice)* (Tokyo: Intermedia, 2001), p. 187.
[165] Watanabe Fumiyuki, *Hômushô*, p. 187.
[166] Article 32, *Bengoshihô*.

Japan Federation of Bar Associations.[167] Even though the operation of lawyers and Bar Associations are outside of its jurisdiction, the MOJ maintains that it has indirect influence over lawyers to the extent that it is in charge of the management of the law regarding lawyers (*bengoshihô*).[168]

b. Defence lawyers' role in criminal cases

Defence lawyers are severely limited in their ability to defend a criminal suspect because of the provision of the Code of Criminal Procedure. Defence counsels are able to do relatively little before a suspect is indicted and public trial begins, by which time an investigation is usually over and the meticulously prepared investigation protocol as evidence is ready. Johnson writes that '[t]he legally ordained importance of defence lawyers places prosecutors in a position of "absolute and incommensurable advantage."'[169] However, 'the introduction of the "*tôban bengoshi seido* (duty counsel system)" in the early 1990s has improved the situation somehow.'[170] It is probable that the quality of defence can be contingent upon the location and capabilities of the individual lawyer. This expectation can be supported by at least the following two points: first, the distribution of lawyers is geographically skewed.[171] Second, some of Japan's defence counsel occasionally 'assist' prosecutors to get the trial going rather

[167] Article 45, *Bengoshihô*.
[168] Watanabe Fumiyuki, op. cit., pp. 187-188.
[169] Johnson, *The Japanese Way of Justice*, pp. 73-75.
[170] Johnson, op. cit., p. 74, footnote 20.
[171] Ibid., p. 79.

than remaining on the defendant's side. One possible reason for this can be attributed to the fact that there are lawyers who used to be judges or public prosecutors.[172]

(6) The Courts

a. Post-war reform and the relation between the courts and the Ministry of Justice

The Japanese Constitution stipulates that the judicial power to make legal decisions belongs to the Supreme Court and the other lower courts,[173] and that judges are bound only by the Constitution and Japanese law.[174] The significance of the above will be more evident when the relation between the courts and *Shihôshô* (Ministry of Justice under the Meiji Constitution) is compared with the one between the courts and *Hômushô* (Ministry of Justice under the current Constitution). Under the Meiji Constitution, *Shihôshô* supervised the courts,[175] and *Shihô daijin* (Minister of Justice under the Meiji Constitution) retained the power to supervise the judiciary.[176] In addition, the court budget constituted a part of that of the *Shihôshô*.[177] With the enforcement of the Constitution of Japan and the Court Organisation Law in May 1947, the courts became independent from the Ministry of Justice.[178]

The conditions of the appointment of judges, provided in the Constitution, indicate that the judiciary should be accountable to Japanese citizens. The Emperor

[172] Ibid., pp. 75-76.
[173] Article 76-1, Constitution of Japan.
[174] Article 76-3, Constitution of Japan.
[175] Watanabe Fumiyuki, op. cit, p. 86.
[176] Ibid., p. 185.
[177] Ibid., p. 185.
[178] Ibid., p. 86.

appoints the Chief Justice, who is nominated by the Cabinet;[179] and the Cabinet appoints the Justice of the Supreme Court,[180] and the judges of the lower courts who are recommended by the Supreme Court.[181]

b. Characteristics in the operation of the courts

It is pertinent to note here that Japanese courts can make three kinds of legal decisions: (i) in criminal cases, (ii) in civil cases, and (iii) for the maintenance of the legitimacy of the state. First, in criminal cases, the Japanese state's interest is almost always upheld by the court. Johnson reports that in criminal cases, the judges' decisions are largely consistent with the expectations of the prosecutors, illustrated by the fact that more than ninety percent of indicted criminal cases result in a conviction. Judges rarely reject a prosecutor's request for arrest warrants, detention warrants, and do not admit bail unless the suspect is expected to maintain her/his confession.[182] In addition, the vast majority of a prosecutor's evidence is admitted and sentencing frequently complies with prosecutors' expectations. Hence prosecutors enjoy 'almost complete insulation from judicial scrutiny of their charged decisions.'[183] Johnson argues, however, that even though they have 'commanding influence over judges', prosecutors do not dominate judges. He claims that prosecutors 'understand the judiciary so well [that] they can calculate decisions to elicit agreement instead of opposition.'[184] The above

[179] Article 6-2, Constitution of Japan.
[180] Article 79-1, Constitution of Japan.
[181] Article 80, Constitution of Japan.
[182] Johnson, op. cit., pp. 61-62.
[183] Ibid., p. 63.
[184] Ibid., p. 65.

'understanding' can be made during legal training, as well as through personnel exchange between judges and prosecutors.[185]

Second, when handling civil cases, the courts act as a neutral arbitrator between society and the administrative branch of the state, as well as between civil society actors. This is in contrast with the courts' role in criminal cases. Steinhoff described the Japanese court in this context as 'a forum for the resolution of social conflicts.'[186] This is one manifestation of the complex and changing characteristics of the state, as discussed in Chapter 2, where it can both assist or prevent the interests of civil society actors. Lawsuits on basic human rights between civil society actors and the Japanese state are cases in point, as will be mentioned in the next section. Third, as shown in Chapter 2, the state tries to maintain its legitimacy to remain in power, and the judiciary performs an important role in such maintenance of legitimacy through making legal decisions. The courts could contribute to sustaining the legitimacy by endorsing the state's action; but in some cases, rejecting one of the state's actions (namely that of the administrative branch) may in the long run be instrumental in keeping the state legitimate, since that would give the state an opportunity to rectify the consequences of its previous actions.

This section has demonstrated the historical background, the role defined by law, and the capability, of the state institutions in Japan's criminal justice administration. The above analysis provides a background for explaining the operation of those institutions involved in controlling crime committed by foreigners. These state

[185] Ibid., pp. 65-66.
[186] Patricia G. Steinhoff, 'Protest and Democracy', in Ishida and Krauss (eds), op. cit., pp. 171-198, p. 192.

institutions merit an analysis in this research, because their actions for controlling the crime constitute the Japanese state's response to the challenge from international labour migration as a force of globalisation.

5. Continuity and Discontinuity in the Japanese State's Treatment of Foreigners from the Meiji to Contemporary Period

Order and justice are two competing values in politics. Order reached without due attention to justice may be possible to sustain for some time, but could also be untenable in the long run without incurring additional maintenance costs. With regard to a migrant receiving state's response to the increase in the migrant population, controlling crime constitutes that state's practice for maintaining domestic order. This practice has to be counterbalanced by ensuring that those individuals subjected to crime control would not face an abuse of state power. In this connection, whether citizenship rights are realised, in particular equality before the law, is a yardstick to examine whether state power is abused or not. In addition, the pursuit of the realisation of citizenship rights requires both a legal structure and actual, daily practice. In the following, this section gives an overview of the developments in the legal structure and actual practice in modern Japan towards the realisation of citizenship rights, in particular protection from state power in the criminal justice process. It will be shown that there are both discontinuity and continuity in terms of state practice and transformation of the state as far as the search for the realisation of citizenship rights for foreigners in Japan are concerned. This is particularly important, because the key question of this study is to test the Transformationalist thesis of globalisation relating to Japan.

Citizenship rights nominally existed in Meiji Japan. The Meiji Constitution stipulated some rights of Japanese subjects, but those rights were easily superseded by imperial decree and other laws.[187] In contrast, the Constitution of Japan guarantees various citizenship rights, or 'basic human rights.'[188] These include universal suffrage, rights to petition, human rights in relation to criminal procedure, social welfare, and rights to education. The above stipulation on the rights in criminal procedure reflects the abuse by the police state during the pre-war years. However, the fact that they are written in the Constitution or the relevant law did not automatically warrant that these rights materialised. Various kinds of basic human rights were contested in the post-war years between the civil society and the state through petition, or in the court. Such cases included: social welfare provision; environmental pollution (water pollution by mercury and cadmium and air pollution); religious freedom; anti-militarisation; and labour rights.[189]

Citizenship rights have certainly been institutionalised in Japan after the post-war reform. However, foreigners in Japan benefited from the Japanese Constitution only to a limited extent.[190] In this respect there exists continuity from the pre-war Japanese state to the contemporary Japanese state with regard to the differential

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[187] Mori Hideki, 'Kihonteki jinken (Basic Human Rights)', in Watanabe Osamu (ed.), *Gendai nihon shakai ron: sengoshi kara genzai o yomitoku (Contemporary Japanese Society: 30 essays on the post-war history)* (Tokyo: Rôdô junpôsha, 1996), pp. 366-399, p. 366.

[188] There seems to be a considerable overlap between the notion of the citizenship rights discussed in Chapter 2, and the 'basic human rights (*kihonteki jinken*)' that the Constitution of Japan provides, considering that the latter clearly reflects the notion of natural rights. As such, this study assumes the *kihonteki jinken* as citizenship rights. (Chris Brown, 'Human rights', in John Baylis and Steve Smith (eds), *The Globalization of World Politics: An introduction to international relations (Second Edition)* (Oxford: Oxford University Press, 2001), pp. 599-614, pp. 604-607; Peter Burnell, 'Human rights', in McLean (ed.), *Concise Oxford Dictionary of Politics*, p. 228; Neary, op. cit., pp. 43-44.)

[189] Mori, 'Kihonteki jinken', pp. 384-389; Stockwin, op. cit., p. 195.

[190] Kajita Takamichi, 'Gendai nihon no gaikokujin rôdôsha seisaku saikô – seiô shokoku tono hikaku o tôshite – (Foreign Worker Policy in Contemporary Japan Reconsidered: comparison with the West European countries)', in Kajita Takamichi (ed.), *Kokusaika to aidentiti (Internationalisation and Identity)* (Tokyo: Minerva shobô, 2001), pp. 184-219, pp. 208-209.

treatment of foreigners. To identify such continuity, this section focuses on Japan's nationalism, because it provided considerable justification to the differential treatment of the foreigners by shaping the structure of the pre-war Japanese state and its relation to the external world, which were reinforced by the 'family state' ideology.

Japanese nationalism has developed since the nineteenth century.[191] The Meiji Japanese state formulated the notion of the 'family state' and educated its population accordingly, in order to establish social cohesion in the developing Meiji Japan.[192] While there are different approaches to theorise nationalism, Yoshino argues that Japanese nationalism can largely be characterised as 'imagined race',[193] following Anderson's notion of 'imagined community'.[194] Because the notions of 'race' and nation are inter-related,[195] there was effectively no way for 'non-Japanese' to participate either in the society or polity in Meiji Japan: foreigners did not possess the 'blood-linkage' which is the theoretical underpinning of the notion of the 'family-state.' One manifestation of the above ideology was differential treatment in the application of law

[191] David G. Goodman, 'Anti-Semitism in Japan: Its History and Current Implications', in Frank Dikoetter (ed.), *The Construction of Racial Identities in China and Japan: Historical and Contemporary Perspectives* (London: Hurst & Company, 1997), pp. 177-198, p. 195; Michael Weiner, 'The Invention of Identity: Race and Nation in Pre-war Japan', in Dikoetter (ed.), *The Construction of Racial Identity in China and Japan*, pp. 96-117, pp. 101-102; Rodney Clark, 'The Company as Family: Historical Background', in Daniel Okimoto and Thomas P. Rohlen (eds), *Inside the Japanese System: Readings on Contemporary Society and Political Economy* (Stanford, CA: Stanford University Press, 1988), pp. 102-105, p. 105.

[192] Kosaku Yoshino, 'The Discourse on Blood and Racial Identity in Contemporary Japan', in Dikoetter (ed.), op. cit., pp. 199-211, pp. 200-201; Kosaku Yoshino, *Cultural nationalism in contemporary Japan: A sociological enquiry* (London: Routledge, 1992), pp. 90-91; Richard Siddle, "The Ainu and the Discourse of 'Race'", in Dikoetter (ed.), op. cit., pp. 136-157, p. 156; Weiner, 'The Invention of Identity', p. 102; Tetsuro Watsuji, 'The Family as Ethical System', extracted in Okimoto and Rohlen (eds), *Inside the Japanese System*, pp. 3-6, p. 5.

[193] Yoshino, 'The Discourse on Blood and Racial Identity in Contemporary Japan', p. 200; Yoshino, *Cultural nationalism in contemporary Japan*, p. 85.

[194] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1991), pp. 5-7.

[195] Weiner, 'The Invention of Identity', p. 96.

as reported by Maruyama,[196] and Siddle also notes that '[r]acial inferiority justified legal inequality.'[197] There was also an indifference to international law, since Japanese state officials were not able to comprehend the view on international relations behind international law, as against the international hierarchy perception derived from the notion of 'family-state'.[198] Maruyama attributed Japanese officials' irresponsible exercise of power to their belief in the hierarchical relations in domestic and international societies.[199]

The above 'absence' of foreigners in the Meiji Japanese polity continued in post-war Japan. First, relations between states and people in Asia and Japan were discussed only to a limited degree, if any, during the post-war reform of Japan. The fact that Asian nations such as Malay or Indonesian were not represented by themselves in the Tokyo War Crimes Tribunal but by their colonial masters[200] is a clear manifestation of the above point. Second, Japan's nationality law, an expression of the Japanese state's conception of who constitutes the nation, has been virtually unchanged from 1899.[201] Third, except for the immigration and criminal justice officials, Japanese people were detached from Asia after the defeat in the Asia Pacific War, as will be shown in Chapter 4. The post-war efforts to establish economic ties with Southeast Asia materialised only in the 1970s.

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[196] Maruyama Masao, 'Theory and Psychology of Ultra-nationalism', in Maruyama Masao (Ivan Morris ed.), *Thought and Behaviour in Modern Japanese Politics* (London: Oxford University Press, 1963), pp. 1-24, pp. 12-13.
[197] Siddle, "The Ainu and the Discourse of 'Race'", pp. 146-147.
[198] Maruyama, 'Theory and Psychology of Ultra-nationalism', pp. 20-21.
[199] Maruyama, op. cit., pp. 12-13; pp. 16-17.
[200] John Dower, *Embracing Defeat: Japan in the Aftermath of World War II* (London: Penguin, 2000), pp. 469-474.
[201] Tessa Morris-Suzuki, 'Migrants, Frontiers and Asian Values: Japan's Identity in a Globalizing Asia', in National University of Singapore, *Asian Values and Japan's Options* (Singapore: National University of Singapore, 2001), pp. 25-33, p. 26.

However, from the 1970s onwards, the developments in Japan's international structure, namely the ending of the Cold War and the progression of globalisation, provided conditions for change in the operation of social forces in Japan, and the Japanese perception about foreign residents within the territory. Developments that contributed to such change include the arrival of Indochinese refugees from May 1975 onwards (10,133 refugees were granted permanent residency by September 1997),[202] and Japan's subsequent acceptance of some of the international human rights norms concerning the treatment of refugees. These developments coincided with the protest of Koreans and other foreign residents about their treatment by the Japanese government concerning immigration control and foreign resident registration. Moreover, migrant women began to arrive in Japan at the end of the 1970s, followed by the increase in the 'New Comer' migrants from the 1980s onwards.

The interests of foreign residents began to be included in Japan's political agenda from the 1970s. This is, of course, very much different from such interests being fully realised. Nevertheless, being included in the political agenda is qualitatively different from being totally excluded, as was the case in pre-war and post-war Japan up to the 1970s. That contemporary Japan under globalisation came to include the interests of foreigners in its political agenda is in contrast to the exclusion of foreigners from the nation, which was the Meiji Japan's response to the international structure in the nineteenth and the early twentieth centuries.[203] The above finding is also an important challenge to the orthodox understanding of the Japanese state, which sees the Japanese state as a static entity.

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[202] Tanaka, op. cit., p. 144; Hatano et al., op. cit., pp. 137-139.
[203] Louise Young, 'Rethinking Race for Manchuko: Self and Other in the Colonial Context', in Dikoetter (ed.), op. cit., pp. 158-176, p. 158.

The fact that legal cases concerning the rights of minorities existed in post-war Japan with different degrees of achievement can be explained in the above context. Representative cases include: women; *burakumin*; Koreans; Okinawans; Ainu, and migrant workers.[204] In particular, war-related apology and compensation cases constitute the most delicate and complicated cases in which the call for the realisation of human rights and the intention to maintain an existing national identity collide with each other. The representative cases include: the claim for medical assistance by Korean atomic bomb survivors who were Imperial Japanese subjects at the time of the bombing;[205] war compensation claims for Koreans and Taiwanese who were Imperial Japanese soldiers during the war;[206] apology and compensation for the forced labour migration of the Chinese,[207] and for the 'Comfort Women' survivors.[208]

To recapitulate, the relation between the legal provision of citizenship rights and the status of foreign residents in modern Japan can be characterised in the following three phases. First, in pre-war Japan, the presence of foreigners in the Japanese society was known, but citizenship rights only nominally existed both for Japanese nationals and the then imperial subjects. Second, in the post-war years up to the 1970s, Japanese nationals were able to make attempts to realise citizenship rights, as the legal framework had been institutionalised as a consequence of the post-war reform. However, the presence of the foreign residents in Japan was almost forgotten among mainstream Japanese nationals, leaving little room for foreign residents to work towards the realisation of their citizenship rights. Third, after the 1970s, Japanese society became

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[204] Stockwin, op. cit., pp. 199-200; Neary, op. cit., pp. 201-217.
[205] Tanaka, op. cit., pp. 49-72.
[206] Ibid., pp. 95-118.
[207] Sugihara, op. cit.
[208] VAWW-Net Japan (ed.), *Josei kokusai senpan hôtei no zenkiroku II (International Women's War Crimes Tribunal: the whole record, vol. II)* (Tokyo: Ryokufû shuppan, 2002).

increasingly aware of the presence of foreign residents, and began accommodating the interest of foreign residents, if not as much as expected by the residents themselves and civil rights campaigners. At least in theory, the possibility that foreign residents could try to realise their citizenship rights had increased.

The above shows continuity and discontinuity in policy practice and capability of the Japanese state to transform itself as manifested in the treatment of foreigners in two respects. First, as to actual practice, the continued discriminatory treatments notwithstanding, the contemporary Japanese state after 1970s changed a part of its operation in comparison to the state in previous years, namely with regard to immigration control and foreign resident registration. The introduction of judicial interpreters in the criminal justice process, which will be reported in Chapter 5, is another crucial example of a policy change in the contemporary era. Those point to an important discontinuity in the state's practice in the treatment of foreigners. Second, there is also a discontinuity in the Japanese state's capability to transform its operation of key functions, in particular of criminal justice administration. The Meiji Japanese state was unable to change the way it worked when the number of migrant workers increased within the territorial jurisdiction; despite the fact that it did not officially acknowledge the presence of non-nationals, the Meiji state kept applying the criminal law to them as it would do to Japanese nationals. In contrast, the introduction of judicial interpreters will indicate in Chapter 5 that the contemporary Japanese state has officially acknowledged that its population now includes non-nationals and that policy instruments specifically designed for them are necessary. This contrast suggests that, whereas the Meiji Japanese state was rigid and incapable of changing its operation, the contemporary Japanese state has been able to change the way it operates. The use of

this historical perspective is particularly important because it enables us to place in context and to compare the reaction of the Japanese state to external forces throughout various phases of the modern era. In turn, this enables an evaluation of the degree and differences of the Japanese state's response to forces of globalisation in the contemporary period as outlined in subsequent chapters, and testing to the full the transformationalist thesis with relation to the Japanese state which forms the main subject of this dissertation. In this sense, there is clearly a discontinuity in the capability of the Japanese state's treatment of the foreigners: the contemporary Japanese state is able to transform some of its functions in the face of challenges from the currently ongoing globalisation.

6. Conclusion

The aim of this chapter has been to apply the analytical framework developed in Chapter 2 to the contemporary Japanese context. Section 2 presented modern Japan's responses to its international structure and the subsequent developments in its domestic sphere in the pre-war period, post-war period up to the 1970s, and the contemporary period after the 1970s. Whereas Japan has intensified its re-engagement with Asia in the last three decades as a response to international structural changes, in its domestic sphere, Japan is undergoing industrial restructuring: some industrial sectors advocate economic liberalisation, while others oppose it. It is the latter kind of industrial sectors, in particular the service sector, which is likely to accept migrant labour in order to adapt to globalisation. Consequently, the current international labour migration to Japan can

be characterised as a manifestation of Japan's re-integration into the regional political economy, which had been inhibited during the Cold War order.

Section 3 demonstrated a brief historical overview of the significance of international labour migration in modern Japan. Despite that the migratory flow was virtually absent during the post-war years (while the considerable number of Koreans and Chinese lived in Japan since the end of the war), this section showed that international labour migration has been an important part of the management of Japan's political economy.

In section 4, a theoretical framework was given to aid the understanding of the operation of Japan's criminal justice institutions that address crime, including ones committed by foreigners. Such institutions' action merits attention because it constitutes an example of the Japanese state's response to a force of globalisation, in particular the response of a domestic and political sector of the state towards international labour migration. The section found that the language barrier renders a challenge both to foreigners suspected of an offence, and to the state institutions in the criminal justice administration. Section 5 discussed the domestic conditions in which the Japanese state's exercise of power in the criminal justice system could be counterbalanced for foreigners in Japan, and it identified the continuity and discontinuity in the practice and capability of the Japanese state manifested in its treatment of foreigners.

This chapter has demonstrated, theoretically, that by reacting to the issues related to the language barrier problem, actors in Japan responded to the challenge from international labour migration as a force of globalisation. Using this analytical framework concerning the language barrier problem, the two ensuing chapters carry out

empirical case studies. Chapter 4 looks at the following: how the globalisation force affected Japan in the 1970s; how Japan as a force of globalisation affected East Asia from the 1970s onwards; and how international labour migration occurred in East Asia (in this case in Thailand) as a response to globalisation. Chapter 5 then examines the causes and consequences of the language barrier problem, and responses to it, in Japan in the 1990s.

CHAPTER 4

GLOBALISATION OF JAPANESE CAPITAL IN THE 1970S AND INTERNATIONAL LABOUR MIGRATION FROM THAILAND

1. Introduction

This chapter aims to locate international labour migration from East Asia to Japan in recent decades within the context of interconnectedness of political economies in the region, which is intensifying under the currently ongoing globalisation process. More specifically, it intends to demonstrate the existence of interactions between mobility of Japanese capital since the 1970s on the one hand, and population mobility from recipient countries of capital on the other. By investigating connections between different political economies at different times, this chapter is going to present that capital mobility mediates developments in countries that are geographically separated and legally independent, which is a characteristic of manifestation within globalisation process.

In Chapter 1, this study has set out the five types of interactions for analysis concerning developments in international labour migration, which are reproduced below:

Table 4-1. Interactions of the state, civil society and the individuals within international labour migration

	Actors involved	Example of interactions
(i)	State – State	Trade and financial liberalisation
(ii)	State – Civil society/ Civil society - State	Increased influence of international market force on national economies
(iii)	Civil society – Individuals	Employment contracts; commercial contracts
(iv)	Civil society – Civil society	Commercial transactions; trafficking of goods
(v)	State – Individuals	Immigration control and citizenship politics

The above analytical framework is employed in this chapter in the following ways. First, Section 2 looks at US-Japan economic relations between 1945 and 1970, and shows that Japan's response to the substantial shift in the international economic policy of the US in the 1970s culminated in its decision within its international structure to export capital. In terms of the above-mentioned interactions, this section is concerned with (i) and (ii). Second, Section 3 exhibits that the complex combination of the workings of the following economic forces created structural conditions for international labour migration from East Asia after the 1970s, in particular the case of Thailand: the Thai government's economic development policy; Chinese-Thai capital; US capital (in particular in the form of war-related spending); IMF and the World Bank; and Japanese capital. Covering all of the above-mentioned five interactions, Section 3 will point out that capital exported from Japan (which was Japan's choice under its international structure, as mentioned above) constituted an international structure for the Thai political economy. Prospective migrants made the decision (or were 'forced' to do so) to migrate within these structural conditions. The following tables indicate

factors and their manifestations that are relevant to international labour migration from Thailand to Japan.

Table 4-2. Contributing factors in labour mobility in Thailand

(i) 1945-1970

Factors	Manifestation
a. Social and demographic factors	Supply of Chinese migrant workers discontinued
b. Thai government	Rice premium; investment in industrial sector
c. Chinese-Thai capital	Introduction of commercial agriculture
d. US capital	Military spending
e. Japanese capital	Introduction of commercial agriculture; FDI in textile and retail industries

(ii) 1970s onwards

Factors	Manifestation
a. Social and demographic factors	Population increase
b. Thai government	Rural development plan
c. US capital	Withdrawal of the military
d. Japanese capital	FDI in industries
e. IMF/WB	Structural adjustments

Among the migration flows to Japan from various origins, this study pays particular attention to the case of international labour migration from Thailand to Japan. There are three reasons for this analytical focus. The first and second are concerned with the structural conditions that can culminate in international labour mobility. The third is related to the way the language barrier problem manifested in Japan in the 1990s. These three factors collectively render a peculiar

characteristic to the language barrier problem that Thai migrant workers and the Japanese state officials faced, which merits analysis as an issue in world politics.

Chapter 2 identified that the presence of the following two factors suggest that international labour migration could take place between two countries or regions: (i) inflow of foreign capital; and (ii) prior colonial relationships, the prevalence of common languages, the intensity of trade relations, the existence of transportation and communication links between the migrant sending and receiving countries. In the following, the significance of the Thai-Japan relationship is examined against the above factors. First, there is a considerable economic relationship between the two countries. The volume of export from Japan to Thailand is the largest among the ASEAN 4 countries; Japan's import from Thailand is the third largest within the ASEAN 4, but it is comparable to Malaysia; as for the volume of FDI from Japan, Thailand was the largest recipient country in the ASEAN 4 in the late 1980s, and remained the second largest in the 1990s.[1]

Second, the above economic linkage mediated by ODA, as well as through FDI and trade, can be seen as a relationship similar to the one between the early colonisers and the former colonies. According to Hook et al., the Japanese state employed ODA 'as a substitute for military power and [...] to draw the states of the region into a relationship of both political and economic interdependency.'[2] Further, transportation and communication links between Thailand and Japan have increased as economic relations have intensified in recent decades, which

[1] Glenn D. Hook; Julie Gilson; Christopher W. Hughes and Hugo Dobson, *Japan's International Relations: Politics, economics and security* (London: Routledge, 2001), pp. 442-457, Tables 1 and 2.
[2] Hook et al., *Japan's International Relations*, p. 195.

will then provide the migration industry and individual migrants access to these technologies.

The third point is with regard to the manner in which the language barrier posed a challenge for Thai migrant workers and Japan. In terms of their number, Thai migrants are much smaller than the migrants in Japan from other origins: in 2000, the Thai people constituted 1.4 percent of the entire number of foreigners entering the country, and 1.7 percent of the total foreigners registered. However, the Thai migrants' presence is more evident in the following sectors of foreigners in Japan. For example, within the foreigners registered as spouse of Japanese, Thai people's share is 4.4 percent in the same year, fifth in this registration category in 2000.[3]

Further, the following two points are more relevant for the purpose of this study. (i) Among the foreigners who were arrested, the number of Thai workers was substantial (19.7 percent in 1993), in particular in the first half of the 1990s.[4] (ii) As such, comparison between Philippine migrant workers and Thai migrant workers is possible:

- Both of those two countries have had economic links with Japan since the nineteenth century (including labour migration from Japan to the Philippines).
- The populations of these two countries do not usually speak Japanese, partly due to the fact that Imperial Japan did not carry out extensive education in the Japanese language, as it did in Korea and Taiwan (Japanese

[3] MOJ, *Dai 40 shutsunyûkoku kanri tôkei nenpô heisei 12 nen (Annual Report of Statistics on Legal Migrants for 2000)* (Tokyo: Zaimushô insatsukyoku, 2001), p. v and p. xvi; Immigration Bureau, MOJ, *Heisei 13 nenban zairyû gaikokujin tôkei (Statistics on the Foreigners Registered in Japan)* (Tokyo: Zaimushô insatsukyoku, 2001), p. 15.
[4] Yoko Sellek, *Migrant Labour in Japan* (Basingstoke: Palgrave, 2001), pp. 32-33, Table 1-3.

attempts to teach Japanese in the Philippines were less than successful). Meanwhile, to a certain degree it is possible to expect that Philippine migrant workers would speak English, leaving some possibilities whereby a Philippine migrant worker and Japanese state officials could communicate in English.

- Peak periods of apprehension are different in timing. Whereas the Philippine migrant workers were most frequently apprehended by the Japanese police in the 1980s, for the Thai workers it was in the early 1990s (after the 1990 revision of Japan's Immigration Control Act), hitting a peak in 1993.[5]

These characteristics – linguistic background and the timing of their interactions with the Japanese state – suggest that the language barrier could have influenced the cases of Thai women migrant workers more strongly than others. The following table shows the comparison between Philippine and Thai migrant workers within the context of the current study.

[5] Sellek, *Migrant Labour in Japan*, pp. 32-33, Table 1-3.

Table 4-3. Characteristics of Philippine and Thai migrant workers

	Philippine migrant workers	Thai migrant workers
Military occupation	Yes	Yes
Japanese language	No	No
English	Possible	Less likely
Majority of migrant workers in Japan	Women	Women
Peak period of apprehension	1980s	Early 1990s

Before moving on to the main parts, the argument of this chapter is as follows. International labour migration from Thailand to Japan from the1980s is both a consequence and cause of globalisation. It is a consequence, because the export of Japanese capital served as a force of globalisation for the Thai political economy. Meanwhile, migration is also a cause of globalisation, for it renders manifold effects on Japan's political economy, in particular on operation of its criminal justice administration, and the constituents of Japan's national identity, as will be explained in the next chapter. In this respect international labour migration from Thailand to Japan reflects an increasing degree of interconnectedness between political economies in East Asia within the context of globalisation.

2. Globalisation of Japanese Capital in the Post-War Years

(1) From 1945 to the 1970s

The period from 1945 to the 1970s can be characterised as the institution building of the East Asian political economy led by the US, since the presence of the US in East Asia played a crucial role in the maintenance of the regional order. Selden writes that the development of Japan's political economy in these years was 'profoundly influenced by the outcomes of the Second World War and the U.S.-Soviet conflict.'[6] Hoogvelt also states that economic growth in East Asia in the post-war years is closely related to 'the geo-political reality of US Pacific dominance.'[7]

The US policies concerning Japan's economic recovery from 1945 to1947 concentrated on demilitarisation and democratisation. Implementation of the new economic recovery policy in Japan began with aid programmes and economic reforms. During these years, the Occupation Force thought that Japan should not be given help for economic revival and reintegration with East Asia. It was against the above backdrop when the Dodge Line deflationary economic reforms were implemented in 1947 to curb the hyper-inflation, and to establish Japan's fiscal and monetary system on a firm basis.[8]

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[6] Mark Selden, 'China, Japan and the Regional Political Economy of East Asia, 1945-1995', in Peter J. Katzenstein and Takashi Shiraishi (eds), *Network Power: Japan and Asia* (Ithaca: Cornell University Press, 1997), pp. 306-340, p. 306.
[7] Ankie Hoogvelt, *Globalisation and the Postcolonial World: The New Political Economy of Development* (Basingstoke: Macmillan, 1997), p. 210.
[8] William R. Nester, *Japan's Growing Power over East Asia and the World Economy: Ends and Means* (London: Macmillan, 1990), pp. 19-24.

However, Japan's reconstruction policy directed by the US changed after 1947. In accordance with the 1947 Containment Doctrine ('the creation of a pan-Asian structure of U.S. based alliances deployed to counter Soviet and Chinese regional power and prevent the spread of revolution'[9]), the US recognised that Japan had the potential to become an 'engine of growth in East Asia,' and that the economic recovery of Japan was necessary for the advancement of a free trade system. Hence the core goal of Japan's recovery became 'the reconstruction of Japan as the economic and financial linchpin of Asia within the framework of U.S. strategic and economic supremacy.'[10]

The development of Japan's international trade framework in East Asia in the post-war years involved the following three points: (i) establishment of trade links between Southeast Asia and Japan; (ii) promotion of Japanese trade; and (iii) international immobility of Japanese capital. These three points are explained below in turn. First, the US policies aimed at integrating Japan into the free world economy included transformation of the trade framework in East Asia, which rendered Japan's international economic environment of the post-war years distinct from that of the pre-war years. The US planned the role of the Asian countries as being the providers of raw materials to Japan, as well as potential markets for Japanese products.[11] Therefore, despite the fact that it wished to maintain its trading interests with mainland China that existed before the war, Japan officially abandoned hope as the Peace Treaty was put at risk by the US

[9] Selden, 'China, Japan and the Regional Political Economy of East Asia', p. 308.
[10] Selden, op. cit., p. 308.
[11] Nester, *Japan's Growing Power over East Asia and the World Economy*, pp. 22-23.

unless Japan recognised Taiwan.[12] Selden writes that restoring Japan's economic ties with the countries in Southeast Asia was 'critical to a Japanese economic recovery consistent with the U.S. attempt to isolate China.'[13] Second, the US promoted trade between Southeast Asia and Japan through such measures as dollar aid tied to the purchase of Japanese goods, or establishing a government office that promotes Japan's trade interests in South East Asia. In addition, the US awarded the most favoured nation status to Japan in 1953. It also persuaded member countries of international organisations to allow Japan's entry into IMF, the World Bank, GATT and OECD. Japan's trade with South East Asia began to increase after the mid-1960s,[14] due to these measures. The beginning of the maturing of the South East Asian market, and the increased competitiveness of Japanese products, also contributed to the above increase in the volume of trade. As for Japan's own actions, war reparation, aid and FDI are the mechanism with which Japan established economic linkage with the political economies in Southeast Asia.[15]

Third, Japanese capital was internationally immobile during this period. In order to secure its economy from international financial influences (namely, to protect the Japanese industries from international competition), Japanese government controlled foreign exchange and banned capital export. A fixed exchange rate was introduced in 1947 as part of the Dodge Line economic reforms mentioned above. The exchange rate of 360 yen to a dollar was designed

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[12] Nester, op. cit., p. 33.
[13] Selden, op. cit., p. 309.
[14] Nester, op. cit., pp. 36-37.
[15] Dominic Kelly, *Japan and the Reconstruction of East Asia* (Basingstoke: Palgrave, 2002), pp. 81-84.

to assure Japanese industries to produce export profit. The Foreign Exchange and Foreign Trade Control Law of 1949 provided the government with the power to regulate trade within the amount of foreign exchange reserves available to Japan. The Foreign Investment Law in 1950 prevented retrieval of profits to the investors' home country, with the effect of protecting Japanese industries from foreign investors.[16]

(2) 1970s Onwards

The 1970s saw a series of events that have reconfigured the international political economy in comparison to the post-war years up to the beginning of the 1970s. The following events, drawn from the list compiled by Selden, are relevant for the analysis of this section, since these developments contributed to 'a transition in the hegemonic politics and the regional political economy of East Asia': (i) the collapse of the U.S. dollar and the end of the gold standard (1970); (ii) the proclamation of the Nixon Doctrine, U.S. inability to prevail on the battlefield in Indochina (1969), the scaling back of U.S. strategic commitments in mainland Asia, and a new approach toward China (1970); and (iii) the beginning of significant Japanese overseas manufacturing investment in Asia, particularly in the NIEs (early 1970s).[17]

The background factors of the above events during the early 1970s include the following matters. Mendl argues that such factors as the constant

[16] Nester, op. cit., p. 26.
[17] Selden, op. cit., pp. 313-314.

trade deficit, the material and psychological cost of the Vietnam War, and the decreasing competitiveness of US products contributed to US policy changes and the subsequent exchange rate adjustments in 1971 and 1973.[18] Selden writes as follows, sharing a similar view with Mendl: '[p]rotracted wars in Korea and Indochina, together with the costs of maintaining a high-flung network of bases, undermined the strength of the dollar and fiscal foundation of U.S. hegemony.'[19] Mendl reported that the decline in the US gold reserves, the cause of the devaluations of the US dollar, had been going on since the end of the 1950s.[20] Meanwhile, Nester claims that, despite the fact that it took such measures as 'import barriers, export subsidies, direct and indirect economic technological and military aid, and open world economy', the US failed to contain the Japanese economy that the US had developed in the post-war years.[21] Mendl further argues that the end of the Cold War revealed conflict over economic interests between the US and Japan, which had been contained when these two states gave priority to shared security concerns.[22] The impact of capital mobility on the US economy in the 1970s has already been discussed in Chapter 2. It has to be noted here that capital mobility (that of overseas US dollars) affected the US economy, culminating in these policy shifts. As will be shown below, these shifts in US policy then influenced the operation of Japan's political economy during the 1970s onwards. The above linkage clearly indicates that capital mobility is instrumental toward globalisation.

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[18] Wolf Mendl, *Japan's Asia Policy* (London: Routledge, 1995), p. 41.
[19] Selden, op. cit., p. 313.
[20] Mendl, *Japan's Asia Policy*, p. 40.
[21] Nester, op. cit., pp. 42-43.
[22] Mendl, op. cit., p. 43.

The impact of the above exchange rate adjustments and the oil crises led to the restructuring of Japanese industries. Having undergone an increase in production costs after the first oil crisis, the METI (then MITI) announced the so-called 'Long Term Vision' in 1974, advocating for transforming the Japanese domestic economy from heavy industry based economy to a 'post-industrial economy,' which meant that the economy consisted of industries that would be less exposed to the fluctuations of raw material prices. In this connection, the government encouraged the Japanese multinational corporations to implement foreign direct investment, in order to: (i) find a cheaper and more stable supply of raw materials; (ii) shift labour-intensive industries to foreign countries; and (iii) find a cheaper labour force.[23]

Prior to publication of the above industrial policy shift, the Japanese state had cleared the ground for making its capital internationally mobile. After foreign exchange surplus accumulated during the 1960s, the Bank of Japan relaxed the regulation on foreign direct investment in 1969, and effectively removed it in 1971.[24] Thus Japan's FDI, which had begun in the mid-1950s, increased in the 1970s.[25] FDI from light industries, the industrial sector that was severely hit by the first oil crisis, began in the 1970s. However, FDI from other sectors of the Japanese economy, such as car, electric and electronic industries, did not take place at this time. This was because they managed to respond to the changes in the international economic environment in the 1970s by increasing exports of products and manifold cost-cutting measures.

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[23] Nester, op. cit., p. 71.
[24] Ibid., pp. 65-66.
[25] Kelly, *Japan and the Reconstruction of East Asia*, p. 84.

Nevertheless, the impact of the 1986 exchange rate adjustment after the Plaza Accord of the previous year, which was 'an attempt to bring under control Japan's enormous trade surplus with the United States and other nations',[26] was substantial to the Japanese economy. Appreciation of the yen in 1986-87 almost doubled the value of the currency, and reduced Japan's export markets in the US and Europe, because export price in those markets increased by twofold. Japan's political economy tried to compensate for the loss of the export market by expanding the domestic market, but it eventually failed to do so (burst of the 'bubble' economy), and consequently export of Japanese capital began.[27] It was against the above backdrop that Japanese business began to advocate 'internationalisation' and foreign direct investment.[28]

From the above it has become clear that the progression of globalisation and the ending of Cold War in East Asia have contributed to an increased degree of interconnectedness between the political economies of the region. Selden writes that after the 1970s, 'greater autonomy, regional unification, rapid integrative regional growth, and redefinition of the regional position of both superpowers' became possible in East Asia.[29] Consequently, the increased degree of interconnectedness was evident in terms of 'intensification of diverse forms of intra-regional economic exchange, including flows of trade, loans, direct and indirect investment, technology, communications, transportation, labor, and

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[26] Selden, op. cit., p. 321.
[27] Rob Steven, *Japan and the New World Order: Global Investments, Trade and Finance* (London: Macmillan, 1996), pp. 58-67.
[28] Steven, *Japan and the New World Order*, p. 69.
[29] Selden, op. cit., p. 313.

travel.'[30] Japan played a key role in this process. Japan has taken an initiative (primarily led by the then MITI[31]) in the economic regionalisation of East Asia, as Kelly points out below. This role that Japan played merits attention here, because, as will be shown in next section, economic regionalisation provided a basis for international labour migration:

> '[T]his deepening regional influence [...] is no accident, and has in fact been driven along by, amongst other things, the conscious actors of the Japanese government and bureaucracy in reaction to events and circumstances in the domestic environment.'[32]

Having seen that international economic structure affected Japan's export of its capital, and then such capital export influenced the regionalisation of the East Asian political economies, the next section examines the impact of Japanese capital exported to Thailand in the 1970s, with particular attention to its influence on the mobility of labour.

3. International Labour Migration from Thailand

(1) Period of Analysis in This Section

Section 2 demonstrated the way the shift in international economic structure in the 1970s induced Japan's political economy to reformulate its operation through cost reduction and industrial restructuring, and eventually, by exporting its capital.

[30] Ibid., p. 321.
[31] Kelly, op. cit., p. 86.
[32] Ibid., p. 86.

Making another analytical step from the above, this section aims to present the way the capital exported from Japan affected the political economy of Thailand during the 1970s and early 1980s, creating structural conditions for labour mobility there. The analytical framework for international labour migration, which was presented in Chapter 2, includes the following two aspects of migration: (i) occurrence of population mobility; and (ii) perpetuation of this mobility. The focal point of analysis of the current section is the first of the above two aspects, namely initiation of labour migration. In particular, the section pays attention to the following three factors: (i) changes in the production process, which mobilises parts of labour; (ii) wage differentials, which affect a migrant's (and migration brokers') intention to move; and (iii) demographic trend as a general background.

As for the focal period of analysis, this study looks at the years from 1970 to the early 1980s. The reason for this focus is as follows. In terms of total volume, FDI from 1970 to the early 1980s is much smaller than that of the late 1980s. However, as will be shown later in this section, this study finds the direct impact of FDI on the agricultural sector (major source of labour mobility) to have been more significant during the 1970-early 1980s period, than the latter. This coincides with the data that the volume of Japanese FDI invested in the Thai agricultural sector was between 1.2-1.6 percent of the entire FDI flow during the 1980-1991 period.[33] Hence it is possible that FDI in the late 1980s could have

[33] Suphat Suphachalasai, 'Export-Led Industrialisation', in Mehdi Krongkaew (ed.), *Thailand's Industrialization and its Consequences* (Basingstoke: Macmillan, 1995), pp. 66-84, p. 80.

rendered indirect influence on agriculture, through secondary and tertiary sectors, and also perpetuated the existing population flow.[34]

Table 4-4. Japan's FDI to ASEAN 4 Countries (US$ millions)

	1970	1975	1980	1985	1989	1990	1995	1997
Indonesia	49	585	529	408	631	1,105	1,569	2,514
Thailand	13	14	33	48	1,276	1,154	1,224	1,867
Malaysia	14	52	146	79	673	725	573	791
Philippines	29	149	78	61	202	258	718	524

Source: Hook et al., *Japan's International Relations*, pp. 450-457, Table 2.

(2) 1945-1970s

a. Social and demographic factors

The following demographical factors that existed during the post-war years were relevant to the labour mobility in the political economy of Thailand: the lack of supply of Chinese migrant workers in Bangkok and population growth since the 1950s. First, Chinese immigrant labour used to be available in non-agricultural

[34] This does not at all downplay the significance of Japan's capital export to East Asia in the late 1980s. Its implications are clear as Bowie and Unger write on the export of Japanese capital. According to them, an important characteristic of the Japanese capital imported in Southeast Asian countries was that it was used for the introduction of export-oriented agriculture and/or export-oriented manufacturing. The capital exported from Japan to Southeast Asian countries in the late 1980s have compensated the latter's loss of access to capital, and also have contributed to economic growth of those countries. The above capital export took the form of ODA (which began to increase in the 1980s and surpassed that of the US in 1989) and FDI from Japan. East Asian NICs also carried out FDI into the region in the same period. The importance of the above capital export becomes much more clearer when compared with the conditions of other developing countries: during those years, the other developing countries other than East Asia were often unable to obtain capital from commercial financial markets after the two oil crises, while simultaneously the direction of net capital flow reversed towards the North (Alasdair Bowie and Danny Unger, *The Politics of Open Economies: Indonesia, Malaysia, the Philippines, and Thailand* (Cambridge: Cambridge University Press, 1997), p. 14, pp. 37-42).

sectors, namely 'in developing Bangkok, in the mines of the south and in a range of small industries' from the late 1880s up to the 1930s.[35] But the establishment of the People's Republic of China (PRC) in 1949 meant that this labour supply was no longer available.[36] Second, distribution of population was sparse and rural income was 'relatively high' until the 1950s. But since then, population growth and 'pressure on rural incomes' changed the above population balance, which paved the way for 'labour-intensive, urban-based industrial development'[37] whereby migrant labour will be required.

b. Thai government

During this period, the Thai government's economic development policy contributed to the creation of structural conditions for labour mobility, through transferring economic resources from the agricultural sector to the industrial sector. Taxation on rice was the main instrument for such a policy. Collected tax was 'used to finance government expenditure',[38] as well as having been an effective subsidy for Bangkok residents,[39] while reducing the return on rice production.[40] One consequence of such a policy could be the creation of a

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[35] Kevin Hewison, 'Thailand: Capitalist Development and the State', in Garry Rodan, Kevin Hewison and Richard Robison (eds), *The Political Economy of South-East Asia: an introduction* (Melbourne: Oxford University Press, 1997), pp. 93-120, p. 99.
[36] Malcolm Falkus, 'Thai Industrialization: An Overview', in Krongkaew (ed.), *Thailand's Industrialization and its Consequences*, pp. 13-32, p. 30.
[37] Falkus, 'Thai Industrialization: An Overview', p. 31.
[38] Kunio Yoshihara, *The Nation and Economic Growth: The Philippines and Thailand* (Kuala Lumpur: Oxford University Press, 1994), p. 101.
[39] Robert J. Muscat, *The Fifth Tiger: A Study of Thai Development Policy* (Tokyo: United Nations University Press, 1994), p. 99.
[40] Ibid., pp. 75-77.

domestic income difference, which could culminate in the generation of a structural condition for labour mobility.

Thailand's first economic development plan (1961-66) promoted private investment, with the government concentrating on infrastructure building.[41] Despite the plan targeting both agricultural and industrial sectors, in practice domestic and foreign investment concentrated on industrial sectors, where there was no state intervention or foreign competition.[42] Hewison wrote:

> '[T]he majority of capital invested with governmental promotional privileges went into import substituting industries. The taxation and export of agricultural production and the extraction of savings from households into the commercial banking sector provided a pool of funds for industrial development'.[43]

Despite such treatment, the Thai agricultural contributions to the economic growth during the import substitution industrialisation were multiple. The first of such contributions was export income. During the 1960s and 1970s, agricultural exports constituted the major source of foreign exchange income for Thailand, and provided the government and manufacturing with finance machinery.[44] Second, as mentioned above, agriculture supplied food at a relatively low price to the industrial sector. Third, it supplied seasonal labour force. Fourth, it also gave savings and revenue source to the urban area.[45] During this period, the Thai

[41] Hewison, 'Thailand', p. 102.
[42] Hewison, op. cit., p. 102.
[43] Ibid., p. 102.
[44] Suphat Suphachalasai, 'Export-Led Industrialization', p. 67; Medhi Krongkaew, 'Contributions of Agriculture to Industrialization', in Krongkaew (ed.), op. cit., pp. 33-65, pp. 43-50.
[45] Krongkaew, 'Contributions of Agriculture to Industrialization', pp. 43-50.

economy recorded 7 percent GDP growth, on average, under 'a very stable price environment' that benefited the agriculture.[46]

While making such contribution, the Thai agriculture experienced negative impacts for decades:

> 'It is estimated that from 1963-1984 there was a net transfer of 30,000 million baht from agricultural sector [...], resulting in rural poverty and income disparities and negatively affecting the growth of rural industry.'[47]

The significance of such a limit on income may become clearer when the following points are taken into account: while its share in GDP has continued to decline since 1960, Thailand's agriculture continued to be the major source of employment and livelihood.[48] Hewison wrote: '[a]mong the poorer classes, farmers faced very low prices and wages were eroded by inflation and increased government charges.'[49] By the time the First Economic Development Plan ended, the Thai government was aware of the uneven distribution of input and output between agricultural and industrial sectors.[50] From this, it is evident that the Thai government's post-war economic policy has created a difference in domestic income between the agricultural and industrial sectors (largely coinciding with rural and urban areas), which constitutes a condition for labour mobility. How the Thai government addressed the consequence of uneven distribution will be reported later in this section.

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[46] Muscat, *The Fifth Tiger*, p. 97.
[47] Nipon Poapongsakorn, 'Rural Industrialization: Problems and Prospects', in Krongkaew (ed.), op. cit., pp. 116-140, p. 133.
[48] Krongkaew, op. cit., pp. 34-36.
[49] Hewison, op. cit., p. 104.
[50] Muscat, op. cit., pp. 96-97.

c. Chinese-Thai capital

The role of Chinese-Thai capital in this period can be characterised in the following two respects: introduction of commercial agriculture; functioning as intermediary for introducing foreign capital. Social incorporation of the Chinese population into the Thai society since the 1950s was a potential political concern for the Thai state, but it also had positive implications for the Thai economy. According to Falkus, the Chinese-Thai were 'encouraged' to invest in Thailand after 1949, as their links with mainland China were disrupted after the establishment of the PRC.[51] Suzuki Noriyuki, one of Japan's leading Sociologists specialised in economic development in Thailand, reports such an example: in one district of the northeast region of Udon Thani a Chinese trader introduced sugar cane production in around 1950,[52] working as 'a principal channel through which joint ventures with overseas firms have developed in Thailand.'[53] Similarly, Yoshihara writes that after the establishment of the PRC, the Thai government was 'liberal towards the Chinese and foreign capital.' Consequently it managed to let the Thai economy 'benefit from the business acumen of the Chinese, who accounted for over 10 per cent of the population, and to rely on foreign capital extensively in pioneering manufacturing'.[54] Thai nationality law, which operates on the *jus soli* citizenship principle, also allowed Chinese residents to assimilate

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[51] Falkus, op. cit., pp. 28-29.
[52] Suzuki Noriyuki, *Daisan sekai ni okeru mou hitotsu no hatten riron (Alternative Development in the Third World – A Case Study of Thai Villages)* (Tokyo: Kokusai shoin, 1993), p. 85.
[53] Falkus, op. cit., pp. 28-29.
[54] Yoshihara, *The Nation and Economic Development*, pp. 3-4.

in society and get involved in the economy.[55] These Chinese-Thai residents thus formed provincial businesses, which acquired extensive sources of income in the later years. Phongpaichit and Baker reported such sources of income available for provincial businesses:

> 'First, from the cash crop expansion in which local merchants played a critical and profitable linking role between the agribusiness company and the cultivator. They leased tractors, sold farming inputs, provided loans, handled crop marketing. Second, from investing in trading and service business buoyed up by local demand. [...] Third, from government contracting for construction work and the supply of materials. [...] Fourth, from any array of semi-legal and illegal businesses including logging, smuggling, gambling, gun-running and drug-trading.[56]

The above indicates that, it is possible to expect that the operation of Chinese-Thai capital during this period was instrumental for industrial restructuring in agriculture and the introduction of commercial loans, probable consequences of which include the creation of conditions for labour mobility.

d. US capital

The US has provided Thailand with economic, military and technical assistance since the 1950s.[57] US aid for Thailand in the 1950s and 1960s was mainly spent

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[55] Ibid., p. 5.
[56] Pasuk Phongpaichit and Chris Baker, 'Power in transition: Thailand in the 1990s', in Kevin Hewison (ed.), *Political Change in Thailand: democracy and participation* (London: Routledge, 1997), pp. 21-41, pp. 29-30. This fourth source of income appears to indicate a possible link to human smuggling in Thai rural economy.
[57] Bowie and Unger, *The Politics of Open Economies*, p. 135.

in the Northeast region, a representative case being the Friendship Highway.[58] Lack of data available prevents elaborating on this point, but it is likely that the above US aid (one form of capital mobility) resulted in domestic labour migration in Northeast Thailand, with the consequence that some of the agricultural population were employed for aid- and military-related projects. The region benefited from such aid for decades, but then saw adverse effects, as will be shown later in this section.

e. Japanese capital

Unlike its relation with other countries of East Asia after the defeat in the Asia Pacific War, the period in which Japanese capital was absent from Thailand was relatively brief. Japanese trading companies returned to Thailand in 1951 after the conclusion of the San Francisco Peace Treaty.[59] Japanese banks (Mitsui Bank in 1952 and Bank of Tokyo in 1962) were also allowed to re-enter Thailand, when there were restrictions put in place by the Thai government on the new-entry of foreign banks.[60] Inter-state relations between Thailand and Japan have been instrumental to Japanese capital's return to the Thai economy, as shown below. Thailand and Japan normalised their diplomatic relations in 1952,[61] and the relation between two governments was 'friendly'.[62] Negotiation for war compensation between the two countries was unusually favourable for Japan.

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[58] Muscat, op. cit., p. 120; Bowie and Unger, op. cit., p. 131.
[59] Yoshihara, op. cit., pp. 41-42.
[60] Ibid., p. 41.
[61] Ibid., op. cit., p. 54.
[62] Ibid., op. cit., pp. 54-55. According to Yoshihara, Prime Minister Phibul Songkram was accepted in Japan after he was ousted in 1957, and stayed there until his death.

Yoshihara wrote that Thailand could have sought substantially more by claiming that Thailand suffered from Allied bombing after being 'forced to become Japan's ally.'[63] However, the only issue on the war compensation negotiation was 'the B1.6 billion worth of obligations the Japanese military had incurred through the issues of yen military scripts.'[64] Nevertheless, the final settlement was reached in 1961, and Japan was supposed to provide ¥ 9.6 billion ($26.7 million) in Japanese goods and services for 8 years.[65]

The Japanese capital that returned to post-war Thailand soon began to collaborate with Chinese-Thai businesses. Yoshihara reported how Japanese trading companies and Chinese business networks modernised Thai agriculture to become able to export non-rice products.

> 'It was through this Chinese network that foreign price signals were transmitted to the rural sector, finances were arranged, and processing was undertaken. ... [When they were needed for starting export crop production, small tractors] were imported by Japanese trading companies from Japan, and distributed by Chinese middlemen with their finances. The Chinese distribution network also made further mechanization.'[66]

The above indicates that operation of Japanese capital in the post-war years up to the 1970s has contributed to industrial restructuring in agriculture, which is a condition that renders labour mobility possible. In this respect, the following account by an NGO in Thailand is instructive, because it supports the above theoretical expectation (even if it refers to recent decades in general, and is not

[63] Ibid., pp. 54-55.
[64] Ibid., p. 54.
[65] Ibid., p. 54.
[66] Ibid., p. 104.

necessarily specific to the years that this section has been discussing, namely the years preceding the 1970s): (i) operating costs of agriculture in Thailand have increased to exceed agricultural income, one major reason being the introduction of agricultural machinery; (ii) the decline of traditional small credit among peasants, and the subsequent reliance on a third party's commercial credit, caused difficulties among peasants.[67]

f. Impact on labour migration

To recapitulate the findings so far, there were at least three factors that could have contributed to the creation of structural conditions for labour mobility in the Thai political economy. The first was the income transfer from agriculture to manufacturing by the Thai government's rice premium policy (domestic income difference). The second was the modernisation of agriculture and the introduction of commercial loans (industrial restructuring). The third was demographic conditions in Thailand during the period, namely population growth among ethnic Thais and the discontinued supply of Chinese immigrant workers.

[67] Tai-nichi ijû josei nettowâku and Takrai (Thailand-Japan Network for Migrant Women and Takrai), *Enpawâmento o mezashite: ijûjoseimondai kaiketsu no tameno nettowâku zukuri, wâkushoppu hôkokusho (Aiming for the Empowerment: Report of the workshop on problem solving network building for immigrant women's issues)*, Chiang Rai, Thailand, 24 and 25 November 2001, p. 23.

(3) 1970s Onwards

a. Social and demographic factors

The Thai government continued import substitution industrialisation in the 1970s, but transition to export oriented industrialisation was called for by businesses at the end of the 1970s, on an assumption that domestic markets were thought to have been exhausted.[68] Hewison identified six major events that influenced the transition: (i) appreciation of the value of the baht since the 1970s and the subsequent relative loss of export competitiveness; (ii) the beginning of East Asian business relocation; (iii) continued decline in international prices for agricultural commodities from the late 1970s; (iv) increase in the public sector debt after the government sought a loan to finance the cost of oil that soared after the second oil crisis; (v) reduction in US military assistance after the mid-1970s; and (vi) the spending spree by the Thai military, claiming that new arms were needed to prepare for the increased concern about regional conflict.[69] As will be presented below, some of these developments were instrumental in creating the conditions for labour migration.

[68] Bowie and Unger, op. cit., p. 146.
[69] Hewison, 'Thailand', p. 104.

b. Thai government

During this period, the Thai government implemented policies to rectify the negative consequences of skewed resource distribution in the preceding decade, which most evidently manifested in the agricultural sector. However, those measures achieved a limited degree of success, thus the structural conditions for labour mobility remained in place in the Thai agricultural sector. There are two significant events for Thai agriculture during the 1980s. First, non-agricultural production outnumbered agricultural production. In terms of sectoral volume in export, 'manufactured exports began surpassing agricultural exports' in the mid-1980s.[70] Hewison writes:

> '[I]n 1960s [agriculture] was the most important economic sector. It accounted for almost 40 per cent of GDP, most exports, and employed the bulk of the population. [...] By 1993, while agriculture was probably still the larger employer of labour, it produced just 10 per cent of GDP, ranking lower than manufacturing, trade and services.'[71]

Implications of the above development were twofold: (i) the output that may be distributed to the population in the agricultural sector has declined in relation to the non-agricultural sector. It is possible that this made the agricultural population seek non-agricultural income. Official employment figures on the economically active population (8.2 percent in 1960 and 60 percent in the early 1990s) indicate the extent of substantial changes that the population in the

[70] Yoshihara, op. cit., p. 47.
[71] Hewison, 'Thailand', p. 105.

agricultural sector have undergone. As a consequence, the search for non-agricultural employment began.[72] (ii) In addition to the above, the takeover of agricultural output by the non-agricultural also means the emergence of the need for the Thai political economy to seek alternative foreign exchange income. The above takeover in industrial output sources and the subsequent foreign exchange deficit meant that, even though non-agricultural output had increased from before, it was not yet possible for Thailand to earn sufficient amount of foreign exchange to cover the entire amount it spends. That is why the government formulated export promotion measures to attract foreign direct investment. The need for foreign exchange will also form a backdrop of migration promotion policy.

Second, rural development was put on the political agenda after two decades of skewed resource distribution that favoured the manufacturing sector. The measures included those concerning rice premium, cultivating land, and credit allocation are relevant here: (i) In 1985, rice premium was withdrawn as a part of the structural adjustment program.[73] However, reduction in the rice premium to zero 'has increased the exposure of rice-dependent farm households to swings in annual income'.[74] This could have constituted another potential condition for labour mobility. This finding coincides with the report by a Thai NGO on economic conditions of Thai peasants. It states that in recent decades income from agriculture is limited and unstable, because agricultural commodity prices remain low and yet volatile; in addition, unlike urban employees who receive monthly salaries, peasants may receive agricultural income only once or

[72] Ibid., pp. 105-107.
[73] Muscat, op. cit., p. 192.
[74] Ibid., p. 242.

twice a year, which makes it more difficult for them to manage their cash flow.[75] (ii) Legal procedures to increase cultivating land were planned and implemented with a limited degree of success,[76] so was the government's plan to divert credit to agriculture.[77] Therefore, despite the Thai state planning and implementing income redistribution policy for the benefit of the agricultural sector, the extent of the income difference reduction was limited, leaving the possible conditions for labour mobility.

c. US capital

The presence of US capital in Thailand between the 1950s and 1970s rendered both positive and negative consequences to the Thai economy. As referred to earlier, US aid in the form of economic, military and technical assistance began in the 1950s, and its volume increased in the 1960s. In addition, US military spending related to its air and naval bases in Thailand also contributed to the Thai economy, as well as spending by the US troops, either those stationed in Thailand or those on vacation.[78]

> 'From 1950 to 1975, US military aid amounted to over half of total Thai defence expenditures; between 1966 and 1971 US military aid along with World Bank loans provided some one-third of public capital spending.

[75] Tai-nichi ijû josei nettowâku and Takrai, *Enpawâmento o mezashite: ijûjoseimondai kaiketsu no tameno nettowâku zukuri, wâkushoppu hôkokusho*, p. 23
[76] Muscat, op. cit., pp. 192-193.
[77] Yoshihara, op. cit., pp. 117-118.
[78] Bowie and Unger, op. cit., p. 135.

> Increasing US military spending in Thailand after 1965 helped boost the construction sector through the 1960s.'[79]

However, after the ending of the Vietnam War, US military bases in Thailand were closed, and aid was withdrawn as well. The impact of US withdrawal is evident in the case of a village in Udon Thani, the northeast region. Udon Thani had lost two of its economic income sources by the middle of the 1970s. First was withdrawal of the US military, which stationed in the region, in 1976. Second, Udon Thani used to be an access point for trade with Laos; but it has ceased to be so since 1975, when commerce between Laos and Thailand stopped after the establishment of a socialist state in Laos.[80] The withdrawal of US aid and war-related spending thus led to the loss of income for the residents in the Northeast region of Thailand, which could constitute a condition for labour mobility.

d. Japanese capital

In contrast to US capital, the presence of Japanese capital in Thailand continued to expand during the two decades of import substitution industrialisation. In

[79] Ibid., p. 135.
[80] Suzuki, *Daisan sekai ni okeru mou hitotsu no hatten riron*, p. 83. The end of the Vietnam War affected Thai military economically as well as in its military roles. During the war years, Thai military allowed operations of non-formal trade, with financial benefits from the trade in return. But after the ending of the war, the Thai military is 'criticized for such entanglements, and especially those with the Khumer Rouge and the military Regime in Burma' (Chai-Anan Samudavanija, 'Old soldiers never die, they are just bypassed', in Hewison (ed.), *Political Change in Thailand*, pp. 42-57, p. 51). This indicates that Thai military's income from border trade may have decreased.

manufacturing, investments were made in textiles,[81] automobile assembly and automobile parts manufacturing.[82] For example, Toyobo invested in Thailand to set up Erawan Textile Co. and Dusit Textile CO. in the 1960s, with Marubeni as a minor equity holder.[83] The following account shows the extent of the presence of Japanese capital in the Thai economy during the import-substitution industrialisation. 'Under the growth-oriented Sarit and Thanan-Prapart regimes', Thai-Japanese joint venture companies

> 'accounted for 40 per cent of cotton spinning, 70 per cent of synthetic spinning, 100 per cent of synthetic fibre, 71 per cent of motor car, 100 per cent of motor cycle, 51 per cent of battery, 53 per cent of wire rod, 100 per cent of sheet glass, 100 per cent of printing ink, 83 per cent of refrigerator, 75 per cent of air conditioner, 47 per cent of electric fan, and 38 per cent of tyre production'.[84]

In the Thai retail industry, where minority investment up to 49% of total shareholding was permitted, various Japanese retailers opened their stores, such as Daimaru, Jusco, Sogo, Tokyu and Yaohan in Thailand.[85] As Japanese investment became ubiquitous in the Thai economy, the anti-Japanese movement occurred in the early 1970s, its peak was the Anti-Japanese Product Week organised by the National Students Center of Thailand in November 1972.[86] From the above

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[81] Pasuk Phongpaichit, 'The Thai Economy in the Mid-1990s', in Robert Ash and Anne Booth (eds), *The Economies of Asia 1950-1998* (London: Routledge, 2000), pp. 184-197, p. 186; Hewison, op. cit., p. 103.
[82] Hewison, op. cit., p. 103.
[83] Yoshihara, op. cit., p. 44.
[84] Ibid., p. 44.
[85] Ibid., pp. 42-43.
[86] Ibid., pp. 57-58.

industrial restructuring in which Japanese capital operated, it is possible to expect that labour mobility was generated as a consequence of such restructuring.

e. IMF and World Bank

As was mentioned earlier, Thailand's economic development strategy shifted from import substitution industrialisation to export oriented industrialisation at around the beginning of the 1980s. The impact of the second oil crisis is relevant to this shift. The Thai economy largely managed to offset increase in the price of oil after the 1973 oil crisis with the commodity export price increase.[87] However, after the second oil crisis of 1979, concerns over Thailand's foreign exchange reserve emerged.[88] Trade and current account deficit forced Thailand to borrow from the IMF in 1981 and 1985, and the government also asked the World Bank for structural adjustment loans in 1982 and 1983 ($150 million in March 1982; $175.5 million in April 1983).[89]

Consequently structural adjustment measures, that aimed to promote export of manufactured products, were incorporated in the Fifth Economic and Social Development Plan (1981-86). These measures included:

(i) Devaluation of the baht in 1981 and 1984, from B20 per dollar before devaluation to B27 in 1985.

(ii) Liberalisation of foreign ownership of Thai companies to allow up to 100 percent share in export-oriented industries.

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[87] Bowie and Unger, op. cit., p. 139.
[88] Ibid., p. 139.
[89] Ibid., p. 142; Muscat, op. cit., pp. 180-182.

(iii) Tax exemption for export companies.

(iv) Lifting of the restrictions on commodity agriculture export in 1981.[90]

FDI in Thailand increased substantially in the late 1980s against the above background: it grew from $164 million in 1985 to $2.5 billion in 1990, which occupied 2.3 percent of GDP.[91] Yoshihara attributes these export promotion measures to the concentration of Japanese and Taiwanese investment in Thailand in the late 1980s, among other origins of FDI.[92] Financial deregulation was also implemented in the late 1980s.[93] Thailand's foreign exchange crisis in the early 1980s had twofold consequences for creating conditions for labour mobility. Removal of the rice premium, one of the structural adjustment measures mentioned above, exposed Thai agriculture to world commodity price fluctuation, which meant the reduction of income available for the sector. Another consequence was the Thai state's promotion of international labour migration in the hope of increasing foreign exchange income. Hence, the Thai government's compliance to policy prescriptions the IMF and World Bank led to the emergence of two factors that could serve as conditions for labour migration: increased difficulties in the agricultural sector in sustaining the previous income, and the state's promotion of international labour migration.

[90] Bowie and Unger, op. cit., p. 143.
[91] Ibid., p. 151.
[92] Yoshihara, op. cit., p. 59.
[93] Bowie and Unger, op. cit., p. 152.

f. Impact on labour migration

Because of the complex workings of the above factors, as have been demonstrated in this section, labour became mobile in the Thai political economy. The following table presents the findings of this section on the contributing factors and their influence on labour mobility:

Table 4-5. Contributing factors and the conditions for labour mobility created

Contributing factor	Conditions created
Social and demographical conditions	Decline in mortality and the subsequent population growth
Thai government's economic policy	Lack of cultivatable land; domestic income difference
Chinese-Thai capital	Industrial restructuring in agriculture (introduction of commercial agriculture, commercial loan; provincial business)
US capital	Aid and construction; the subsequent withdrawal from Thailand
Japanese capital	Industrial restructuring in agriculture and manufacturing
IMF and World Bank	Thai government policy compliant to the structural adjustment: commodity price fluctuation; promotion of labour immigration

It must be noted here, however, that the above factors refer to the structural conditions for labour mobility. The actual decision to migrate is contingent upon other factors as well, such as another structure (patriarchy), and the factors attributable to individual migrants as active agents.

The following accounts on labour mobility in the Thai political economy, drawn from existing sociological studies on contemporary Thailand, clearly reflect the influence of the above factors on labour mobility. For explanatory

purposes, it is possible to classify the mobility of Thai labour in the following four phases:

(i) 1960s onwards: domestic and seasonal labour migration

(ii) Mid-1970s onwards (after the Vietnam War): international labour migration to the Middle East

(iii) 1990 onwards (after the Iraqi invasion of Kuwait): international labour migration to East Asia

- 1960s onwards

Population increase and the decreasing availability of new land available for cultivation are attributed to pressure on the rural economy in the 1960s and 1970s. Such pressure was manifest in 'the fragmentation of farms and the growing incidence of tenancy, landlessness and indebtedness in some regions; [and] migration from poorer areas.'[94] Agricultural production in Thailand is 'seasonal and heavily dependent upon the monsoon rain – which is concentrated in only four months'.[95] Nevertheless, about 85 percent of the cultivated area is not irrigated. Consequently in the dry season 'a few million workers become idle' and seek temporary jobs.[96]

The above need for domestic labour migration is illustrated in the following case of the Udon Thani area, northeast Thailand, where labour migration most frequently occurred in the country. Suzuki reported that from 1960 onwards, the need for non-agricultural employment, particularly during the dry season, became evident among the residents of Udon Thani. Domestic labour

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[94] Falkus, op. cit., p. 30; Sidney Goldstein and Alice Goldstein, 'Migration in Thailand: A Twenty-Five Year Review', *Papers of the East-West Population Institute*, Number 100 (Honolulu: East-West Center, 1986), p. 46.
[95] Poapongsakorn, 'Rural Industrialization', p. 131.
[96] Ibid., p. 131.

migration to Bangkok or transportation of sugar cane was available for such additional employment.[97] Domestic labour migration to Bangkok from the village peaked in the 1970-1975 period; after that, several alternative employment opportunities emerged, such as international labour migration (as shown above) or local paid employment. However, among the younger generation of village residents, it was becoming common even after 1975 to leave the village to work in Bangkok. Wages in Bangkok have not always been as competitive as those of other local employment; but if there was no desirable job for them, young and unmarried villagers, including women, left the village.[98] Once agricultural labour had become mobile as shown above, it was possible for those domestic migrant workers to move beyond the state border. According to Suzuki, international labour migration to the Middle East began in 1974, with land ownership being a determinant of international labour migration (i.e., ability to finance the initial cost for the migration).[99]

- Mid-1970s onwards

International labour migration began in this period as an attempt to provide the former US military base workers with alternative working opportunities in the Middle East. There were both public and private migration agencies: a parliament member whose constituency was Udon Thani set up a private migration agency

[97] Suzuki, op. cit., pp. 90-92. In addition, tourism was another alternative employment since this period. 'In the late 1960s tourism emerged from beyond the horizon of official policy. In 1970 tourist earnings were estimated at B2 billion, equal to 15 per cent of merchandise export earnings' (Muscat, 1994, op. cit, p. 102).
[98] Suzuki, op. cit., pp. 100-101.
[99] Ibid., p. 93.

for the first time.[100] Suzuki cited 1985 data that showed that the number of emigrants from Udon Thani was the largest in the whole Thailand.[101] The number of emigrants from Udon Thani was estimated at around 20-30,000 in 1988, whereas the officially registered emigrants from the area numbered 10,600.[102] Foreign exchange remittance sent to the region was B1.046 million in 1987, and it had grown to B468.6 million for the period from January to July in 1988.[103]

- 1990 onwards

International labour migration from Thailand continued from the 1970s, but in the 1980s there were some changes in the characteristics of population movement. First, the destination changed in the late 1980s from the earlier concentration to the Middle East to East Asian countries. Second, women increasingly migrated, in contrast to the 1970s when migrant workers were predominantly men. Third, exploitation of migrant workers by migration agents became more frequent in the 1980s than had been in the 1970s.[104] Fourth, the Thai government published guidelines for international labour migration in its Fifth and Sixth Plans, and promoted migration for increasing foreign exchange income.[105]

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[100] Ibid., p. 83.
[101] Ibid., p. 83.
[102] Ibid., p. 83.
[103] Ibid., pp. 90-91.
[104] Supang Chantavanich, 'Issues from Thailand', in Patrick Brownlee and Colleen Mitchell, *Asia Pacific Migration Research Network Working Paper Series, Working Paper No. 1, Migration Issues in the Asia Pacific* (Wollongong, Australia: Centre for Multicultural Studies, Institute for Social Change and Critical Inquiry, University of Wollongong, 1997), pp. 161-174, pp. 163-164.
[105] Amara Pongsapich, 'International Migrant Workers in Asia: The Case of Thailand', *Proceedings of the International Conference on Transnational Migration in the Asia Paific Region: Problems & Prospects, December 1-2, 1994* (Bangkok: Asian Research Resource Center for Migration, Institute of Asian Studies, Chulalongkorn University, 1995), pp. 47-66, p. 59.

The above change in the characteristics of international labour migration can be found once again in the case of a village in Udon Thani, as reported by Suzuki. The following two events induced the villagers to shift their attention from the Middle East to East Asia as a destination: (i) the Saudi Arabian government suspended issuing visas to Thai workers after a Saudi diplomat was murdered in 1990; and (ii) the Iraqi invasion of Kuwait in August 1990 made migrant workers from Asian countries, including Thais, refugees. According to Suzuki, migration to Hong Kong from the village in Udon Thani occurred in 1990 for the first time, followed by migration to Taiwan and Japan in 1991.[106] Women were among those who migrated to these destinations.

Skrobanek reported that some of those women who worked in the domestic sex industry took another step to migrate internationally.[107] The following account on women's labour migration, from rural areas to big cities like Bangkok, describes how women are part of domestic migration, and also how some women migrant workers take the first step that may lead to the second step to international migration.

> 'Today women comprise half of the active labour force of the country. There were 1.9 million women workers in 1992, most of whom were employed in the rural agricultural sector. [...] A great number of rural women labourers have migrated to Bangkok to find work in factories, where they are more likely to be exploited by employers than are male workers. The plight of Thai women workers never ceases to make newspaper headlines, both inside

[106] Suzuki, op. cit., p. 98.
[107] Siriporn Skrobanek, 'Traffic in women, forms and remedies: the case of Thailand', *Proceedings of the International Conference on Transnational Migration in the Asia Paific Region: Problems & Prospects, December 1-2, 1994*, pp. 37-45, p. 41.

and outside the country, to the point where people have started to take their exploitation granted. This is not to mention those who have been pushed or lured into prostitution as a result of the rapid expansion of tourism and service industries in Bangkok and tourist spots such as Pattaya, Chiang Mai and Phuket'.[108]

4. Conclusion

Sections 2 and 3 of this chapter have demonstrated the following points, respectively:

(i) Changes in Japan's international economic environment in the 1970s resulted in the beginning of capital export from Japan, one of the destinations being Thailand; and
(ii) Operation of the Thai political economy, to which the capital exported from Japan constituted an important part of its structure, led to the mobility of labour both domestically and internationally. It must be noted here that Japanese capital did *not* determine such population mobility. However, this section has shown how Japanese capital, among other economic forces in Thailand, contributed to the creation of structural conditions for international labour migration since the 1970s, if it was not deliberate, direct or the sole reason[109] for the labour mobility.

The above findings indicate that the following three political economies were interconnected after the 1970s, mediated by different forms of globalisation force

[108] Suntaree Komin, 'Changes in Social Values in Thai Society and Economy: A Post-Industrialization Scenario', in Krongkaew (ed.), op. cit., pp. 251-266, pp. 254-255.
[109] Influence of migrants' family and the establishment and operation of migration network are also pertinent to the population movement, in addition to the factors discussed in this section.

at different times: (i) capital flow from US to Japan;[110] (ii) capital flow from Japan to Thailand; and (iii) labour migration from Thailand to Japan. Therefore, capital mobility and population mobility are, if with some time lag and in non-linear process, related. Consequently, it is possible to argue here that international labour migration from Thailand to Japan in the 1990s was a force of globalisation, in that Japan's capital mobility had created structural conditions. By corollary, analysed in terms of the workings of the East Asian political economy, the migration is not entirely an external force for Japan, as is often assumed, based upon the legal-territorial conceptualisation of the state.

Having demonstrated that international labour migration from Thailand is a consequence of globalisation, the next chapter shows that migration then operated as a cause of globalisation at a later period of time. In other words, Chapter 5 investigates how international labour migration worked as an international structure for Japan in the 1990s, and also how Japan's state and civil society acted in response to a challenge from the international structure, namely the language barrier.

[110] It can also be recalled here that, moving backwards chronologically, the change in the US international economic policy was triggered partly due to the working of the offshore US dollars, or mobile capital, as demonstrated in Chapter 2.

CHAPTER 5

THE LANGUAGE BARRIER AND THE JAPANESE STATE: IMPACT AND RESPONSES

1. Introduction

The aim of this chapter is to analyse the impact of the challenge from globalisation for Japan in the 1990s. To do so, the chapter examines how international labour migration as a force of globalisation affected Japan in terms of: (i) capabilities of actors in the Japanese state to respond to new developments in their environment; (ii) national identity; and (iii) the Japanese state's relation with its foreign population. More specifically, the chapter's focal point is the language barrier problem in Japan's criminal justice system. 'Language barrier' refers to the difficulties in communication and the subsequent legal and political problems experienced by investigators, defence counsel and judges operating in Japan's criminal justice administration on the one hand, and foreigner suspected of crime on the other.

The language barrier problem constitutes an important challenge for the Japanese state for the following reasons. International labour migration is a cause and consequence of globalisation, as Chapter 4 identified. In addition, Chapter 2 found that international economic forces such as international labour migration are capable of affecting the operation of the sector of the state of the migrant receiving country which is in charge of 'political' issues, in particular law

enforcement. One of the core tasks of the law enforcement sector of the migrant receiving state is to maintain domestic order by controlling crime committed by foreigners through investigation, indictment, public trial and punishment. A public trial is a crucial stage both for the state and the defendant, because at the end of the trial, the court makes a legal decision as to whether or not the defendant is guilty, and if so, to what extent she/he should be punished. When making this important legal decision, it is a common practice in the criminal justice administration to convict the defendant based on the facts that constitute offence and applicable law, which in theory would not involve many technical difficulties[1] as long as the suspect/defendant and the state officials of the criminal justice administration speak the same language. Such has been the case in the nation state, in particular in contemporary Japan, reinforced by the alleged notion of ethnic homogeneity. However, when a new environment emerged in which the above two parties speak different languages, there are instances where they are unable to communicate with each other as is assumed in the context of the nation state: the arrival of migrants is clearly an important case in point. One possible consequence of the inability to communicate fully will be that the defendant could be unjustly based on false facts. Such a use of state power is not only illegal, but also lacks legitimacy and consent, which are indispensable for the continued operation of that state in the long run, and would indicate that the state was unable

[1] This is a theoretical assumption made solely for explanatory purpose to highlight the implications of the language barrier problem for criminal justice administration. The author is aware of at least the following two problems in criminal justice process, which will be addressed in Chapter 6: (i) contests over the delivery of criminal justice; and (ii) related to the previous point, the problems arising from the gender-blindness of law.

to respond effectively to the challenges from globalisation, namely international labour migration.

This chapter discusses the language barrier in two ways: The first is to describe and analyse the following three points concerning the language barrier problem: (i) how the problem emerged in Japan; (ii) how the problem affected the Japanese state; and (iii) how Japan responded to the problem? The second objective is to consider the implications of Japan's response to the language barrier problem with regard to the following issues: (i) the Japanese state's capability to operate in the face of the challenge of globalisation; (ii) the relation between civil society and the state in Japan; and (iii) Japan's national identity. The latter three points merit analysis because the problem underlying the language barrier is that the constituency of political authority and the actual extent where such political power can influence do not correspond with, as has been (or assumed to have been) the case within the context of the nation state. This is a situation where 'a deficit in [...] the delivery of collective goods'[2] could take place. Hence this chapter is going to examine whether and to what extent such a 'deficit' in the exercise of political power and legitimacy was filled in the Japanese case in the 1990s.

Before moving on to the above three tasks, however, the next section discusses the cases of Thai migrant women, because their cases clearly illustrate the connection between the following two key themes of this dissertation: the linkage between international mobility of capital and labour as discussed in

[2] Richard Devetak and Richard Higgott, 'Justice Unbound? Globalization, states and the transformation of the social bond', *International Affairs*, 75(3), 1999, pp. 483-498, p. 495.

Chapter 4 with relation to Thailand, and the impact of international mobility of labour on the Japanese state's practice and capability to transform itself, as will be demonstrated later in the current chapter.

2. International Labour Migration of Thai Women and the Language Barrier

The aims of this section are threefold. The first aim is to show that the progression of globalisation contributed to make Thai migrant women conspicuous in the statistics of crime committed by foreigners in Japan in the early 1990s, and therefore they are a prominent illustration of the language barrier problem. The second aim is to highlight the complex identities of Thai migrant women who were investigated in the above context. In the official statistics of detected crime, Thai migrant women primarily appear as offenders. However, during the criminal justice process, it also became evident that prior to the commission of offence they were also victims of crime and violence by other foreigners. Being the victim of crime and violence is an important issue within the context of globalisation, but this will be discussed in Chapter 6 as it is subsidiary to the main question for this chapter. Meanwhile, having been a focus of the investigation, the Philippine migrant women share some of the characteristics similar to the Thai migrant women: they were both from Southeast Asian countries, and a considerable number of them of both groups were in the entertainment and the sex industry in Japan. However, there are some differences, and it is because of the following points the Thai migrant women demand attention in this section: (i) the Phillipine migrant women were the target of crime

control in the 1980s; the Thai migrant women were the target in the early 1990s, when Japan's crime control against foreigners became considerably tighter following the revision of the Immigration Control Act. (ii) the interaction between capital mobility and international labour mobility is more evident in the Thai cases than in the Philippine cases, as was seen in Chapter 4. (iii) The language barrier could have manifested more severely to the Thai migrant women than it did for the Philippino migrant women: it was more difficult for the Thais to communicate in English; the extent of the support network available for the Thais likely to have been smaller than for the Philippines. The third aim is to point out that, notwithstanding the fact that the cases of Thai migrant women raised Japanese society's awareness about it, the language barrier problem was also manifested in Japan in the 1990s for migrants from other areas such as East Asia and South America, among others. This finding makes it necessary to document the Japanese state's response to the language barrier problem in generic terms in this chapter, in other words, in terms of all migrants including both Thais and non-Thais.

(1) Thai Migrant Women in Japanese Statistics

International labour migration of women to Japan is unique in that a considerable number of them are concentrated in the service sector,[3] including migrants from Thailand. Tables 5-1 and 5-2 show that the number of people from Thailand is

[3] Mike Douglass, 'The singularities of international migration of women to Japan: Past, present and future', in Mike Douglass and Glenda S. Roberts (eds), *Japan and Global Migration: Foreign workers and the advent of a multicultural society* (London: Routledge, 2000), pp. 91-119, p. 92.

relatively small in comparison to the entire foreign population in Japan. Within the total number of foreigners who visited Japan in 1999 and 2000 less than 1.5 percent were Thai nationals. A similar trend is evident in the registration of foreigners with local government. Thai nationals constituted 1.6 to 1.7 percent of all the foreigners who registered.

Table 5-1. Foreigners Arrived in Japan (Selected Origins)

	1999 (H11)	(%)	2000 (H12)	(%)
South Korea	1,160,034	23.7	1,286,583	24.4
Taiwan	963,701	19.7	944,019	17.9
USA	720,142	14.7	749,343	14.2
China	327,005	6.7	385,296	7.3
UK	188,036	3.8	198,675	3.8
Hong Kong	208,172	4.2	192,946	3.7
Philippines	144,305	2.9	169,755	3.2
Australia	137,558	2.8	150,046	2.8
Canada	109,651	2.2	122,260	2.3
Brazil	70,794	1.4	101,513	1.9
Germany	89,355	1.8	90,605	1.7
France	72,356	1.5	81,528	1.5
Singapore	68,676	1.4	74,967	1.4
Thailand	64,246	1.3	73,472	1.4
Malaysia	53,961	1.1	64,157	1.2
Total	4,901,317	100.0	5,272,095	100.00

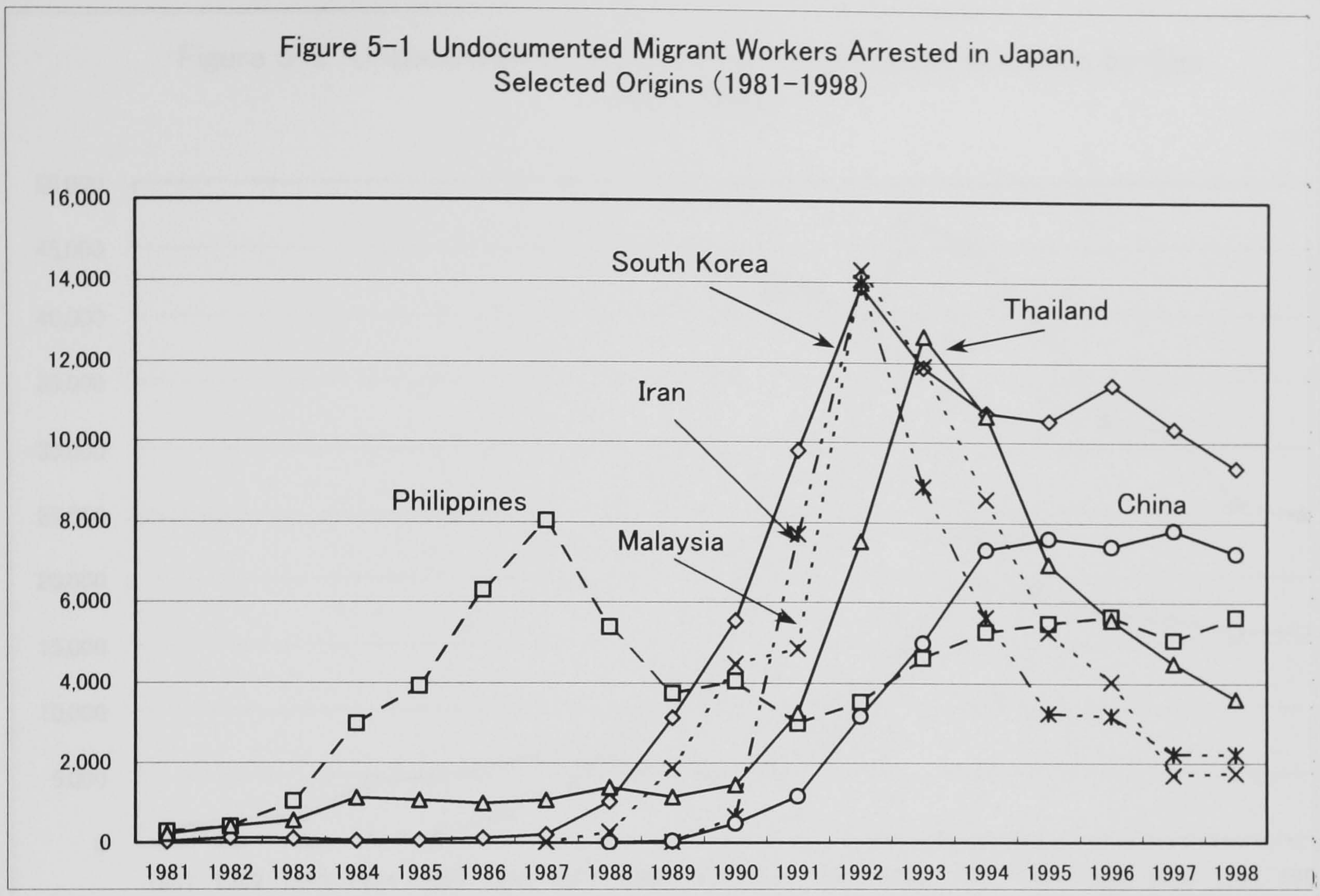
Source: Ministry of Justice, *Dai 40 shutsynyūkoku kanri tôkei nenpô heisei 12 nen (Annual Report of Statistics on Legal Migrants for 2000)* (Tokyo: Zaimushô insatsukyoku, 2001), p. v, Table 6.

Table 5-2. Foreigners Registered in Japan (Selected Origins)

	1999 (H11)	(%)	2000 (H12)	(%)
Korea	636,548	40.9	635,269	37.7
China	294,201	18.9	335,575	19.9
Brazil	224,299	14.4	254,394	15.1
Philippines	115,685	7.4	144,871	8.6
Peru	42,773	2.7	46,171	2.7
USA	42,802	2.8	44,856	2.7
Thai	25,253	1.6	29,289	1.7
Indonesia	16,418	1.1	19,346	1.1
Vietnam	14,898	1.0	16,908	1.0
UK	15,402	1.0	16,525	1.0
Total	1,556,113	100.0	1,686,444	100.0

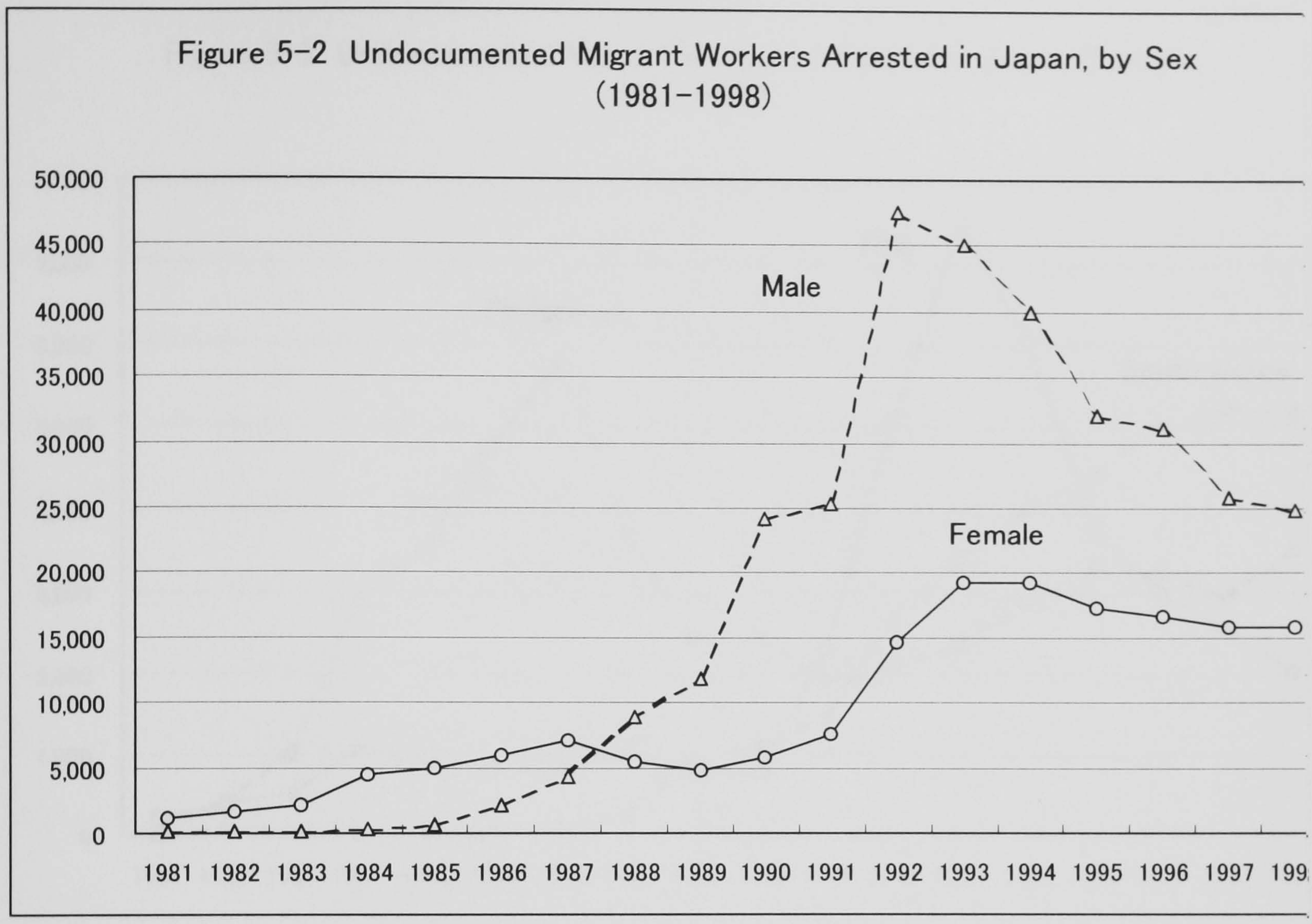
Source: Ministry of Justice, *Dai 40 shutsynyūkoku kanri tôkei nenpô heisei 12 nen*, p. xvi, Table 22.

In contrast to their relatively less noticeable status in the foreign population in Japan, some of the migrants from Thailand were conspicuous in the official crime statistics in the early 1990s.



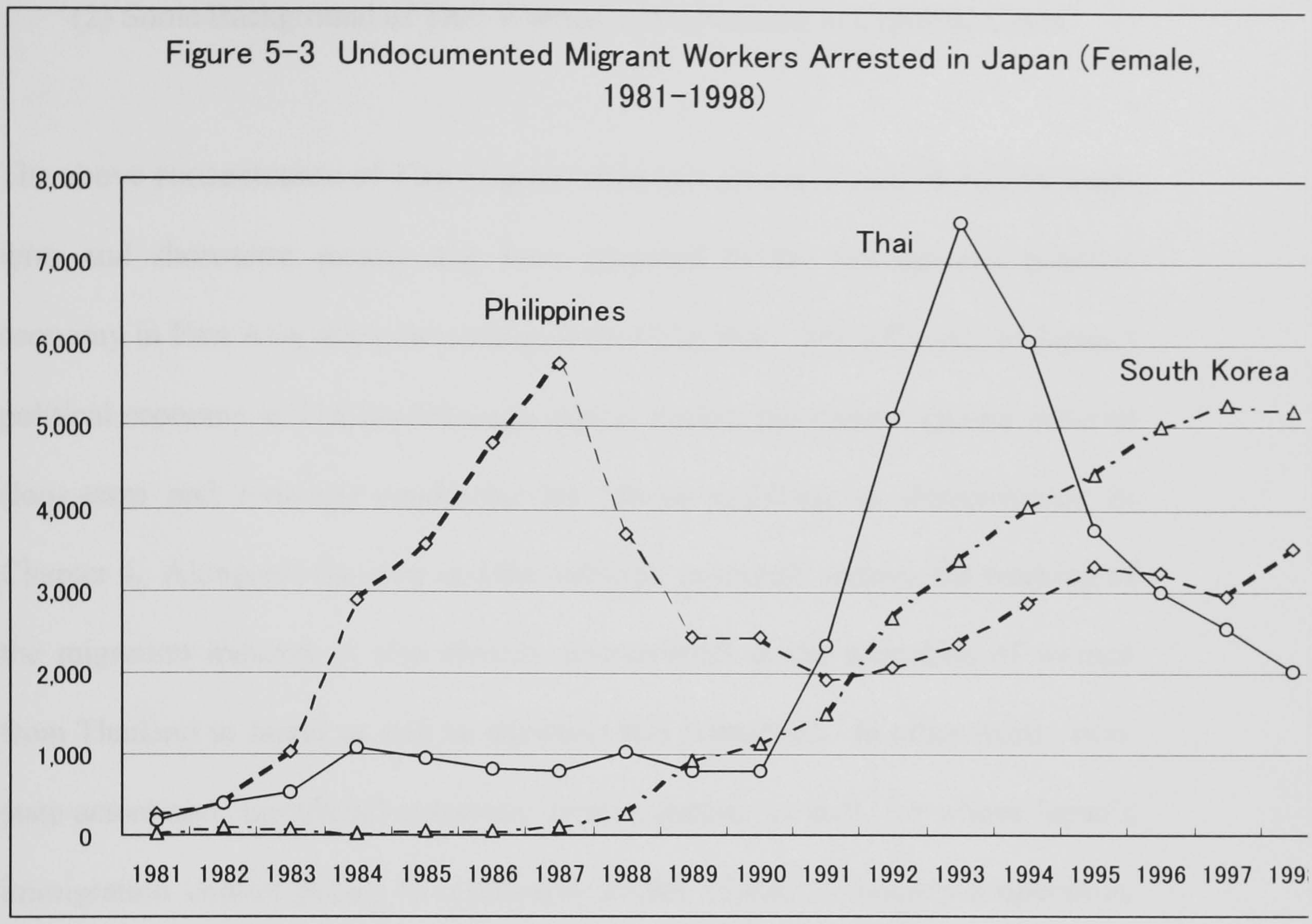
Source: Yoko Sellek, *Migrant Labour in Japan* (Basingstoke: Palgrave, 2001), pp. 32-33.

Figure 5-1 shows the number of foreigners arrested in Japan for unauthorised employment and/or overstaying the visa expiry date. In the 1980s the majority of the arrests were of people from the Philippines. In the first half of the 1990s, migrants from South Korea, Iran, Malaysia and Thailand were among the majority. In the second half of the decade, those from South Korea and China were the major groups arrested, whereas the number of those from other origins decreased.



Source: Sellek, *Migrant Labour in Japan*, pp. 32-33.

Figure 5-2 shows the trend in the arrests of female and male migrants. In the 1980s the majority of foreigners arrested were women. The male migrant figure overtook that of female migrants between 1987 and 1988. Since then, the number of arrests of male migrants increased by more than nine times by 1992. After that, however, the number declined, and in 1998 was almost half the 1992 peak. In contrast to the male figure, the female figure kept growing throughout the 1990s, with two peaks in 1987 and 1993.



Source: Sellek, op. cit., pp. 32-33.

The breakdown of the two peaks in the female figures in Figure 5-2 is shown in Figure 5-3: over the last two decades, the main group of migrant women arrested for unauthorised employment has shifted from women from the Philippines in the late 1980s, to Thais in the early 1990s, and to South Korean women in the late 1990s.

(2) Some Background of Thai Women's Involvement in Criminal Cases

The above concentration of Thai migrant women's arrests is conditioned by long-term and short-term factors that have operated in the international political economy in East Asia since the ending of the Cold War. The influence of Japan's political economy in Thailand through capital exports has created crucial material (long-term and indirect) conditions for labour mobility, as demonstrated in Chapter 4. Alongside the state and the 'official' economic sectors, the working of the migration industry is also directly instrumental to the migration of women from Thailand to Japan, as will be shown in this subsection. In other words, non-state actors and 'unofficial' economic sectors operate as well, for whom Japan's immigration control policy is conductive to the migration industry's operation. Furthermore, capital mobility and the development and operation of transnational networks of the migration industry, are both manifestations of the globalisation process.

The origin of the international migration of Thai women to Japan can be traced back to the late 1970s, when the internationalisation of the sex industry in Thailand began as the number of male tourists from the Middle East and Japan increased.[4] Sex tourism was then converted to the trafficking of women from Thailand to Japan.[5] Despite the fact that they were in Japan from the early 1980s,

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[4] Kyoto YWCA APT (ed.), *Jinshin baibai to ukeire taikoku Nippon: sono jittai to hôteki kadai (Trafficking in Persons and Japan as a Major Recipient Country: Actual conditions and legal problems)* (Tokyo: Akashi shoten, 2001), p. 45.

[5] Kinsey Alden Dinan, 'Trafficking in Women From Thailand to Japan', *Harvard Asia Quarterly*, Summer 2002 (http://www.fas.harvard.edu/~asiactr/haq/200203/index.htm Cited 3 October 2002), pp. 4-5. Human Rights Watch, *Owed Justice: Thai Women Trafficked into Debt Bondage in Japan* (London: Human Rights Watch, 2000), p. 15.

the presence of Thai women only drew the attention of Japanese society in the late 1980s. A possible explanation for this is as follows. In the 1980s, the majority of migrant women working in Japan were from the Philippines. However, the Japanese government tightened the processing of entertainment visa applications in 1988, affecting the flow of migration of women from the Philippines. Meanwhile, international networks for trafficking women from Thailand to Japan were thought to have been established by 1988.[6] This timing coincides with the increase in the number of Thai women who escaped from the extremely harsh treatment of their employers. For example, the women's shelter HELP reported that the number of Thai women who sought refuge at the shelter was 144 in 1988, as opposed to only 51 women from the Philippines.[7]

The migration industry, or the transnational trafficking network of Thai women, usually consists of local recruiters and migration agents in Thailand, escorts from Thailand to Japan, migration brokers, and employers and managers of bars where the trafficked women eventually work.[8] Organised crime groups in Japan and East Asian countries perform the core roles in the international network of trafficking of women.[9] The participants in the migration industry are able to exert influence upon the prospective migrant's decision to go abroad and also the destination. For example, it is the migration recruiter or agent who employs the notion of a possible large income to persuade the prospective migrants to go to

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[6] Ajia no onnatachi no kai, *Ajia to josei kaihô (Asian Women's Liberation)* (Tokyo: Ajia no onnatachi no kai, 1989), October, No. 20, p. 2.
[7] Ajia no onnatachi no kai, *Ajia to josei kaihô*, p 12 & 21.
[8] Dinan, 'Trafficking in Women From Thailand to Japan', pp. 33-42, 58.
[9] Dinan, op. cit., pp. 3-5.

Japan.[10] In addition, the destination depends more on the network that the migration agent maintains, rather than the prospective migrant's preference.[11] Major destinations of Thai migrant women include Hong Kong, Taiwan, Malaysia and Singapore, in addition to Japan.[12] In this respect, as argued in Chapter 2, it is inaccurate to assume that the individual migrants are entirely responsible for their migration.

The migrant women trafficked into Japan are driven into 'debt bondage' despite the fact that there is no legal obligation for the women to pay money. The 'debt' accumulates in the following way: a migration agent sells trafficked women from one and a half to two million yen to a broker. The mark up for the migration broker in Japan is between one and a half and three million yen. These make the total amount of 'debt' unloaded on the woman at three to five million yen.[13] This is an equivalent to ten years' salary of an ordinary Thai women worker.[14] In the late 1980s and the beginning of the 1990s it took the trafficked women about six to seven months to pay off the 'debt', but they have to serve much longer in the late 1990s as the turnover in the sex industry decreased significantly as the 'bubble' economy ended.[15] Compliance with the above 'responsibility to pay the

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[10] Josei no ie Saalaa, *Josei no ie Saalaa 10 nen no ayumi: gaikokuseki josei eno bôryoku no jittai (The Ten-year History of Women's Home Saalaa: Actual conditions of violence against the women of foreign origins)* (Yokohama: Josei no ie Saalaa, 2002), p. 24; Human Rights Watch, *Owed Justice*, p. 62.
[11] Chinami Kasama, 'Tainichi gaikokujin josei to "gender bias": nihon teki ukeire no ichisokumen to mondaiten (Women Migrant Workers in Japan and 'Gender Bias': An aspect of Japan's reception of the migrant workers and the problems)', in Miyajima, Takashi and Kajita, Takamichi (eds), *Gaikokujin rôdôsha kara shimin e (From Foreign Workers to Citizens)* (Tokyo: Yūhikaku, 1996), pp. 165-186, p. 171.
[12] Saalaa, *Josei no ie Saalaa 10 nen no ayumi*, p. 115.
[13] US$25,000-42,000 at $1=¥120.
[14] Kyoto YWCA APT, *Jinshin baibai to ukeire taikoku Nippon*, pp. 49-50; Saalaa, op. cit., p. 109; Human Rights Watch, op. cit., p. 87 and p. 90.
[15] Kyoto YWCA APT, op. cit., p. 56.

debt' is warranted by the possible and actual use of violence by bar owners or managers, or members of organised crime associated with the bar owners. Awareness of 'illegal stay' in Japan also hinders the migrant women from seeking help from the Japanese authorities.[16]

Because of their proximity to members of organised criminal groups, Thai women face greater dangers than Thai men who work illegally in construction or manufacturing.[17] At the end of the network of trafficking operates the bar managers, who directly control the trafficked women and keep them under uninterrupted surveillance. Such bar manager (called '*mama*' or '*mama-san*') are often women who have themselves worked in the industry previously.[18] Due to the nature of their work, the bar managers are also vulnerable (if relatively less so than the migrant women under debt bondage) if and when the trafficked women thought that there was no other alternatives than to resort to the use of force in order to escape from the debt bondage.

The trafficked women can be sent anywhere in Japan, but in some cases they are sent to a location that already has or had sex industry: commercial districts; former red light districts; hot spa and other tourist resorts; areas adjacent to industrial area/military bases/local government offices.[19] Sending migrant women to succeed Japanese women, and possibly Philippine women, who used to work in these places could be interpreted as the service industry's adaptation to globalisation through restructuring.

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[16] Human Rights Watch, op. cit., p. 90.
[17] Saalaa, op. cit., p. 10.
[18] Kyoto YWCA APT, op. cit., p. 55; Human Rights Watch, op. cit., p. 82.
[19] Kasama, 'Tainichi gaikokujin josei to "gender bias"', p. 169.

The following statistics corroborate with the above finding on the international network of trafficking of Thai women. The statistics are compiled by a women's shelter Saalaa, based on interviews with migrant women who sought refuge after escaping from debt bondage. Between 1992 and 2001, 183 women were sheltered after escape. Among them there were 164 Thai women whose arrival was concentrated in the period between September 1992 and 1995.[20]

Table 5-3. Debt Bondage of Trafficked Migrant Women Sheltered at Saalaa (1992-2001)

(1) Migrant Women's Country of Origin

Origin	Number	Percentage
Thailand	171	93.4
Philippines	6	3.3
Columbia	4	2.2
Others	2	1.1
Total	183	100.0

(2) Who Suggested Migrating to Japan?

	Number	Percentage
Migration Broker	77	42.1
Friend/Acquaintance	71	38.8
Family	1	0.5
Others/Don't Know	34	18.6
Total	183	100.0

[20] Saalaa, op. cit., pp. 12-13.

(3) Location First Posted in Japan

Prefecture	Number	Percentage
Ibaragi	36	19.7
Chiba	26	14.2
Nagano	24	13.1
Tokyo	19	10.4
Gunma	16	8.7
Saitama	14	7.7
Kanagawa	12	6.6
Others	36	19.6
Total	183	100.0

(4) Amount of 'Debt' Unloaded

Amount (million yen)	Number	Percentage
Less than 1.00	1	0.5
1.01-2.00	2	1.1
2.01-3.00	10	5.5
3.01-3.50	42	23.0
3.51-4.00	82	44.8
4.01-5.00	11	6.0
5.01 or more	3	1.6
Unknown	32	17.5
Total	183	100.0

(5) Origins of the Bar Manager

Origin	Number	Percentage
Taiwanese	56	30.6
Thai	51	27.9
Japanese	21	11.5
Others	55	30.0
Total	183	100.0

(6) Experience of Being 'Resold' to Another Bar Owner/Manager

	Number	Percentage
Yes	45	24.6
No	88	48.1
Not Sure	50	27.3
Total	183	100.0

Source: Josei no ie Saalaa, *Josei no ie Saalaa 10 nen no ayumi: gaikokuseki josei eno bôryoku no jittai (The Ten-year History of Women's Home Saalaa: Actual conditions of violence against the women of foreign origins)* (Yokohama: Josei no ie Saalaa, 2002), Appendix 1-14.

Some of the Thai women trafficked and driven into debt bondage may have paid up their 'debt'. There are others who decided to get out and managed to seek refuge at the Thai Embassy or private shelters such as HELP and Saalaa, among others. In addition, there were also those who were involved in criminal cases either as victim or offender.[21] Sugiura Akimichi, a civil rights campaigner, compiled a chronology of detected murder cases in Japan from January 1989 to February 1994. Table 5-4 summarises Sugiura's data, and demonstrates the extent of violence involving Thai women.

Table 5-4. Thai Women in Detected Murder Cases in Japan (1989-1994)

(1) Number of the murder cases in which Thai woman was a victim or the perpetrator

1989	3
1990	N/A
1991	6
1992	8
1993	3
1994	3
Total	23

[21] Kyoto YWCA APT, op. cit., p. 4.

(2) Victim's country of origin and sex

Thai women	19
Japanese men	4
Taiwanese woman	1
Singaporean woman	1
Total	25

(3) Victim's characteristics

Bar manager or owner	11
Migrant women	10
Procurer of the service	2
Unknown	2
Total	25

(4) Location and frequency of incidence

Location	Cases
Tokyo	5
Chiba	3
Ibaragi, Kanagawa and Nagano	2 each
Tochigi, Saitama, Niigata, Aichi, Mie, Osaka, Ehime, Wakayama and Kumamoto	1 each

Source: Kyoto YWCA APT (ed.), *Jinshin baibai to ukeire taikoku Nippon: sono jittai to hôteki kadai (Trafficking in Persons and Japan as a Major Recipient Country: Actual conditions and legal problems)* (Tokyo: Akashi shoten, 2001), pp. 125-127.

It was among these cases in which accuracy of the interpretation, the validity of investigation and the public trial were questioned, in particular the so-called Dôgo Incident (1989),[22] Shimodate Incident (1991) and the case of N (1992). In the

[22] Fumi Fukami, *Tsūyaku no hitsuyô wa arimasen: Dôgo taijin josei satsujin jiken saiban no kiroku (There is No Need for Interpretation: the record of murder case in Dôgo of a Thai woman)* (Matsuyama: Sôfûsha shuppann, 1999), and Makiko Mizuno, 'Gaikokujin jiken to tsūyaku mondai: "Dôgo jiken" to "Meruborun jiken" ni mirareru tsūyaku mondai (Problems of Interpretation of Criminal Cases of Foreigners: the interpretation problems in the Dôgo Incident and the Melbourne Incident)', *Matsuyama shinonome joshi daigaku jinbungakubu kiyô*, No. 9, 2001.

Shimodate Incident, the defence argued that the investigators failed to notify the arrested women of their rights as suspects; moreover, the investigation and evidence collection were unlawful because there was effectively no consent from the suspects to do so. In the N's case, the defence argued that the suspect's testimony, 'I stabbed the victim with a knife' was inaccurately interpreted during the investigation as, 'I stabbed the victim with a knife to kill her.' This difference meant that the defendant was convicted for murder, even though it could have been manslaughter. In the Dôgo Incident, the interpreter was thought to be incompetent by civil rights campaigners because the interpretation did not make clear sense and the interpreter spent one-third of court hearing time looking up words from a Thai-Japanese dictionary. In each case the court dismissed the defence's claim over inaccuracy of the interpretation.

Having shown the reasons why the Thai migrant women cases demand attention in relation to the language barrier problem, in particular in the early 1990s, the next subsection demonstrates that other migrants also merit analysis as they were very much influenced by the language barrier problem in similar ways, namely experiencing difficulties in communication with Japanese state officials, and potential problems (possibly real in some cases) in the delivery of criminal justice.

(3) Extent of the Foreign Population that Faced the Language Barrier Problem

While the Thai migrant women cases revealed the grave consequences of human trafficking that took place in Japan, the reported number of criminal case involving Thai women began to decrease by the middle of the 1990s. The shift in the reasons for seeking refuge at Saalaa reflected this development.[23] Whereas by 1994 the majority of the women who reached Saalaa to escaped debt bondage, after 1995, domestic violence by a Japanese boyfriend or husband was the main reason to seek refuge, in particular for Philippine women.

Table 5-5. Number of Women Sought Refuge by Origin (1992-2001)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Thailand	40	72	52	17	7	6	5	16	6	10
Philippines	2	5	6	13	12	10	9	25	18	14
Central/South America			1	1	6	5	4	5	7	14

Source: Saalaa, *Josei no ie Saalaa 10 nen no ayumi*, p. 122

The reasons for the above decrease in the number of the sheltered Thai women must be various, and only two possible ones are mentioned below. Migration from Thailand to Japan peaked in 1993 and declined thereafter,[24] and the responses of both Thai and Japanese governments have possibly contributed to this decline, among other factors. Thailand revised its labour laws in 1994 and

[23] Saalaa, op. cit., p. 17 and p. 84.
[24] Human Rights Watch, op. cit., p. 3, fn 2.

1995 to dissuade the Thai nationals from migrating abroad,[25] partly due to a lack of domestic labour, but also because Thai nationals were exploited while working in Japan.[26] At the same time there was speculation that frequent reports of violent incidents in which Thai migrant women were involved may have influenced the Japanese government to tighten their inspection of visa application in Bangkok and immigration control at Japanese ports.[27]

The remainder of this chapter analyses and discusses Japan's response to the language barrier in generic terms. As far as the language barrier is concerned, keeping the analytical focus solely on Thai migrant women cases could miss some developments in Japan's response to the problem. Such an extension of the analytical focus will also be justified, because the language barrier in the criminal process matters not only for Thai speakers, but also to speakers of other languages. The origin countries of human trafficking victims in the late 1990s included Columbia, former East European countries and Russia,[28] as the international network of trafficking extended in particular to the countries of the former Soviet Union.[29] Moreover, the language barrier confronts not only first generation migrants such as Thai migrant women discussed above, but also second-generation migrants in Japan.

There is a reported relative decline in debt bondage of trafficked women, but whether such practice is actually disappearing is quite another. There are

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[25] Saalaa, op. cit., p. 24.
[26] Noriyuki Suzuki, 'Tai seifu syakai no taiou (The responses of the government and the society in Thailand)', in Hiroshi Komai (ed.), *Shinrai teijû gaikokujin ga wakaru jiten (An Encyclopedia of Understanding the New Comer and the Settling Foreigners in Japan)* (Tokyo: Akashi shoten, 1997), pp. 240-241.
[27] Ibid., p. 24.
[28] Ibid., p. 85.
[29] Dinan, op. cit., p. 5.

indications that the practice continues today, while the control and surveillance of women by migration brokers and employers has become tighter than ever before, making it more difficult for the women to escape and seek refuge outside.[30] In this respect, the need to considering the safety of people of foreign origins within the Japanese territory continues to exist at the beginning of the twenty-first century. This issue will be discussed in Chapter 6.

In sum, this section has argued three main points. First, it showed that the progression of globalisation in East Asia, in particular capital mobility and the subsequent social reconfiguration, and the operation of the migration industry who benefited from the technological developments, contributed to making Thai migrant women conspicuous in Japan's crime statistics in the early 1990s. Second, the significance of Thai migrant women concerning the language barrier problem was twofold: (i) the existence of the problem was more clearly uncovered than the cases of foreigners from other countries; and (ii) their cases also showed that within Japan's territorial jurisdiction the safety of foreign nationals was not always ensured. Third, the section has argued that, while it is important to focus on Thai migrant women, the analytical focus has to be expanded to include other groups of migrants. This is because the language barrier affected other migrants throughout the 1990s as much as it did Thai women in the early 1990s when such women were the targets of human trafficking as well as crime control by the Japanese state. The analysis of the characteristics of the language barrier and Japan's responses will therefore be demonstrated below in generic terms, namely

[30] Saalaa, op. cit., p. 18.

both for Thai and non-Thai migrants, rather than focusing on any particular groups of migrants in Japan.

3. Emergence of the Language Barrier

(1) Characteristics of Current Labour Migration in Comparison to Previous Flows

The characteristics of international immigration to Japan in the last two decades include three main points. First, the volume of immigration flow to Japan increased significantly: the total number of foreigners visiting Japan was on average 300,000 per year in the 1960s,[31] but increased to 4-5 million annually in the 1990s.[32] Second, the number of foreigners who registered with local governments also expanded from 783,000 in 1980 to 1 million in 1990, then to 1.5 million between 1997 and 1998. In 2000 the figure was 1.7 million.[33] Third, the composition of the origin of registered foreigners changed in the 1990s: Koreans, who used to represent the majority of resident foreigners, were outnumbered by those from China, Brazil and the Philippines in the 1990s (Table 5-6 and Figure 5-4).

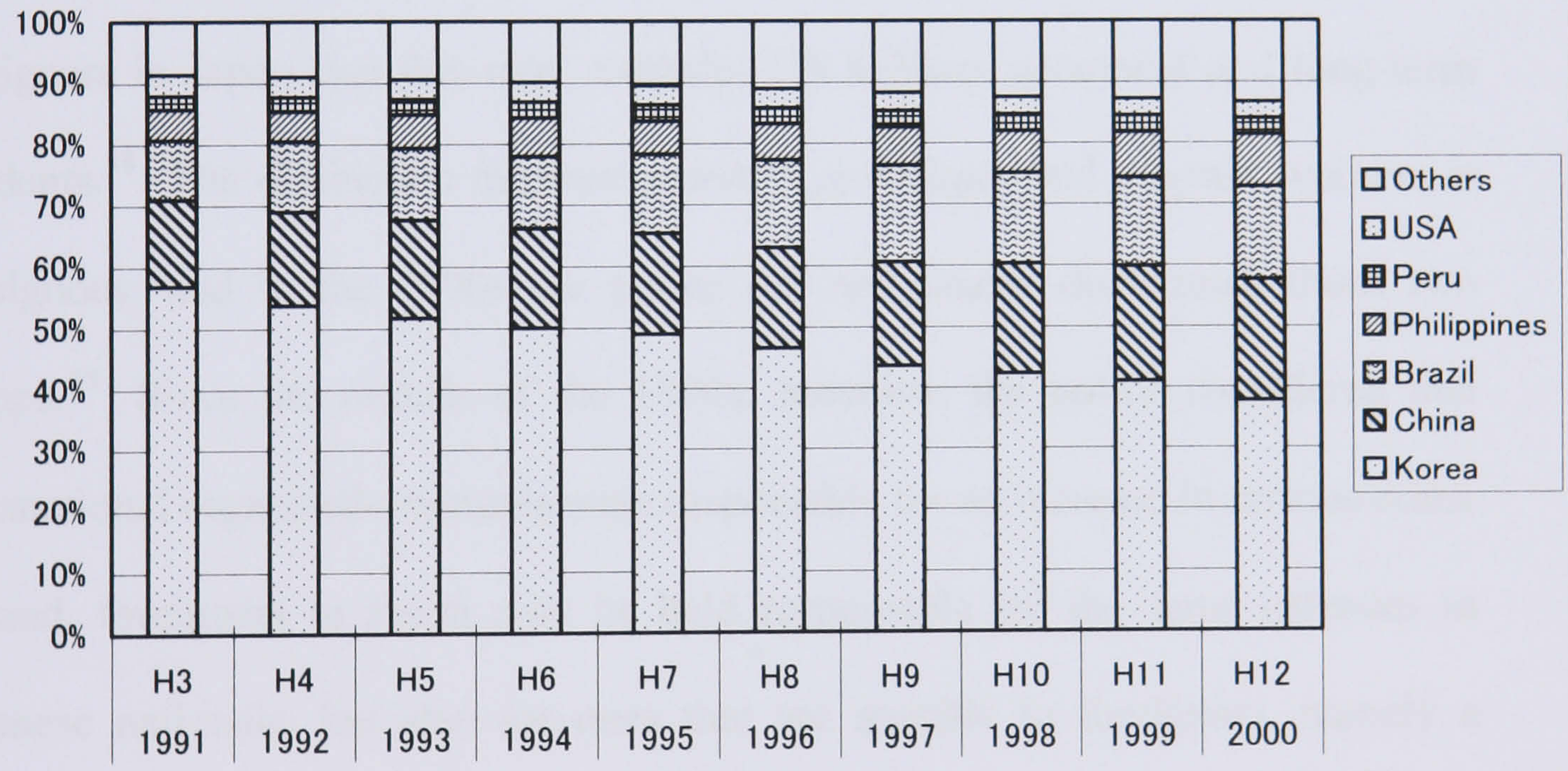
[31] Seigo Hirowatari, 'Foreign Workers and Immigration Policy', in Junji Banno (ed.), *The Political Economy of Japanese Society volume 2: International and Domestic Issues* (Oxford: Oxford University Press, 1998), pp. 81-106, p. 81.
[32] Immigration Bureau, MOJ, *Heisei 13 nenban zairyû gaikokujin tôkei (Statistics of registered foreigners in 2001)* (Tokyo: Zaimushô insatsukyoku, 2001), p. II and p. VII.
[33] MOJ, *Dai 40 shutsûnyûkoku kanri tôkei nenpô heisei 12 nen (Annual Report of Statistics on Legal Migrants for 2000)* (Tokyo: Zaimushô insatsukyoku, 2001), p. iii.

Table 5-6 Origins of registered foreigners, 1991 and 2000 (thousands)

	1991 (H3)		2000 (H12)	
	Registration	(%)	Registration	(%)
Korea	693.1	56.9	635.3	37.7
China	171.1	14.0	335.6	19.9
Brazil	119.3	9.8	254.4	15.1
Philippines	61.8	5.1	144.9	8.6
Peru	26.3	2.1	46.2	2.7
USA	42.5	3.5	44.9	2.6
Others	104.8	8.6	225.3	13.4
Total	1,218.9	100.0	1,686.4	100.0

Source: Immigration Bureau, Ministry of Justice, *Heisei 13 nenban zairyû gaikokujin tôkei (Statistics of registered foreigners in 2001)* (Tokyo: Zaimushô insatsukyoku, 2001), p. viii, Table 4.

Figure 5-4 Composition of registered foreigners by origin (1991-2000)



Source: Immigration Bureau, Ministry of Justice, *Heisei 13 nenban zairyû gaikokujin tôkei (Statistics of registered foreigners in 2001).* (Tokyo: Zaimushô insatsukyoku, 2001), p. viii, Table 4.

One implication of the above shift in foreigners' origins is that an increasing number of foreigners are from places where Japan did not carry out extensive Japanese language instruction as it did in Korea and Taiwan in the first half of the twentieth century. This also means that Japanese people, including officials, who

meet foreign visitors and residents, are now less likely to assume that such foreigners of non-Western origin would understand Japanese.

(2) Statistics of Foreigners Suspected of an Offence

It is against the demographical background mentioned above that the reported number of offences committed by foreigners increased in the 1990s. At least two points should be taken into account when discussing the offence figures of foreigners in the last decade. First, not every 'foreigner' in Japan is included in the statistics. The National Police Agency defines *rainichi gaikokujin* as all foreigners in Japan, but this term excludes US military personnel and long-term residents.[34] The distinction between *rainichi gaikokujin* and migrant workers is ambiguous, and in the 1990s the police did not clearly distinguish those two groups.[35] Since the middle of the 1990s, however, the police considered that transnational organised criminals were responsible for an increase in serious crime. Second, foreigners in Japan may be held responsible for the same offences as Japanese nationals, but also for ones that are specific to foreigners, namely a breach of the Immigration Control Act, in particular unauthorised employment and visa overstay (hereinafter 'the Special Law offence'). As will be shown later in this section, most suspected offences by foreigners are related to the latter kind.

The official statistics indicate the trend in offences by foreigners in Japan in the last decade as follows. The cases of criminal offences detected by the

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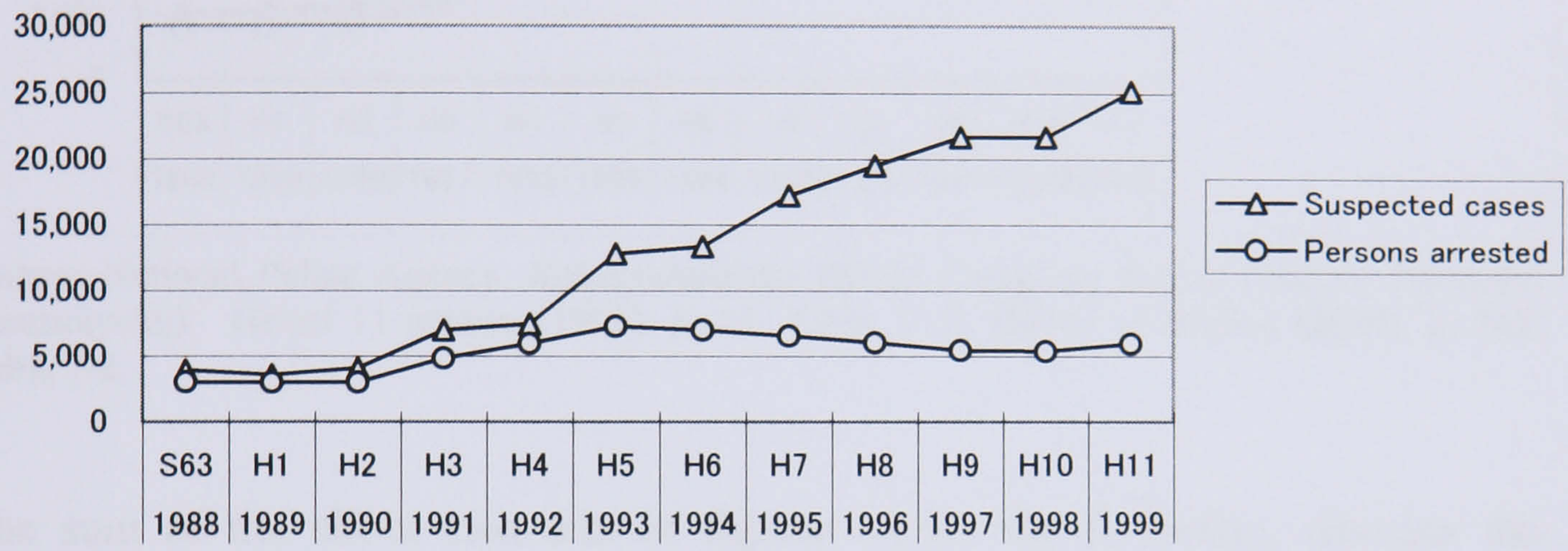
[34] NPA, *Keisatsu hakusho (White Paper on the Police)* (Tokyo: Ôkurashô insatsukyoku, 1989), p. 111.
[35] NPA, *Keisatsu hakusho*, 1990, pp. 7-8.

police increased by 7 times between 1989 and 1999. However, in terms of the number of arrests, the figure grew by 2.4 times between 1990 and 1993, and this number has remained stable since then (Figure 5-5).

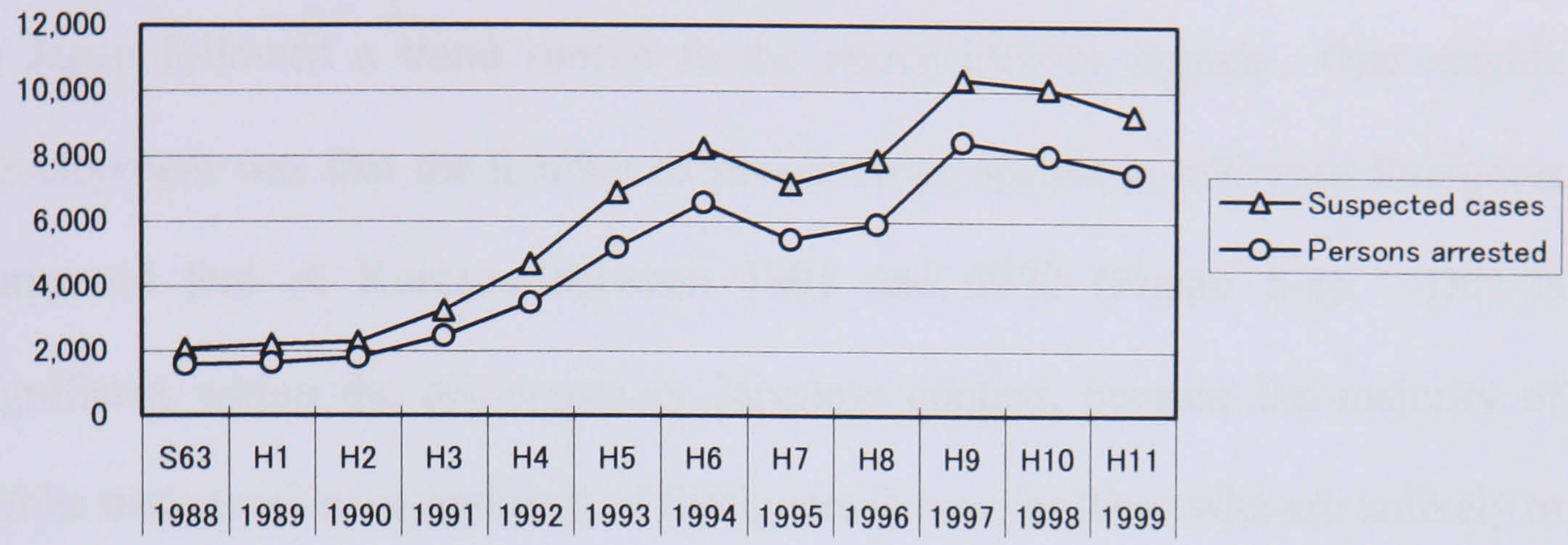
Figure 5-5 *Rainichi gaikokujin* suspected of criminal offences, 1988-1999.



Source: National Police Agency, *Keisatsu hakusho (White Paper on the Police)* (Tokyo: Ôkurashô insatsukyoku). Heisei 10 nenban (1998), p. 259, Table 9-1; Heisei 11 nenban (1999), p. 9, Table 1-10; Heisei 12 nenban (2000), p. 240, Table 7-1.

As for the Special Law offence, both the number of suspected cases and of arrests hit a peak in 1997. After that the figures decreased until 1999. The increase in 1997 may be attributed to law regarding the criminalisation of human smuggling which was enacted the same year (Figure 5-6).

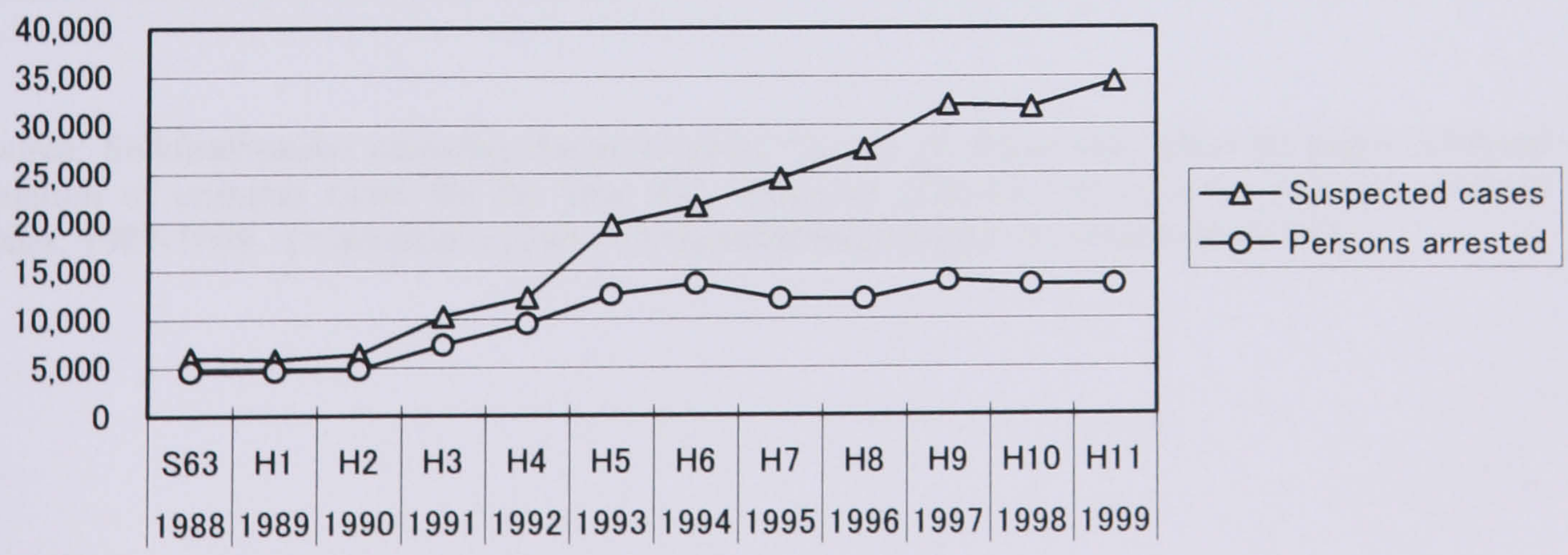
Figure 5-6 *Rainichi gaiokujin* suspected of special law offences, 1988-1999



Source: National Police Agency, *Keisatsuhakusho (White Paper on Police)* (Tokyo: Ôkurashô insatsukyoku). Heisei 11 nenban (1999), p. 13, Table 1-13; Heisei 12 nenban (2000), p. 242, Table 7-2.

The sum of the above two sets of figures shows the following: whereas the number of suspected cases continues to rise, the number of *rainichi gaikokujin* suspected of offences became largely stable, having grown threefold between 1988 and 1997. In the late 1990s, the total number of *rainichi gaikokujin* arrested on suspicion of criminal or special law offence was approximately 14,000 (Figure 5-7).

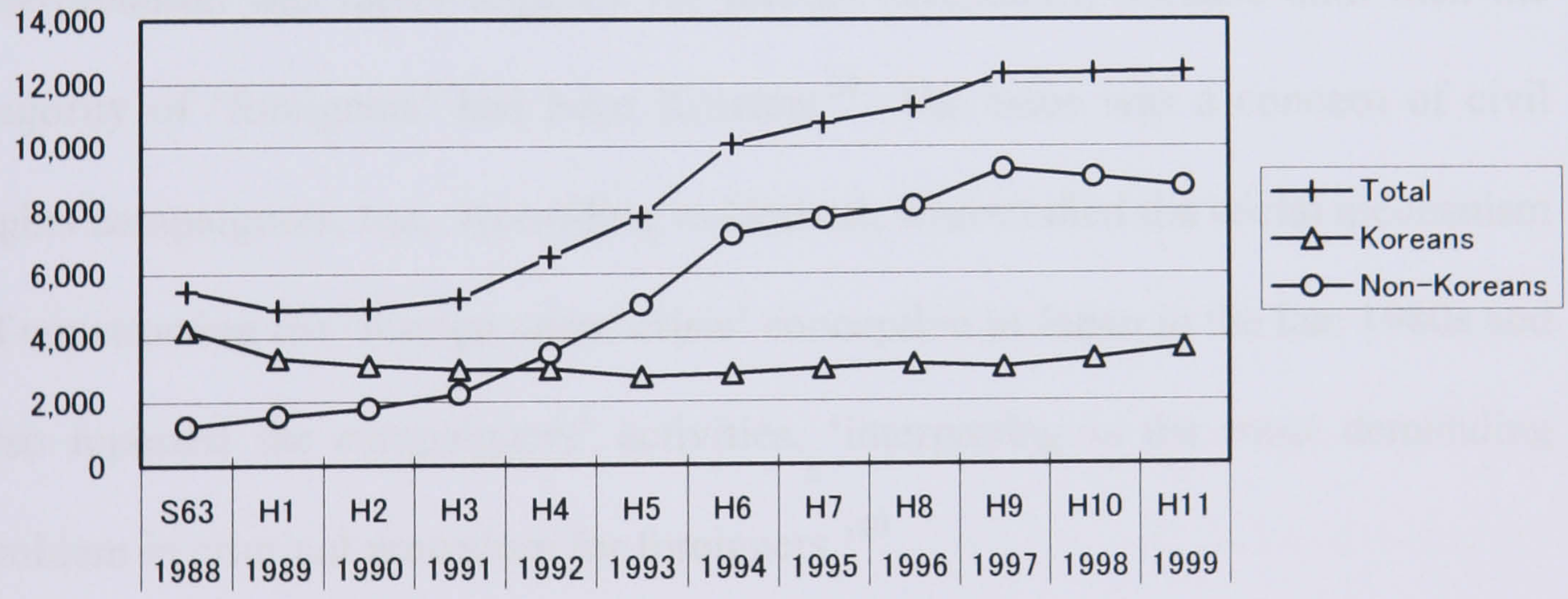
Figure 5-7 *Rainichi gaikokujin*: total cases of suspected offence and persons arrested, 1988-1999



Sources: same as for Figures 5-5 and 5-6.

Foreigners arrested and investigated for the suspicion of an offence may be indicted by the public prosecutor. The number of prosecutions against foreigners in Japan followed a trend similar to the above offence figures. One notable development was that the number of prosecutions against non-Korean foreigners surpassed that of Koreans between 1991 and 1992 (Figure 5-8). This is significant within the contemporary Japanese context, because the majority of public trials (and investigations) of foreigners is now for those who are unlikely to understand Japanese, in contrast to Koreans who have grown up speaking Japanese.

Figure 5-8 Prosecution against foreign nationals, 1988-1999



Source: Saikôsaibansho jimusôkyoku keijikyoku, 'X nen ni okeru keiji jiken no gaiyô (General situation of criminal cases for the year X)', *Hosôjihô (Lawyers Association Journal)*, various issues, 1987-1999. ('Gaikokujin jiken no kokusekibetsu kiso jin'in (chi kansai sôsû)')

(3) Explosion of the Language Barrier Problem

The Japanese state acknowledged the language barrier problem in the late 1980s. For example, the National Police Agency set up a working group on the problem in 1988.[36] The police admitted in the next year that interpreting foreign languages became indispensable during many investigations.[37] The issue affected not only the investigation but also any subsequent public trial. According to Watanabe, a professor in Japanese criminal law, the number of first instance public trials in which interpretation was required was 344 in 1984 (0.5 percent of the entire defendants), 463 in 1988, and 2,273 in 1992 (4.8 percent).[38] The General Secretariat of the Supreme Court stated in 1992 that until the late 1980s interpretation was rarely required for foreign defendants, because until then the majority of 'foreigners' had been Koreans.[39] The issue was a concern of civil rights campaigners, too. According to Herbert, who studied the social mechanism of constructing the 'foreign crime crisis' conception in Japan in the late 1980s and also reported the campaigners' activities, 'interpreting is the most demanding problem in criminal procedure for foreigners.'[40]

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[36] Kitamura Shigeru and Hayakawa Osamu, 'Keisatsu ni okeru tsûyaku no genjô to kongo no tenbô (The Present Condition and a Prospect in the Future of Interpretation in the Police)', *Keisatsugaku ronshu (The Journal of Police Science)*, 42(6), 1993, pp. 20-37, p. 21.
[37] NPA, *Keisatsu hakusho* op. cit. (1989), p. 115.
[38] Watanabe Osamu, 'Gaikokujin jiken to keiji shihô kenkyûsha no shiten (The foreigner cases and criminal procedure: reflections of an academic)', in Watanabe Osamu and Nagao Hiromi (eds), *Gaikokujin to keiji tetsuzuki – tekiseina tsûyaku no tameni – (Criminal procedures for foreigners: towards fair interpretation)* (Tokyo: Seibundô, 1998), pp. 285-296, p. 285.
[39] Saikôsaibansho jimusôkyoku keijikyoku, 'X nen ni okeru keiji jiken no gaikyo (General Situation of criminal cases for the year X)', *Hôsôjihô*, 1992, p. 119.
[40] Wolfgang Herbert, *Foreign Workers and Law Enforcement in Japan* (London: Kegan Paul International, 1996), p. 247.

The technical reason for this problem is because Japanese laws stipulate that the language used in investigations and public trials must be Japanese. Article 175 of the Code of Criminal Procedure reads: 'In case a person or persons not versed in the Japanese language are required to make a statement, an interpreter or interpreters shall be caused to interpret.'[41] In addition, article 74 of the Court Organisation Law provides that 'In the court the Japanese language shall be used.'[42]

Watanabe's reports of two trials are testimony to the emergence and 'explosion' of the language barrier problem. During the trial of a foreign defendant conducted in 1987 and 1988, Watanabe noticed that among the public prosecutor, the defence counsel, and the judge, none appeared to have understood that interpretation mattered to the operation of the trial. The judge reportedly told the interpreter that it was enough for the interpreter to convey a rough outline of the exchanges and opinions made during the trial. In contrast to the above indifference, the language barrier 'exploded' in 1991, when the Osaka High Court quashed a first instance ruling in which the defendant was convicted for robbery and murder. The reasons for this decision were as follows: interpretation in the court was incomplete; the interpreter was biased towards the public prosecutor; it was impossible to re-examine the defendant's testimony during the first instance trial, because audio recording of the original court hearings was not produced.[43]

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[41] Fukio Nakane (trans. and ed.), 'The Code of Criminal Procedure of Japan', *EHS Law Bulletin Series* No. 2600 (Tokyo: Eibun-Horei-Sha, 2001), p. RA41.
[42] Fukio Nakane (trans and ed.), 'Court Organization Law', *EHS Law Bulletin Series* No. 2010 (Tokyo: Eibun-Horei-Sha, 1995), p. AA24.
[43] Watanabe, 'Gaikokujin jiken to keiji shihô kenkyûsha no shiten', pp. 285-287.

In 1994, the Supreme Court published the number of complaints upheld by the first instance courts over the accuracy of interpretation during investigations and/or public trials from 1991 to 1993.[44] This was an official acknowledgement of the frequent problems in its operation. Such admission is significant, as it appears that Japan's criminal justice institutions decided that they had to admit officially the existence of the problem. Coleman and Moynihan, criminologists in Britain, argue that criminal statistics are '*records of decisions* (of which they are a very careful and detailed account) [...] rather than *an attempt to represent* aspects of crimes and offenders.'[45] Since both Britain and Japan maintain a bureaucracy, including the judicial branch, the above characterisation applies to the Japanese context as well.

4. Significance of the Language Barrier

(1) Japan's Criminal Justice Administration: a Brief Outline

In order to highlight the significance of the language barrier problem to Japan's criminal justice process, the first two phases of the process, namely investigation and public trial, are briefly described here.[46] The police and public prosecutor investigate in the first phase of the criminal justice process. The main tasks of the

[44] MOJ, *Hanzai hakusho (White Paper on Crime)* (Tokyo: Ôkurashô insatsukyoku, 1994), p. 264.
[45] Clive Coleman and Jenny Moynihan, *Understanding crime data: Haunted by the dark figure* (Buckingham: Open University Press, 2001), p. 135. Emphasis in original.
[46] The Language barrier at the correction phase, the third in the process, also has important implications for the convicts, the state, and the society. Discussing this phase will be beyond the scope of this research, however, for the data relevant to the third phase was more difficult to obtain than that for the first two.

police include: identifying a possible criminal offence; interviewing witness(es); arresting a suspect(s); interviewing the suspect(s) and collecting evidence. Upon completion of their investigation, the police decide whether or not to send the case to a public prosecutor. This decision must be made within 72 hours of the arrest, and the public prosecutor may request a judge to grant permission to detain the suspect for up to 20 days. After completing the investigation, the public prosecutor decides whether or not to charge the suspect. In the second phase of the criminal justice administration, namely, at a public trial, a judge examines the evidence presented to the court by the public prosecutor. After considering all the evidence presented, and cross-examination by the defendant and the defence counsel, the judge decides whether the defendant is guilty or not.[47]

(2) Implications of the Language Barrier Problem

The implications of the language barrier problem to the operation of Japan's criminal justice system are twofold, namely legal and political. The legal implication is that the language barrier may affect the result of the criminal justice administration. To account for this point requires reference to the core principles of the criminal justice system:

[47] Ida Makoto, *Kiso kara manabu keijihô (dai 2 han) (Basics of Criminal Law and Procedure)* (Tokyo: Yuhikaku, 2002), pp. 203-232; Kamiguchi Yutaka et al., *Keijisoshôhô (dai 3 pan) (Criminal Procedure, 3rd edition)* (Tokyo: Yuhikaku, 2002), pp. 31-212; 262-263; Yanagawa Shôji, 'Rainichi gaikokujin no keiji jiken to jinken (Criminal cases of rainichi gaikokujin and their human rights)', in Ebashi Takashi and Tanaka Hiroshi (eds), *Rainichi gaikokujin jinken hakusho (White Paper of human rights of rainichi gaikokujin)* (Tokyo: Akashi shoten, 1997), pp. 274-298, pp. 278-290.

(i) A judge may convict a defendant based on the following three sources: the fact that constitutes the offence; evidence that supports this fact; and identification of the applicable law (Code of Criminal Procedure (CCP) Article 335-1).[48]

(ii) The judge recognises the offence-constituting fact based on evidence. Confession by the suspect or testimony of a witness not accompanied by evidence will not be recognised as an offence-constituting fact (CCP 317).[49] The judge examines the alleged offence and the evidence only to the extent requested by the public prosecutor. In exceptional circumstances, however, a judge can collect and examine evidence by herself/himself.[50]

(iii) There are three rules in the criminal justice system that can void or limit the validity of the evidence submitted to the court by the public prosecutor: (a) hearsay evidence is in principle prohibited (CCP 320-1),[51] even though investigation protocol is accepted by the court as evidence in day-to-day practice on the condition that the suspect gave consent to such submission; (b) forced confession is not recognised as evidence (Constitution of Japan, Article 38-2;[52] CCP 319-1[53]); and (c) 'evidence that [was] collected through illegal investigation will not be accepted as evidence to be examined in court as to whether the defendant is guilty or not.'[54]

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[48] Nakane (trans and ed.), 'The Code of Criminal Procedure of Japan', p. RA83.
[49] Nakane, op. cit., p. RA89; Ida, *Kiso kara manabu keijihô*, p. 219.
[50] Ida, op. cit., p. 220.
[51] Nakane, op. cit., p. RA79; Ida, op. cit., p. 222.
[52] Glenn Hook and Gavan McCormick, *Japan's Contested Constitution: Documents and analysis* (London: Routledge, 2001), p. 194.
[53] Nakane, op. cit., RA79; Ida, op. cit., p. 223.
[54] Ida, op. cit., pp. 223-224.

Two legal implications of the language barrier emerge from the above principles. First, evidence based on inaccurate interpretation will not be recognised as offence-constituting facts. Second, when interpretation is biased for some reason, this also fails to form a crime-constituting fact. The accuracy and neutrality of interpretation can thus affect the conviction or acquittal of foreign defendants.

The above possible influence of interpretation on the administration of criminal justice carries further political implications. The criminal justice administration is an exercise of the sovereign power that is monopolised by the state. In Japan, unlike civil lawsuits, only public prosecutors are authorised to institute a criminal prosecution [55] as 'representative of public interests.' [56] Similarly, only judges are granted authority to make legal decisions as to whether the defendant is guilty or not guilty, and to decide to what extent the defendant should be punished. Ida, a professor of Japan's criminal law, argued that this practice is underlined by the rationale that the clarification of the truth of a case and administering the right sentence to the offender should be of prime importance in the criminal justice administration. For this purpose, the court is in charge of finding the 'objective truth' of the case.[57] In other words, it is assumed in Japan's criminal justice system that the state, not civil society, should control conviction and punishment, because maintenance of domestic order is one of the core tasks of the state.

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[55] Ibid., p. 214.
[56] David Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (Oxford: Oxford University, 2002), p. 237; Kamiguchi et al., *Keijisoshôhô*, p. 91.
[57] Ida, op. cit., pp. 193-194.

However, shortcomings in investigation and public trial may breach the three rules of the validity of evidence shown above, which may possibly lead to an acquittal. Since the criminal justice officials aim to control crime to maintain domestic order,[58] failure to convict a foreign defendant could imply to the criminal justice officials that Japan's criminal justice system is unable to operate in the way that they wish it to. Considering that the language barrier is a manifestation of globalisation, as this chapter demonstrated earlier, being unable to control foreign crime due to the inefficient operation of the criminal justice system could suggest that the state is partially constrained by the language barrier. This clearly shows that the operations of globalisation forces are dialectical. International labour migration is a consequence of globalisation (mediated by capital mobility, as argued in Chapter 4), and now it works as a cause of another force of globalisation, namely the language barrier problem.

(3) Expression of the Language Barrier

From the above discussion it should be clear that investigators should collect evidence in compliance with the following three rules: to acquire the defendant's agreement on the contents of the investigation protocol and its submission to the court as evidence; to obtain a voluntary confession; and to conduct the investigation with due process of law. In the current Japanese context, this means finding out whether due process was enforced during investigation, and whether the investigation protocol was drawn up properly. Insufficient instruction to, or

[58] NPA, *Keisatsu hakusho* op. cit. (1999), p. 1.

monitoring of, interpreters can lead to shortcomings in the investigation of foreign suspects and in the public trial of foreign defendants, which can eventually undermine the validity of the criminal justice administration.

Such shortcomings can take three forms. First, with regard to the suspect's consent to submitting investigation protocol as evidence to the court, such consent may be fictitious if the interpretation during the investigation was inaccurate. Second, the voluntary confession principle will not be fulfilled if investigators forced or cheated the suspect into 'confessing.' Third, compliance with legal procedures during the investigation and public trial includes: the criminal justice officials' responsibilities to notify and explain to foreign suspects and defendants their rights to remain silent and to provide access to a defence counsel and to their consul in order to enable the suspect/defendant to exercise her/his rights. Thus, if insufficient attention is paid to interpretation, it is possible that the language barrier may surface at any of the steps in criminal justice administration (see Table 5-7).

Table 5-7. Possible Expressions of the Language Barrier during the Criminal Justice Process

Police investigation	Public prosecutor's investigation	Public trial
• Questioning by the police as a possible initiation of investigation • Inspection of personal effects of the suspect by the police • Voluntary presentation to police accompanied by police officer(s) • Arrest with or without warrant • Notification of the right to remain silent, and the right to retain defence counsel • Compilation of investigation protocol	• Judge's hearing of suspect's statement before sanctioning committal investigation • Compilation of investigation protocol	• Service of transcript of indictment • Notification of the right to appoint counsel • Notification of the right to remain silent • Examination of evidence • Statements of public prosecutor, defence counsel, and defendant • Pronouncement of judgement and penalty

Source: Ida, op. cit., pp. 203-232; Kamiguchi Yutaka et al., op. cit., pp. 31-212; pp. 262-263; Nakane, Code of Criminal Procedure; Yanagawa, 'Rainichi gaikokujin no keiji jiken to jinken (Criminal cases of rainichi gaikokujin and their human rights)', pp. 278-290.

In contrast to the cases when the interpretation was insufficient as demonstrated in the above table, when a reasonably competent interpreter is assigned to a public trial, that fact will be illustrated by the following developments, according to Judge Tsuneo Suzuki: (i) the expression on the face of the foreign defendant would brighten from the previous puzzled and anxious look; and (ii) whereas incompetent court interpreters would miss points, a capable court interpreter

would be able to bring out the points clearly, thus interviews in the court would flow smoothly.[59]

5. Manifestations of the Language Barrier and the Japanese State's Responses

The previous section showed that the core issue arising from the language barrier problem was the breach of the three principles concerning the validity of evidence submitted to the court. Such a breach can be attributed either to the shortage in the number of interpreters, shortcomings in the quality of interpretation, or both. In order to account for how the Japanese state responded to these shortages and shortcomings, this section discusses the following four points: first, the actions taken by the Japanese state and civil society actors to address the shortage in the number of interpreters; second, the actions carried out to rectify the qualitative shortcomings of the interpretation; third, the Diet debate on developing a new legal framework to address the language barrier problem; and fourth, an assessment on the current status of the language barrier.

(1) Quantitative Shortages

Since Japan's criminal justice administration had not been aware of the need for them,[60] it was unfortunately inevitable that the availability of interpreters was

[59] Interview with Judge Mr. Suzuki Tsuneo, 25 May 2001.
[60] Nakagawa Kiyoaki, 'Gaikokujin higisha no keiji tetsuzuki o meguru mondaiten (Issues related to criminal procedures of foreign suspects)', *Hôritsu no hiroba*, 46(7), 1993, pp. 21-28, p. 28.

limited in the late 1980s and early 1990s. Consequently, the criminal justice process operated without interpretation in many cases during this period. For example, in 1988, approximately 40 percent of *rainichi gaikujin* suspects (1,521 cases out of 3,745) were investigated by the police solely in Japanese.[61] Among the investigation records of *rainichi gaikokujin* cases in the Kinki area in Western Japan between 1988 and 1992 (n=30; this is the number of records made available to the researchers by the public prosecutor's office), a substantial number of the records indicated that interpretation might not have happened.[62] Similarly, among the 8,018 cases for which the defence counsel considered one necessary, an interpreter was assigned to only 838 cases in the early 1990s.[63] As for the court, research for this study so far has not identified published accounts that a public trial of *rainichi gaikokujin* was conducted without interpretation. Judge Kitani, a former Tokyo High Court judge, remarked that there had not been such a case as far as he was able to recall.[64]

The police took two measures to address the interpreter shortage. The first was to train officers to work as interpreters.[65] Those who held the second grade certificate of the *Eiken* English proficiency examination were qualified as internal

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[61] Kitamura and Hayakawa, 'Keisatsu ni okeru tsûyaku no genjô to kongo no tenbô', pp. 31-33; Muraoka Keiichi, 'Aru gaikokujin jiken no kyôkun (Lessons from the criminal case of a foreigner)', *Jiyû to seigi*, 44(1), 1993, pp. 72-79, p. 74; Mitsui Tôru, 'Rainichi gaikokujin no keiji jiken to tsûyaku (1) (Criminal cases of rainichi gaikokujin and interpretation, part 1)', *Hôgaku kyôshitsu*, 195, December 1996, pp. 99-104, p. 99.

[62] Tsuda Mamoru and Miyawaki Setsu, 'Gaikokujin keiji tetsuzuki ni okeru tsûyaku honyaku ishi sotsû no genjô – firipin jin no jiken kiroku no chôsa kara – (The present condition of interpretation, translation and communication in criminal procedures fore foreigners: a case study of the Philippine suspect)', *Jiyû to seigi*, 44(1), 1993, pp. 27-41, pp. 31-34.

[63] Tanaka Hiraku; Taniguchi Seisaku; Matsuo Kôya; Miura Masaharu; Yanagawa Shôji; and Yamada Toshio, 'Gaikokujin jiken to keiji tetsuzuki (Foreigner cases and criminal procedure)', *Jurisuto*, 1043, 15 April 1994, pp. 8-30, p. 11.

[64] Interview with Judge Mr. Kitani Akira, 4 April 2002.

[65] Mitsui, 'Rainichi gaikokujin no keiji jiken to tsûyaku (1)', p. 101.

interpreters.[66] Second, the police asked the private sector to supply interpreters. At the end of the 1980s the majority of interpreters working for the police were the internally trained officers,[67] but by the early 1990s those from the private sectors outnumbered the in-house interpreters.[68] The NPA testified to the Diet both in 1988 and in 2000 that it found it difficult to recruit interpreters of foreign languages 'not so often spoken in Japan' (namely, non-English languages such as Filipino and Thai).[69] In addition, the police compiled an interpreter roster, and shared with the officers in neighbouring jurisdictions the information on interpreters who may be able to assist in investigations.[70]

Research for this study indicates that public prosecutor's office would first identify university teachers or local leaders who can recommend possible candidates to be interpreters,[71] while it would also contact police or the public prosecutor's office in the neighbouring jurisdictions in order to compile the interpreter roster.[72] Initially each public prosecutor's office compiled the rosters, but since late 1997, the MOJ has maintained the roster to which all the public prosecutor's offices have access.[73] The roster is updated monthly and it includes such information about registered interpreters as languages they can interpret, the

[66] Tanaka Hiraku et al., 'Gaikokujin jiken to keiji tetsuzuki', p. 19.
[67] Kitamura and Hayakawa, op. cit., pp. 31-33.
[68] Tanaka Hiraku et al., op. cit., pp. 19-21.
[69] Minutes No. 11, LAC/HOR, the 109th Session, 16 September 1988 (S62), p. 4; Minutes No. 11, Local Governance and Police Affairs Committee, HOC, the 147th Diet, 18 May 2000 (H12), p. 14.
[70] Mitsui, op. cit., p. 101.
[71] Minutes No. 3, LAC/HOC, the 147th Session, 15 March 2000, p. 8.
[72] Mitsui, op. cit., p. 101; Tanaka Hiraku et al., pp. 19-21; Nakagawa, 'Gaikokujin higisha no keiji tetsuzuki o meguru mondaiten', p. 22.
[73] Minutes No. 5, LAC/HOC, the 140th Session, 27 March 1997, p. 8.

extent of their understanding of legal procedures, and awareness about their neutrality.[74]

In the 1980s the courts used to appoint interpreters of English chosen from the roster that the courts had already compiled. For the interpreters of other languages such as Cambodian and Tagalog [Filipino], the courts consulted such institutions as universities, the Ministry of Foreign Affairs, *Nihon Hôsô Kyôkai* (NHK), and foreign embassies in Japan.[75] In the 1990s, the courts also contacted such institutions as language colleges, *Kakyôsôkai* (Chinese residents association), and *Nittai bôeki kyôkai* (Thai-Japan Trade Association),[76] and international exchange associations in prefectures or municipalities.[77] They also placed advertisements for court interpreters in the public media, and on the Supreme Court website.[78] The screening process of interpreters for district courts is, according to Judge Yasurô Tanaka, as follows: first, a primary screening based on an applicants' CV; second, those who were short-listed are asked to observe public trials a couple of times before submitting an essay explaining why the candidate thinks she/he is capable for the job, and how she/he would do it; and third, the court selects interpreters and registers them on the court interpreter

[74] Minutes No. 8, LAC/HOC, the 141st Session, 4 December 1997, p. 6.
[75] Minutes No. 11, LAC/HOR, the 109th Session, 16 September 1988 (S62), p. 6.
[76] Nakayama Takao, 'Yô tsûyaku gaikokujin keiji jiken to saibansho no torikumi (Measures that the courts have taken for criminal cases of foreigners requiring interpretation)', *Jiyû to seigi*, 44(1), 1993, pp. 42-53, p. 44.
[77] Minutes No. 5, LAC/HOC, the 140th Session, 27 March 1997, p. 8.
[78] Minutes No. 5, LAC/HOC, the 140th Session, 27 March 1997, p. 8.

roster.[79] Each High Court compiled a roster to enable the District Courts in its jurisdiction to share the information.[80]

As a consequence of the recruitment during the last decade, the capacity for judicial interpretation has expanded as follows, according to the official accounts. In 2000, the police had 8,700 interpreters in total on their rosters, consisting of 3,400 police officers and 5,300 private interpreters.[81] For the Public Prosecutor's Office, approximately 1,900 interpreters were registered in 1994, and by late 1997 the number had increased to 3,700.[82] A Supreme Court official testified in 2002 that the number of interpreters on their rosters was 414 in 1990, 2,703 in 2000, and 3,037 in 2001.[83] In terms of the number of languages they should be able to interpret, the police and the external interpreters collectively have command of 70 to 80 languages.[84] The 3,037 interpreters on the rosters of the courts in 2001 totalled 44 languages.[85] However, for twenty of these languages, there were less than ten interpreters, and for the other eleven, there was only one interpreter each.[86] The limited availability of interpreters, in particular

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[79] Interview with Judge Mr. Tanaka Yasurô, 19 June 2001.
[80] Murase Hitoshi, 'Gaikokujin hikokunin no saibanjô no mondaiten to taisaku (Problems in criminal trials of foreigners and their measures)', *Hôritsu no hiroba*, 46(7), 1993, pp. 29-34, p. 31. Minutes No. 5, LAC/HOC, the 140th Session, 27 March 1997, p. 8.
[81] Minutes No. 11, Local Governance and Police Affairs Committee, HOC, the 147the Session, 18 May 2000 (H12), p. 14; Minutes No. 6, Accounting Committee, HOC, Post-session meeting of the 149th Session, 20 September 2000 (H12), p. 4.
[82] Minutes No. 8, LAC/HOC, the 141st Session, 4 December 1997, p. 6.
[83] Minutes No. 9, LAC/HOC, the 154th Session, 11 April 2002 (H14), p. 10. At the same meeting, the number of foreign defendants who received court interpretation was also reported to the Diet: 689 (1.3% of the entire defendants judgement was given) in 1989 (H1); 5,331 (10.7%) in 1994 (H6); 7,219 (12.6%) in 1997 (H9); and 6,281 (9.2%) in 2000 (H12) (p. 10).
[84] Minutes No. 11, Local Governance and Police Affairs Committee, HOC, the 147th Session, 18 May 2000 (H12), p. 14.
[85] Minutes No. 9, LAC/HOC, the 154th Session, 11 April 2002 (H14), p. 10.
[86] Minutes No. 6, Accounting Committee, HOC, Post-session meeting, the 149th Session, 20 September 2000 (H12), p. 4. In 2000, number of foreign defendants sentenced at the first-instance trial was 6,328. Number of their country of origin was 76, and 36 languages were interpreted this year. Constituents of these languages were: Chinese (38.8% of the entire cases with interpretation

those of the relatively less frequently spoken languages in Japan, is illustrated in the account of a former Thai-Japanese interpreter who was a student of a university in Japan. Demand for judicial interpretation (both for investigation and public trial) was so heavy that from a certain point of time he had to decline requests to interpret due to concern that he might not be able to complete his research he was conducting in Japan if he kept sparing time for judicial interpretation.[87]

By the end of the 1990s, judicial interpretation had become a 'one billion yen industry.'[88] According to the MOJ, the amount it had spent on interpreter fees was ¥82.2 million in 1993; ¥432.4 million in 1997; and ¥464 million in 1998. The annual budget for 1999 was ¥504 million[89] and was ¥556 million in 2000.[90] In addition, the Ministry allocated ¥13 million for Workshops for Interpreters in 2000.[91] According to the testimony by the SC in 1999, the amount that the courts spent on the court interpreter fees was as follows: ¥167 million in 1993; ¥580 million in 1997; ¥580 million in 1998. The budget for 1999 was ¥580

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given), Korean (15.6), Filipino (Tagalog) (6.8), Persian (6.4), Thai (6.2), Portuguese (5.3), Spanish (4.7), English (3.9), Vietnamese (2.3), Bengalese (1.9), and other languages (8.1). In addition the 'other languages' include the following: Arabic, Italian, Indonesian, Urdu, Dutch, Cambodian, Singhalese, Swahili, Tamil, German, Turkish, Nepalese, Hungarian, Punjabi, French, Hebrew, Polish, Malay, Myammarese, Mongolian, Laotian, Rumanian and Russian. Yokohama District Court, http://courtdomino2.courts.go.jp/__49256b52003556d8.nsf/0/617c10450136b8dd49256b5e0013c4d1?OpenDocument&Highlight=0,_f229ck44muc890r0_ (cited 22 January 2003)

[87] Interview with Mr. Sittha Sanfeungfung, 19 March 2002.

[88] Approximately $83 million at US$1=¥120.

[89] Minutes No. 2, LAC/HOC, the 145th Session, 15 March 1999 (H11), p. 15.

[90] Minutes No. 2, LAC/HOC, the 147th Session, 14 March 2000 (H12), p. 14.

[91] Minutes No. 2, LAC/HOC, the 147th Session, 14 March 2000 (H12), p. 14.

million,[92] and ¥24 million was allocated to *Hôtei tsûyakunin seminâ (Workshop for Court Interpreters)*, and ¥8 million for the Manual for Interpreters.[93]

(2) Qualitative Shortcomings

A qualitative improvement in judicial interpretation was also required in Japan's criminal justice institutions, since the increase in the number of the interpreters recruited did not automatically warrant the quality of interpretation they were able to provide for the criminal justice process. Two kinds of actors engaged in such improvements. The first were the members of the criminal justice institutions themselves, namely the police, public prosecutor and the court. The second were the judicial interpreters. In other words, whereas the officials themselves could change the way they operate, they could also design training programmes for judicial interpreters. Whichever way was chosen, preparation for these qualitative improvements was likely to have involved a restructuring of the operation of Japan's criminal justice administration. In this respect, the internal sector of the Japanese state has certainly responded to the external impact rendered upon its operation in Japan's geographical territory. One of the fundamental obstacles to removing the language barrier was the lack of understanding among the officials that interpretation does indeed matter to the administration of criminal justice, and it should be taken seriously as such.[94] The developments shown below in this

[92] Minutes No. 2, LAC/HOC, the 145th Session, 15 March 1999 (H11), p. 15.
[93] Minutes No. 2, LAC/HOC, the 145th Session, 15 March 1999 (H11), p. 15.
[94] Watanabe Osamu; Tanaka Hiraku et al, op. cit., p. 15.

and the next subsections indicate that such indifference appears to have decreased – at least to a certain degree.

a. Providing translation of the investigation and court documents

The police, public prosecutor, and the court should enable the suspect/defendant to understand what sort of legal process she/he is going through, in order to be able to defend herself/himself with the assistance of the defence counsel. These arrangements should ensure that state power is not unduly exercised. For the above purpose the investigators and the courts have compiled translations of the documents to present to foreign suspects and defendants at different stages in the criminal justice administration, including the following three documents. First, the police provide the suspects with translations of legal documents whose contents are fixed regardless of the case, such as notification of the right to retain defence counsel.[95] Second, the court explains to the foreign defendants the implications of the judge's questioning prior to detention, and the availability of duty counsel.[96] Third, the court sends a translation of an outline of the indictment to the defendant before the public trial begins.[97] Yanagawa, an attorney-at-law, requested to investigation officials that the following should be enforced: the police should orally inform a suspect of the reason for the arrest in the language that the suspect understands. If they were unable to do so at the time of arrest, such notification should be made as soon as possible after the arrest, through an

[95] Fujimoto Tetsuya, *Keijiseisaku gairon (zentei dai 3 pan) (Criminal policy: an outline (3rd and revised edition))* (Tokyo: Seirin shoin, 2001), p. 340.
[96] Mitsui, op. cit., p. 103.
[97] Ibid., p. 104.

interpreter over the phone if necessary; in either case, notification of the suspects' rights should be made in a practical manner, not as a token measure. The fact that such request was made indicates that those notices were not always made during the early 1990s.

The following two events may have been influential in ensuring distribution of the translation of the documents. First, in October 1990, Urawa District Court acquitted a foreign defendant who was charged on suspicion of arson, while he was simultaneously convicted for overstaying the visa expiry date. The reasons for this acquittal were manifold, but one point that is most relevant to this study is that the Court, presided over by Judge Kitani Akira, found that the confession of the defendant submitted to the court did not constitute valid evidence of an offence, for it was made involuntarily. According to the Court, the investigators did not inform the defendant of the right to remain silent and to retain a defence counsel in a practical manner which was understandable to him, but only as a mere formality. In addition, the investigators led the suspect to make a false confession, taking advantage of the defendant's misunderstanding of Japan's criminal justice system.[98] The Court warned the investigators that, notwithstanding the resource constraints under which the investigators were operating when dealing with the cases of foreigners, the practice of the investigators in this case should be corrected immediately. Forcing a foreigner, who has at best a limited understanding of Japanese law and the language, to make a false confession is unacceptable both on humanitarian grounds and

[98] Urawa chihô saibansho, 'Misatoshi no gaikokujin apâto hôka jiken hanketsu (urawa chisai shô 63 (wa) 707 gô, 782 gô, hei 2. 10. 2 kei sanbu hanketsu)', *Hanrei jiho*, 1376, pp. 24-54, pp. 40-42, p. 45.

according to international morality.[99] At least in the Urawa court case, the investigation failed to convict the suspect whom they thought was responsible for a suspected crime. Three years after the Urawa ruling, an official from the Ministry of Justice alluded to the above judgement and wrote that, even though that official himself was convinced that it was the practice of investigators to inform suspects of their rights, translations of notice of such rights should be prepared. In this way, it was argued that, the investigators will be able to prove to third parties that they guarantee defendants' rights, and also will be able to 'avoid unnecessary disputes during public trial.'[100] The failure to inform suspects of their rights, as seen in the above case, was not uncommon in the early 1990s. One of the interviewees for this study, who was arrested in Japan in 1992, told the author that at the time of the arrest there were no explanations given in a comprehensible way pertaining to the rights of the suspect.[101]

In contrast to the judiciary's influence upon the administrative branch of the Japanese state as shown above, in a second event, civil rights campaigners were able to affect the operation of the courts. *Jiyû jinken kyôkai* (Japan Civil Liberties Union, JCLU) is an NGO that advocates the promotion of international human rights. In 1991 JCLU published a proposal to call for the protection of the rights of foreigners in Japan, including those within the criminal justice process. One of the suggestions in this proposal stated that translation of legal documents

[99] Urawa chiho saibansho, 'Misatoshi no gaikokujin apâto hôka jiken hanketsu', pp. 53-54.
[100] Nakagawa, op. cit., p. 27.
[101] Interview with Khun P, Tai-nichi josei nettowâku (Thailand-Japan Network for Migrant Women), on 10 March 2002.

should be provided to foreigners during investigation and public trial.[102] Hashiba, a senior member of the Union reported that, based on the proposal, the JCLU managed to discuss frankly with the Supreme Court the issues relating to foreigners and criminal justice. He also noted that all the District Courts and the Summary Courts began providing translation of legal documents thereafter.

Another example of a civil society actors' contribution in reducing the extent of the language barrier problem is the working of the *tôban bengoshi* (Duty Counsel) system in Japan, according to Kawaguchi Kazuko, an attorney-at-law. The system was first set up in Fukuoka in western Japan in 1990, and then was further introduced throughout the country in 1991. Because the defence counsels are now able to contact a suspect during the investigation stage, the possibilities for inaccurate interpretation and investigation protocol have probably decreased in the 1990s.[103]

b. Training for judicial interpreters

Shortly after the introduction of interpreters began in the early 1990s, it was discovered that some of the interpreters from outside the judiciary did not know basic legal terms that are frequently used in investigation and public trial. To reduce the extent of this problem, the police, public prosecutor, defence counsel

[102] Japan Civil Liberties Union, *Criminal Procedure and the Human Rights of Foreigners in Japan: Problems and Suggestions* (Tokyo: Japan Civil Liberties Union, 1991), p. 7, p. 10, and p. 12.
[103] Interview with Kawaguchi Kazuko, 5 March 2002.

and the courts respectively compiled a glossary of legal terms and also held training sessions for interpreters.[104]

The training and recruitment of interpreters became intertwined by the end of the 1990s, as illustrated by the following three developments. First, the police both trained their officers internally, and also delegated some of their training to external institutions. While the NPA administered language training (mainly English) to the officers at *Kokusai sôsa kensyûsho* (International Research and Training Institute for Criminal Investigation, National Police Academy), local police authorities asked private institutions (presumably language schools) to give language lessons to their officers.[105] Second, the MOJ, which has jurisdiction over the public prosecutor's office, provided interpreters with a glossary of legal terms in several different languages.[106] The Criminal Affairs Bureau of MOJ delegated *Hômu sôgô kenkyûsho* (Research and Training Institute of Ministry of Justice) to hold *Tsûyakunin seminâ* (Workshops for Interpreters) in Tokyo. Instructors for these workshops included public prosecutors from the Ministry, and prosecutors operating in public prosecutor's offices. These workshops had been held four times from 1994 to 1996 (once in 1994 and 1995, twice in 1996), and the high public prosecutor's offices select the attendants of these workshops from interpreters within their jurisdiction.[107] By 2000, MOJ increased the frequency of meetings between interpreters and public prosecutors held at the District Prosecutor's Office; it also sent the officials to *Shihô tsûyaku toreining seminâ* (Workshops for Judicial Interpreters) held by a university and sought

[104] Mitsui, op. cit., pp. 101-102.
[105] Minutes No. 11, LAC/HOR, the 109th Session, 16 September 1988 (S62), p. 4.
[106] Minutes No. 5, LAC/HOC, the 140th Session, 27 March 1997 (H9), p. 8.
[107] Minutes No. 8, LAC/HOC, the 141st Session, 4 December 1997 (H9), p. 7.

possible future interpreters.[108] In 2001, Kômura Masahiko, the Minister of Justice. told the Diet that the Ministry was considering the establishment of a *Tsûyakunin shien sentâ* (Support Centre for Judicial Interpreters) to coordinate the registration and management of interpreters. [109]

Third, the training of interpreters given by the courts became more systematic in the late 1990s than it had been in the late 1980s, when training was left to individual courts. New practices included the judge or the court officials explaining to the interpreter the procedures of the trial and the relevant legal terms and asking the interpreters to observe public trials other than their own cases as preparation. The courts also supplied a manual for court interpreters, which was originally compiled for the courts in Okinawa in the early 1970s when the territory was returned to Japan.[110] Since 1995, the courts have held '*Hôtei tsûyakunin seminâ* (Workshops for Court Interpreters)' in different places which were effective in identifying and recruiting in each region in Japan new interpreters of especially the non-English foreign languages. The courts have also made videotapes that explain the outline of the Japanese criminal procedure; compiled *Hôtei tsûyaku gaidobukku* (A Manual for Court Interpreters); and made sure to assign new interpreters to cases that are relatively simple and easy to interpret.[111] In the meantime, the SC acknowledged to the Diet the efforts that private organisations had made when working on judicial interpretation issues, and that the courts were ready to cooperate with such private parties towards the

[108] Minutes No. 2, LAC/HOC, the 147th Session, 14 March 2000 (H12), p. 14.
[109] Minutes No. 10, Budget Committee, HOC, the 151st Session, 19 March 2001 (H13), p. 31.
[110] Minutes No. 11, LAC/HOR, the 109th Session, 16 September 1988 (S62), p. 8.
[111] Minutes No. 5, LAC/HOC, the 140th Session, 27 March 1997 (H9), p. 8.

improvement of the capability of interpreters.[112] Unlike similar workshops that the MOJ holds, District Courts in the prefecture where there is a High Court organise and hold *Hôtei tsûyakunin seminâ* (Workshops for Court Interpreters).[113]

Meanwhile, though not a result of deliberate training, the emergence of 'second-generation' interpreters has also contributed to improvements in court interpretation. According to Miki Emiko, an attorney-at-law, at the end of the 1990s an increasing number of interpreters' first language is the same as that of the suspect/defendant/witness. Some of those interpreters are foreign residents who have settled down in Japan. It is probable that such interpreters would clearly understand the crucial points that the suspect, defendant or witness, made in the court. Even if expressions used in her/his interpretation into Japanese were somehow less fluent in comparison to native Japanese speakers, this can be rectified by the lawyers in the court whose first language is Japanese. The significance of the above development becomes clearer in comparison to common practice in the early 1990s. At the time the first language of the judicial interpreter was often Japanese and despite the fact that she or he was able to express themselves accurately in Japanese, on certain occasions the contents of the interpreted testimony did not fully make sense.[114] It is possible to speculate that the reasons for the above included a lack of professional training as a court interpreter, and of understanding about the social and cultural backgrounds of the defendant.

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[112] This appears to be referring to the Japan Judicial Interpreters Association, among others.
[113] Minutes No. 8, LAC/HOC, the 141st Session, 4 December 1997 (H9), p. 8.
[114] Interview with Miki Emiko, 16 November 2002.

c. Assigning at least two interpreters in one case

Different stages in investigation and public trial carry different legal implications. When discussing the case with the defence counsel, or during a public trial, there are possibilities that the foreigner suspected of offence may be able to successfully defend herself/himself with the help of counsel, which is more difficult to achieve during the investigation. Understanding the difference between the investigation and public trial could therefore be crucial for the suspect/defendant. Mitsui, a professor in Japanese criminal law, argued in this connection that the interpreter at a public trial should be a different person from the one in the investigation, so that the defendant would understand the implications of each stage, and thus effectively be able to defend herself/himself. In the early 1990s that was not always possible, probably because interpreters were less easily available than in later years.[115] But Mitsui reported that increasingly different interpreters have been assigned at the different stages of police investigation, public prosecutor investigation, and public trial.[116] This is possibly because the number of available interpreters has increased for some of the languages.

[115] Mitsui, op. cit., p. 103; Yanagawa, op. cit., pp. 283-284.
[116] Mitsui, op. cit., p. 103.

d. Use of plain, clear and logical Japanese

The aim of using plain language is similar to the above, namely to assist the suspect/defendant to understand what is going to happen to her/him. Some judges have urged their colleagues to use plain and easily understandable Japanese expressions, so that the interpreters and the defendant may better comprehend the public trial process, and also the implications of the actions taken during public trial.[117] Some of the public prosecutors and judges appear to have learned that the preparation prior to the public trial is effective and indispensable in making the Japanese used in the court clearer and more comprehensible. First, by the mid-1990s, public prosecutors from the Tokyo District Prosecutors' Office began supplying advance summaries of evidence to be examined during a public trial. This made the examination of evidence more comprehensible to the interpreters, and by extension, to the defendants.[118] Second, in his article published in 1998 and circulated among judges and judicial interpreters for training purposes,[119] Judge Tanaka Yasurô argued that the problems in the administration of a public trial arising from the language barrier can, to many extents, be effectively addressed by taking the following measures: (i) institutionalise systematic training to improve the capability of interpreters. (ii) Ensure that the public prosecutor, defence counsel and judge in a case make full preparations in advance so that the administration of the trial transparent and comprehensible. (iii) Inform defendants of their rights to defend themselves. (iv) Provide the defendant with a one-way

[117] Nakayama, 'Yô tsûyaku gaikokujin keiji jiken to saibansho no torikumi', p. 47; Nakagawa, op. cit., p. 27.
[118] Watanabe, op. cit., pp. 288-289.
[119] Interview with Judge Mr. Tanaka Yasurô, 19 June 2001.

wireless receiver in order to reduce the time required for interpretation.[120] There is some evidence such training may be having an effect: in one public trial at a branch office of the district court, the author of this study confirmed that exactly the same language as in the Tanaka article was used by the presiding judge during proclamation of the sentence.[121]

e. Audio recording of testimony in the court for future re-examination

Since court-hearing protocol is written in Japanese, there is no way to confirm retrospectively, be it at a later stage of the same public trial or during the second instance, whether interpretation in the court was accurate. This problem may now be possible to amend, as the presiding judges have been allowed since November 1989 to record the testimony of the foreign defendant to whom interpretation was provided.[122]

f. Interpretation costs

At the beginning of the 1990s, the courts used to charge interpretation costs for a public trial of foreign defendants. This practice changed after the Tokyo High Court ruled in February 1993 that courts should not charge foreign defendants

[120] Tanaka Yasurô, 'Gaikokujin jiken ni okeru seikakuna hôtei tsûyaku no jissen to tekisetsuna soshô unei (Practicing Accurate Court Interpretation and the Appropriate Court Administration in Foreign Cases)', in Harada Kunio ; Kawakami Takuichi; and Nakatani Yûjirô (eds), *Keiji saiban no riron to jitsumu (Theory and Practice in Criminal Trial)* (Tokyo: Seibundô, 1998), pp. 139-191.
[121] Judge Mr. Amemiya Norio, Urawa District Court, Kawagoe Branch, 5 June 2001.
[122] Hashiba Shun, "Kokusai jinken kijun kara mita keijitetsuzuki ni okeru gaikokujin no jinken - JCLU 'teigen' o chûsin ni - (An assessment of human rights of foreigners in criminal procedure by the international human rights standard: in connection with the JCLU proposal)", *Jiyû to seigi*, 1993, 44(1), pp. 60-65, p. 63.

interpretation costs, on the grounds of Article 14-3-(f) of the International Covenant on Civil and Political Rights. A senior official of the Supreme Court wrote in 1993 that, as a member of international society, Japanese courts should continue making efforts towards meeting the requirements of international human rights standards, notwithstanding opposition within the courts based on the negative understanding of the applicability of international law on Japan's domestic law.[123] Civil rights campaigners welcome this decision,[124] since this ruling provides the legal basis for the similar treatment of foreigners and Japanese in future cases. However, there could be judges, who would also order that the MOJ should bare the interpretation cost, but based on a different legal justification adapted from Japan's Code of Criminal Procedure,[125] rather than the international covenant.

(3) Public Certification of Judicial Interpreters

The previous two subsections showed how the police, public prosecutor, defence counsel and the court have worked to reduce the constraints from the language barrier on Japan's criminal justice administration by increasing the number of interpreters and improving the quality of interpretation. In contrast, this subsection is going to show the response to the language barrier by the legislative branch of the Japanese state. The legislature's action is as significant as those by

[123] Nakayama, op. cit., p. 42.
[124] Nihon bengoshi rengôkai, *Kokusai jinken kiyaku to nihon no shihô shimin no kenri (International human rights covenants, Japan's judiciary, and citizens' rights)* (Tokyo: Kôchi shobô, 1997), p. 97, p. 348; Watanabe, op. cit., pp. 288-289.
[125] Tanaka Hiraku et al., op. cit., pp. 26-27.

the administrative branch of the state: if and when a new law was approved and enacted by the legislature, this would give new powers to the bureaucracy (namely the police, public prosecutor, defence counsel and the court) to address the language barrier. In other words, whereas the above-mentioned quantitative increase and qualitative improvements can be seen as a first stage of the Japanese state's response to the language barrier, the legislature's action constitutes the second stage of the response.

Lawmakers questioned the government and the judiciary about the language barrier problem 19 times from 1988 to 2001, once in the House of Representatives and the remaining 18 times in the House of Councillors. Ômori Reiko, a member of the House of Councillors, played a key role in this debate, posing questions in the Diet ten times out of the nineteen. She was influenced by her own experience when she, as a public prosecutor, had processed cases of Thai migrant women. Being a lawmaker from a junior coalition partner in the 1990s may also have given her an additional capability to bring the language barrier issue to the agenda of the parliamentary debate.[126]

[126] Ômori Reiko, 'Tekisei tsûyaku no hoshô to kuni no shisei, kokusei no shiten (Japanese state's attitude manifest in national legislature about guaranteeing the appropriate interpretation)', in Watanabe and Nagao (eds), *Gaikokujin to keiji tetsuzuki – tekiseina tsûyaku no tameni – (Criminal procedures for foreigners: towards fair interpretation)*, pp. 297-313, pp. 297-298; Ômori Reiko, 'Gaikokujin jiken ni okeru shihô tsûyaku no genjô (The Present Status of Judicial Interpretation for Foreigner Cases).' http://www.reiko-ohmori.com/reiko/home.html Cited 13 January 2003. Minutes No. 5, Legal Affairs Committee (LAC), House of Councillors (HOC), the 140th Session, 27 March 1997 (H9), p. 7. Shiroishi Makiko, '30 sai o sugite sengyô shufu kara shihô tsûyaku no michie (Interview with Hiromi Nagao. From a full time housewife to a judicial interpreter: the choice made after 30 years of age)', *Sâ iou (Let's talk)*, July 1999.

a. Significance of interpretation to criminal justice

At the end of the 1980s, the Japanese state saw the relevance of judicial interpretation primarily in terms of efficiency in crime control. The police and public prosecutors considered the language barrier as causing difficulties in collecting evidence of offence[127] and controlling unauthorised foreign residents efficiently.[128] However, by the early 1990s the police accepted that interpretation was not solely for investigation, and that the measures should be enforced to protect the rights of foreign suspects in practical terms and not in a token manner.[129] This contrasts with their statements in previous years.

In the late 1990s, the Japanese government officially acknowledged that judicial interpretation was indispensable in order to control crime committed by foreigners as well as to guarantee the rights of the foreigners involved. The Commissioner of the National Public Safety Commission said that it was essential for the police to improve interpretation, both in order to 'listen carefully' to the testimony of any foreigners suspected of offences, and also to take their human rights into consideration.[130] An official from the MOJ reported that recruiting competent interpreters was crucial for performing investigations as precisely as possible, and for guaranteeing the rights of suspects and witnesses.[131] The above position was further endorsed by Ministers. In March 1999, Jinnai Takao,

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[127] Nakagawa, op. cit., p. 22.
[128] Matsumoto Mitsuhiro, 'Rainichi gaikokujin ni kakaru hanzai no dôkô to kongo no kadai (Present situation and the future problems in crimes relating to visiting foreigners)', *Hôritsu no hiroba*, 46(7), 1993, pp. 4-13, pp. 12-13.
[129] Kitamura and Hayakawa, op. cit., pp. 34-36; NPA, op. cit. (1992 edition), pp. 91-92.
[130] Minutes No. 11, Local Governance and Police Affairs Committee, HOC, the 147th Session, 18 May 2000 (H12), p. 13.
[131] Minutes No. 5, LAC/HOC, the 140th Session, 27 March 1997 (H9), p. 8.

Minister of Justice, told the Diet that ensuring the recruitment of competent interpreters was important for legal process: accurate and impartial interpretation was salient for just and efficient investigation and trial, and also for protecting the rights of suspects and defendants.[132] Two months later, Prime Minister Obuchi Keizô went on to confirm to the Diet that to recruit competent interpreters and to provide accurate and impartial interpretation in the criminal cases of foreigners were important in order to realise a just and unbiased investigation and trial.[133] Consequently, at the official policy statement level, the two contradictory (at least in the short term) concerns over the efficiency in crime control and protecting the rights of the foreigners being investigated have been embedded in Japan's criminal justice administration.

Moreover, the Ministry of Justice claimed that judicial interpretation could possibly be an instrument for protecting the interests of Japanese nationals abroad. In 2000, Yasuoka Kôji, Minister of Justice, told the Diet that ensuring accurate interpretation in judicial process was important not only for securing the human rights of foreign residents in Japan who were questioned as suspects, but also for the foreigners as witness. He then suggested that accurate and just interpretation in Japan's criminal justice process could allow the Japanese government demand that foreign countries justly treat Japanese nationals in their own judicial processes.[134] The so-called Melbourne Case, in which Japanese tourists were convicted by the Australian court for smuggling illegal drugs from the country they had visited before arriving in Australia, is a case in point. The defendants

[132] Minutes No. 3, LAC/HOC, the 145th Session, 15 March 1999 (H11), p. 14.
[133] Minutes No. 14, LAC/HOC, the 145th Session, 27 May 1999 (H11), pp. 5-6.
[134] Minutes No. 2, Budget Committee, HOC, the 149th Session, 8 August 2000 (H12), p. 34.

argued that inaccurate interpretation misled them, making them unable to fully defend themselves.[135]

b. Guaranteeing the accuracy of interpretation

While acknowledging the considerable importance of judicial interpretation, the investigators and the judiciary also admitted in the 1990s that it was extremely difficult to organise consistent ways for ensuring the accuracy of interpretation. One possible way to ensure accuracy is to make an audio recording of an investigation or public trial. The degree of acceptance of the need for audio recording varies between the criminal justice institutions. Even though it acknowledged the need for such measures, in 1988 the NPA did not have any particular systematic ways to ensure the accuracy of interpretation during an investigation. At that time, only in exceptional cases did the police ask a suspect to submit a written testimony in the foreign language she/he commands and attach it to the official investigation protocol, in which the testimony was translated and written in Japanese.[136] The rejection of audio recording partially changed a decade later. In 2000, the police stated to make audio recordings of part of an investigation in order to prove to third parties that the suspect agreed with the contents of the investigation protocol. At the end of the investigation, the investigative officer would read out to the suspect the protocol that the officer had compiled from the testimony of the suspect, and then obtain the suspect's consent

[135] Mizuno, 'Gaikokujin jiken to tsûyaku mondai'.
[136] Minutes No. 11, LAC, House of Representatives (HOR), the 109th Session, 16 September 1988 (S62), pp. 4-5.

that the contents of the protocol were accurate. This became a common practice in preparation for the possibility that the accuracy of interpretation could be contested at a later stage of the criminal justice process.[137] The MOJ admitted in 1998 that it did not have reliable ways to ensure that interpretation during investigation was accurate.[138] Nevertheless, the Ministry was not considering making audio recordings of interrogations, claiming that the transcription would be time-consuming.[139]

c. Public certification of the capability of interpreters

Certifying the capability of judicial interpreters was discussed at the Diet after 1999 as another possible way to ensure improved accuracy of interpretation. At the end of the 1980s, neither the MOJ nor the SC expressed any interest in certification.[140] Similarly in 1997, the MOJ thought that such public certification was premature[141] and untimely.[142] However, in 1999 when he acknowledged the significance of judicial interpretation, Prime Minister Obuchi stated that the Cabinet would examine the necessity to establish a public examination of interpreters, and a law that regulates court interpretation.[143] In 2000, the Minister of Justice confirmed that his Ministry had started to consider a bill for the public

[137] Minutes No. 11, Local Governance and Police Affairs Committee, HOC, the 147th Session, 18 May 2000 (H12), p. 16.
[138] Minutes No. 3, LAC/HOC, the 143rd Session, 22 September 1998 (H10), p. 19.
[139] Minutes No. 3, LAC/HOC, the 143rd Session, 22 September 1998 (H10), p. 20.
[140] Minutes No. 11, LAC/HOR, the 109th Session, 16 September 1988 (S62), pp. 8-9.
[141] Minutes No. 5, LAC/HOC, the 140th Session, 27 March 1997 (H9), p. 9.
[142] Minutes No. 8, LAC/HOC, the 141st Session, 4 December 1997 (H9), p. 9.
[143] Minutes No. 14, LAC/HOC, the 145th Session, 27 May 1999 (H11), pp. 5-6.

certification of judicial interpreters.[144] For this purpose, the MOJ sent law scholars to the United States (New York, New Jersey and Florida) and to Sweden, Germany and France to conduct research on the public certification of court interpreters. *The Yomiuri Shinbun* reported in January 2002 that the government and the ruling parties had decided to make a new law concerning judicial interpreters (*shihô tsûyaku*).[145] However, no bill on the certification of judicial interpreters had been submitted to the Diet by 2003.

Ethical guidelines will be an important part of the public certification of the competence of judicial interpreters. A judicial interpreter can be biased because, for example, of social relations within the migrant community between a suspect/defendant and the interpreter. In that case the neutrality of the interpretation may be compromised. There were cases, in particular in the early 1990s, in which the interpreter (who was from the same country as the foreigner suspected of an offence) was not particularly sympathetic to the suspect, possibly because of a difference in social backgrounds. There were also instances in which the interpreter had vested interests,[146] such as the case in which the Urawa District Court acquitted the defendant in 1991, reported earlier in this chapter. The police had asked the flatmate of the suspect to interpret, even though this flatmate had alleged that the suspect set fire to the flat. Even if it was not deliberate, a judicial interpretation could be biased if the interpreter did not know what she or he was supposed to do and what not. Ohki and others argue that defence counsel should

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[144] Minutes No. 2, Budget Committee, HOC, the 149th Session, 8 August 2000 (H12), p. 34.
[145] *Yomiuri shinbun*, 5 January 2002, cited in *Migrants'-netto*, No. 48, April 2002, p. 11.
[146] Tsuda and Miyawaki, 'Gaikokujin keiji tetsuzuki ni okeru tsuyaku honyaku ishi sotsû no genjô', p. 40.

remind the interpreter to refrain from giving the suspect advice that is of legal character.[147]

As far as the research for this study has been able to identify, Japan's criminal justice institutions maintain that enough has been done about the ethical aspects of interpretation. The police told the Diet in 2000 that there was no legal requirement to bind private interpreters to protect information learned during interpretation. Nevertheless, the police would ask interpreters to sign a written pledge not to disclose such information.[148] In addition, the police would instruct interpreters at workshops on the importance of protecting secrets learned during interpretation. The MOJ would instruct judicial interpreters professional ethics at the *Tsûyakunin seminâ* (Workshop for Interpreters) and on other occasions, while each Public Prosecutor's Office does the same in its daily practice. Regarding court interpreters, each must take an oath before she/he begins interpretation, which binds her/him to interpret sincerely. In case an interpreter committed perjury, she/he will be held criminally responsible.[149]

(4) Current Status of the Language Barrier and the Remaining Issues

This chapter described how the language barrier problem emerged in Japan during the end of the 1980s and the beginning of the 1990s and the responses by various

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[147] Ohki Kazuhiro et al., *Gaikokujin jiken keiji bengo manyuaru (Foreigner criminal case manual for defence lawyers)* (Tokyo: Gendai jinbunsha, 1997), p. 86.
[148] Minutes No. 11, Local Governance and Police Affairs Committee, HOC, the 147th Session, 18 May 2000 (H12), p. 15. Suzuki Ken considers that the police should still be responsible for supervising private interpreters. Suzuki Ken , 'Kanagawakenkei minkanjin tsûyaku ga sôsa torishirabe jôhô o rôei (Private interpreter for Kanagawa Prefectural Police leaks information obtained from investigation)', *Migrants'-Net*, May 2000, No. 27, p. 16.
[149] Minutes No. 6, Accounting Committee, HOC, Post-session meeting, the 149th Session, 20 September 2000 (H12), p. 28.

actors to address these problems. These developments can be summarised in terms of the following three aspects. First, the number of judicial interpreters has increased, which is reflected in the frequency of use of interpretation. In 1988, the rate of interpretation against the entire public trials for foreigners was 29.0 percent, and in 1991 this rose to 49.7 percent. The rate of interpretation increased afterwards, to 62.2 percent in 1992, and hit a peak of 85.4 percent in 1997.[150] Research for this study has been unable to identify corresponding figures for the police and public prosecutors. In 1988, among the police investigations of foreigners suspected of an offence, 40 percent of them were carried out without interpretation.[151] Second, in terms of the quality of interpretation, the Japanese state appears to have managed to maintain legality and legitimacy of administering criminal justice to foreigners suspected of an offence. This is in contrast to the beginning of the 1990s when the investigators failed, at least on two occasions, to convince the judiciary that the investigation was legal. Third, with regard to the building of a new legal framework for addressing the language barrier problem, the Ministry of Justice has begun research for a bill on the public certification of judicial interpreters.

Even though there is a consensus among lawyers that interpretation has improved in the last decade, there is nevertheless some room for further

[150] General Secretariat, the Supreme Court (GSSC), 'Tsûjô dai isshin ni okeru tsûyaku honyakunin no tsuita gaikokujin jiken no yûzai jinin (chisai, kansai) (Convictions at Ordinary First Instance Trials at District and Summary Courts in which Interpretation was Given)', GSSC, 'X nen ni okeru keiji jiken no gaikyo (General situation of criminal cases for the year X)', *Hôsô jihô*, various years.
[151] See p. 263 of this Chapter.

improvements.[152] Firstly, there is an uneven distribution of the availability of interpreters and defence counsel in Japan. In other words, those who live in smaller cities and rural areas are less likely to have access to an interpreter compared with those who live in the large cities where more interpreters should be available. Likewise, speakers of the languages whose entire speaking population is relatively small may not be able to find the interpreters as frequently as other languages, such as English. Meanwhile, some defence counsels estimate that the cases in the greater Tokyo area occupied about two thirds of the entire *rainichi gaikokujin* cases in which interpretation was requested,[153] which may suggest that the availability of interpreters are limited outside the large cities.

A second point of concern is that defendants may not be able to assess the capabilities of interpreters prior to or during a public trial to refuse an interpreter who appeared to be incompetent, to claim objection to, or demand correction, of the mistakes the interpreters appeared to have made.[154] Tanaka argues that this potential could be addressed if both the court and the defence were flexible.[155]

6. Conclusion

The first objective of this chapter was to describe and analyse three points about the language barrier problem: (i) how the language barrier emerged; (ii) how the language barrier affected the Japanese state; and (iii) how different actors in Japan

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[152] Daiichi Tokyo bengoshikai, *Zoku gaikokujin no horitsusodan Q&A jireihen (Legal advise for foreigners in the Q&A format volume 2: case studies)* (Tokyo: Gyôsei, 1998), p. 182.
[153] Tanaka Hiraku et al., op. cit., p. 11.
[154] Hashiba, "Kokusai jinken kijun kara mita keijitetsuzuki ni okeru gaikokujin no jinken", p. 63.
[155] Tanaka Yasurô, 'Gaikokujin jiken ni okeru saikakuna hôtei tsûyaku no jissen to tekiseina soshôunei', p. 156.

responded to the language barrier problem. There are a number of findings that this chapter has made towards answering these questions.

Section 2 showed how cases involving Thai migrant women were frequently detected in Japan in the early 1990s and how they revealed to the Japanese society the existence of a language barrier problem, and how this problem also applied to foreigners in Japan from other origins as well. The section also reported the existence of violence against those migrant workers by employers and others involved in the migration industry.

Section 3 showed that the shift in composition of the origins of foreigners in Japan in the last decade symbolises the two contrasting dynamics in Japan's international relations in the last century, namely the imperial world order and the Cold War order on the one hand, and the progression of globalisation and the ending of the Cold War on the other. This is the case because of two distinctive characteristics of the foreign population in Japan. The presence of Koreans and Taiwanese in post-war Japan is testimony to the international population movements for which Japan had created structural conditions in the first half of the twentieth century. Subsequently, international migration to Japan in the last two decades has been influenced by Japan's post-war economic hegemony in East Asia, as shown in Chapter 4.

Section 4 presented legal and political implications for the Japanese state of the language barrier problem. The legal implication is that inaccurate or biased interpretation may hinder the Japanese state from convicting a foreign defendant. This could mean that the criminal justice administration failed to identify the facts that constitute a crime. The political implication that flows from the above is that

the Japanese state might have partially failed in legally convicting defendants through which the state maintains domestic order. Such a situation could have appeared as if the operation of the criminal justice system, a 'domestic and political' sector of the Japanese state, was to a certain extent constrained by the language barrier. This is a challenge from international labour migration as a force of globalisation.

The extent of the language barrier problem in Japan was evident, as reported in Chapter 5, in official acknowledgement by the police: at the end of the 1980s, 40% of the *rainichi gaikokujin* suspects were interviewed without interpretation. The Japanese state took the following measures in order to reduce the shortages in interpreters: training police officers; recruiting interpreters from the private sector; and improving the remuneration of private sector interpreters to attract them to the job. In addition to these measures, the Japanese state also took several steps to improve the quality of interpreting. All of those measures were designed to make legal decisions by the court justifiable: evidence had to be collected legally through accurate and neutral interpretation and the suspect/defendant should be given the opportunity to defend herself/himself against any charges. Not only were there these measures carried out by each institution of the criminal justice administration carried out, there were also interactions within different state institutions, as well as between civil society and the state, in addressing the language barrier problem. The chapter reported that at least in two cases, the investigation had failed to convict a suspect because of problems with interpretation. After a stern warning from the court, the investigation changed its practice. In another example, some of the civil society

actors led by the defence counsel exerted a certain degree of influence on the judiciary to prepare the translation of legal documents required during investigation and public trial. Furthermore it was also found that the judiciary was acting in compliance with at least one of the international human rights covenants, namely with regard to the bearing of interpretation costs during public trial. Turning to the parliamentary debate, after an initial attempt in 1988 that drew only a limited degree of political attention, the debate from 1997 to 2002 over the language barrier problem resulted in: (i) confirmation in 1999 by the Justice Minister and endorsed by the Prime Minister in the same year that accurate and impartial interpretation was indispensable for controlling crime and protecting the rights of foreigners suspected of an offence; and (ii) the emergence of the possibility whereby public certification of the competence of judicial interpreters can be legislated.

To recapitulate the answers to the questions for this chapter: (i) the language barrier emerged in the early 1990s, when the configuration of the foreign population in Japan was substantially changing; the emergence of the problem itself thus highlights a transition of Japan's international structure from the Cold War order to globalisation and post-Cold War order. (ii) The language barrier has been a constraint on the operation of Japan's criminal justice administration, both in terms of the resources available to the institutions involved, and also of legitimacy for the exercise of penal power. In this respect, the following assessment of the language barrier problem by a judge is indicative. Judge Tanaka wrote that the emergence and increase in the number of criminal cases requiring interpretation demanded that all lawyers involved in criminal procedure

reconsider the foundations of criminal trial.[156] (iii) Japan appears to have managed to reduce the magnitude of the language barrier problem (it would probably be impossible to eliminate it entirely) by recruiting and training judicial interpreters. Even though each branch of the criminal justice administration tackled the problem mainly by itself, there were also interactions within the state institutions, and between civil society and the state.

The second objective of this chapter has been to consider the implications of Japan's response to the language barrier problem in relation to the three questions presented at the outset. Answers to these questions are shown below.

(i) With regard to its capability to operate in the face of globalisation, the Japanese state largely managed to overcome the challenge posed by the language barrier. This shows that the state reformulated its function within the globalisation process; hence it is not necessarily in retreat, as advocates of the Hyperglobalist thesis of globalisation would claim. This study has gauged the Japanese state's capability in responding to the constraints from the forces of globalisation. While the above assessment was made in aggregate terms that cover the entire population to whom the language barrier mattered, whether and in what way was the Japanese state was effective in responding to the language barrier issue as a force of globalisation, in terms of the distribution among the foreigners in Japan, will be considered in Chapter 6.

(ii) Concerning the relation between civil society and the state in Japan, the chapter found that it was contingent on the context. In certain circumstances civil society actors contributed to raise awareness in the Japanese society about the

[156] Tanaka Yasurô, op. cit., p. 191.

language barrier. However, other sectors in civil society were also able to work with the state institutions to reduce the negative consequences of the language barrier as a manifestation of globalisation.

(iii) Japan's national identity has changed as a consequence of Japan's response to the challenge from international labour migration as a force of globalisation. The introduction of judicial interpreters implies that the Japanese state has acknowledged (if grudgingly or unwittingly) that attributes of the population it governs are, at least in terms of the languages used, no longer 'homogenous.' The introduction of judicial interpretation is an extension of citizenship to the foreign population, which constitutes an 'emergence of a multinational state.'[157]

[157] Ahmet Icduygu, 'Citizenship at the Crossroads: Immigration and the Nation-State', in Eleonore Kofman and Gillian Youngs (eds), *Globalization: Theory and Practice* (London: Pinter, 1996), pp. 150-162, p. 152.

CHAPTER 6

CONCLUSION

The aims in this final chapter are fourfold. The first is to present the answers to the research questions set out in the introductory chapter. The second is to discuss the delivery of collective goods in contemporary Japan within the context of the increasing degree of international labour migration as a force of globalisation. This issue was omitted in Chapter 5, for it was subsidiary to the discussion in that chapter. The third is to demonstrate the significance of this study's contributions towards knowledge in the field of International Relations and International Political Economy. The fourth is to indicate possible future research directions.

1. Answers to the Research Questions

Having conducted the empirical studies in the previous two chapters, it is now possible to present the answers to the research questions set out in Chapter 1.

(1) Research Questions and Answers

a. In what way is international labour migration a force of globalization?

Chapter 4 of this study found that the increasing interconnectedness between interdependent political economies creates structural conditions for international labour mobility in which individual prospective migrants make decisions to move. In other words, capital mobility contributes to the creation of structural conditions for international labour migration. In this sense recent international labour migration reflects Japan's re-integration with East Asia after the ending of the Cold War.

b. In what way is the language barrier a manifestation of international labour migration as the currently ongoing process of globalisation?

Chapters 3 and 4 made it clear that the language barrier reflects the shift in Japan's international structure from the imperial world and Cold War orders, to globalisation and a post-Cold War order. Whereas the presence of Korean and Taiwanese residents during the Cold War years has had much to do with Japan's behaviour in the international sphere in the imperial world order, the current labour migration is a manifestation of the globalisation process in East Asia.

c. What is the language barrier, and who will be affected by it?

Chapters 1 and 5 showed the following: (i) the language barrier refers to difficulties in communication and the subsequent legal and political problems that occur within the process of the criminal justice administration of a migrant receiving country. (ii) An inability to resolve the language barrier means that there are possibilities where a foreign defendant could be convicted on a false grounding. The language barrier thus affects both those foreigners who are subjected to the penal power of the migrant receiving state, and those who enforce criminal justice on foreigners.

d. Who in Japan responded to the language barrier problem? Was it only state officials in the criminal justice administration, or civil society actors as well? If civil society actors were instrumental to the response, how did they interact with the state actors?

Chapter 5 demonstrated that both the state and civil society actors responded to resolve the language barrier problem during the 1990s by recruiting and training judicial interpreters. Civil society actors' relations with the state actors were manifold: whereas some cooperated with the state actors, others raised alarms.

e. Was the Japanese state capable of responding to the language barrier problem as a force of globalisation?

Chapter 5 pointed out that the Japanese state was able to reduce significantly the extent of the language barrier problem in comparison to its status at the time of the emergence of the problem. Whereas less than 40 percent of police investigations of foreign suspects were carried out without interpreters at the end of the 1980s, in the late 1990s, more than 85 percent of public trials of foreign defendants were conducted with interpreters.

Consequently it is possible for this study to argue that the Japanese state was capable of responding to a challenge from the language barrier as a manifestation of international labour migration, and did not 'fail' in its reaction to the new international environment brought about by globalisation. This counters the assertion of the Hyperglobalists (such as Ohmae, for example) that globalisation will result in the demise of the state, or its retreat from world politics. This study thus empirically supports the argument of the Transformationalist thesis of globalisation, namely that the globalisation process involves a transformation of the form and the working of the state.

2. Delivery of Collective Goods within the Context of Globalisation

The capability of the Japanese state to adapt to a new environment, and then to apply its law to foreigners within its territory can be taken for granted if an analyst assumes that the state is by definition automatically capable of extending its power throughout its territory. However, as has just been shown above, this study takes the view that the forms and capabilities of the state transform over time, in particular within the globalisation process. This finding carries some significance with regard to the socio-political relationship between the population and the state in a society. In order to identity such significance, this section considers the following question: while the capitalist economy and the state are being reconfigured, and the constituent of the state is changing under globalisation (one of the main questions in globalisation, as referred to in Chapter 1), is it possible to expect some sort of mutual relationship to develop in a way similar to (but not the same as[1]) the formulation of a nation state? This question is well worth considering in Japan today, because the language barrier problem in legal cases, not only in criminal but also in civil cases, continues to be of importance to both foreign and Japanese residents, as the potential for an increased number of migrants are anticipated in the coming decades.

As discussed in Chapter 2, developments in social forces can change the configuration of political institutions. That is how citizenship rights were

[1] The notion of citizenship carries a potential problem of 'structural exclusion and inequality.' Hence the question to be asked within the context of globalisation can be 'how to include non-citizens in domestic decision making', rather than replicating the existing notion of citizenship beyond the state border (Hazel Smith, 'Why Is There No International Democratic Theory?', in Hazel Smith (ed.), *Democracy and International Relations: Critical Theories and Problematic Practices* (Basingstoke: Macmillan, 2000), p. 21)).

institutionalised as nation states were built since the eighteenth century, including Japan's post-war reform. Likewise, the recent international labour migration, in particular the cases of Thai migrant workers in the early 1990s, caused at least two kinds of challenges to the Japanese state, namely the transterritorialisation of administering criminal justice, and the transterritorialisation of ensuring the safety and well being of the population. In the following section, the Japanese state's response to these two challenges are considered.

(1) Transterritorialisation of Administering Criminal Justice

With regard to the transterritorialisation of administering criminal justice, the following three points can be drawn from the findings of this research. The first is about the extent to which the language barrier is an external force to the Japanese state. The language barrier has its roots partly in Japan's political economy itself, and is partly a consequence of actions that were taken outside Japan, as Chapters 3 to 5 have shown. In this sense, the language barrier carries transterritorial character, similar to other forces of globalisation. The following interpretation of the characteristics of the language barrier is thus possible. In the case of contemporary Japan, the 'external/economic' sectors of the state such as the METI have contributed to economic globalisation in East Asia,[2] and that policy was implemented by some parts of Japanese businesses whose capital was internationally mobile. As has been shown throughout this study, international

[2] Glenn D. Hook; Julie Gilson; Christopher W. Hughes; and Hugo Dobson, *Japan's International Relations: Politics, economics and security* (London: Routledge, 2001), p. 195.

labour migration is a consequence of a complex combination of factors operating under globalisation, in which capital mobility plays an indispensable role. Since the increase in foreign offenders followed the above-mentioned labour migration, it is possible to characterise that the criminal justice administration ('internal/political' sector of the Japanese state) undertook the tasks that derived from the actions that the other ('external/economic') sectors of the state had undertaken beforehand. The argument of the Transformationalist thesis of globalisation now becomes relevant. It has been argued that globalisation and reformulation of the state proceed together.[3] To contextualise the findings of this study into the above theoretical claim, it is possible to argue that different sectors are responsible for the state's diversified adaptations to the globalisation process, probably with some time lag.

The second point refers to the relation between the language barrier and state sovereignty. The interpretation in the above paragraph may make more sense in relation to the following claim. Through the introduction of interpreters, the sphere of influence of Japan's criminal justice administration, where the state can justify its 'open exercise of state power',[4] expanded from Japanese nationals and Japanese speakers, to cover non-Japanese speakers. Without the interpreters, the Japanese state was unable to legitimately apply its criminal law to non-Japanese speaking foreigners, despite the fact that these foreigners were physically present within its geographical territory. Hence the introduction of

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[3] Linda Weiss, *The Myth of Powerless State: Governing the Economy in Global Era* (Cambridge: Polity, 1998), p. 209; Ian Clark, *Globalization and International Relations Theory* (Oxford: Oxford University Press, 1999), p. 170.

[4] Itô Shigeki, *Shûsô retsujitsu: kenjisôchô no kaisô (Observing strict neutrality: a public prosecutor-general's memoir)* (Tokyo: Asahi shinbunsha, 1988), p. 158. Ito was the Public Prosecutor-General from 1985 to 1988.

the judicial interpreters means that the territorial distinction where the law of the Japanese state is applicable is blurring, but is not necessarily detrimental to the state. In other words, the Japanese state 'recovered' jurisdiction that was temporarily unavailable after the discovery of the language barrier problem, despite the Japanese state officials operating within Japan's geographical territory.

The third point is concerned with the relation between the language barrier and the constituents of the Japanese state. The introduction of judicial interpreters rendered another consequence, if unwittingly, to the constituency of the state. The introduction of judicial interpreters in the criminal justice process signifies that the Japanese state has acknowledged that it has to equip itself with a ruling tool that suits non-Japanese nationals and the non-Japanese speaking population. In other words, the Japanese state admitted that the population of Japanese society is no longer solely made up of Japanese nationals and a Japanese speaking population. Japan has incorporated foreigners in its constituents, if not as nationals with full membership of the polity. In this respect, Japan's national identity has clearly changed to include foreigners.

(2) Transterritorialisation of Ensuring the Safety and Well Being of the Population

The previous subsection has shown that the Japanese state was able to respond to the challenge from the transterritorialisation of administering criminal justice. In contrast, as far as the research for this study has been able to identify, the state's

response to the transterritorialisation of ensuring the safety and well being of the population is limited, as the following suggests.

The relation between the enforcer and target of legal control of the state, in particular the administration of criminal justice, is complicated by the globalisation process, as the following chronological comparison indicates. First, during the imperial world order, the development of a capitalist economy largely coincided with the territory of the nation state. Even if the development of the national economy was linked with the colonial economy, the operations of the home economy and the colony were geographically distinct, and this meant that the extent of the state's legal control usually dovetailed with that of each nation. Second, in contrast to the above, within the globalisation process, political economies that are closely associated with each other (often through trade and foreign direct investment) are still distinct in geographical terms; but in societal terms, the distinction between the interdependent political economies is less clear-cut than it was under the imperial world order and during the Cold War. International labour migration is one of the important contributing factors to such development.

Just as in the other economic activities that operate within the globalisation process (capital flow, telecommunication, the Internet, and environmental destruction, for example), economic actors in international population movements (who are often non-state actors) move ahead of regulation by the state and other international institutions. The fact that human traffickers were able to drive trafficked women into debt bondage is clearly an example

where economic actors operate in advance of the working of the state actors, or take advantage of any political vacuum.

The existing study into operation of the human traffickers indicate that the traffickers take advantage of the lacunae in the social relations between the migrant sending and receiving countries to control the migrant women under debt bondage. First, the Japanese state does not know much about the traffickers, as it is often difficult for the state to detect traffickers unless it decided to investigate them. Second, the trafficked migrant women do not know much about social and political institutions in Japan. Third, the traffickers tell the migrant women, or the trafficked women learn, that their stay in Japan is 'illegal.' The second and third points above could lead the trafficked women to consider that rescue will not come from the Japanese state. The traffickers threaten to, and sometimes actually do, use violence against the trafficked women in order to ensure the women's compliance with the traffickers' demands. Such beliefs held by the trafficked Thai women that there were no alternatives, or that there was no one else to seek help from, likely to have contributed to the actual use of force in the cases for which they were convicted.

In the public trials of Thai migrant women cases, the defendants did not contest the fact that they were responsible for the death or injury of the 'victim.' However, at the same time, the defendants pleaded that they had suffered from physical and psychological violence before committing their own offence, and wanted at least this fact to be acknowledged, and hopefully taken into consideration when the legal decision was made. The court decisions for the

above cases have been thought to be dismissive of such claims (excluding one case that ruled that the offence was excessive self-defence).

The above shows the following: illegal brokers and employers inflicted violence upon 'illegal' migrant workers while both sides were present in the Japanese territory. Those migrant women will be held responsible for irregularity in their immigration status, but they should also be entitled to the rights stipulated by Japanese law, including bodily safety. The entitlement to security and the responsibility with regard to the offence, should not automatically cancel each other out, simply because the suspect was an 'illegal migrant'. While Sakanaka's remark cited in Chapter 3 comes very close to this point, the Japanese state did not address the above violence by the migration brokers. For the Japanese state, this constitutes the deficit in delivering collective goods within globalisation, namely ensuring the safety and well being of the population.

(3) Globalisation and Multiple Identities of a Person

The observations in the previous subsection lead to another question with regard to the Japanese state's response to globalisation: despite the fact that the Japanese state was able to respond to the transterritorialisation of administering criminal justice, why was it not able to act in a similar way in the case of the transterritorialisation of ensuring the safety and well being of the population? In other words, why was it not possible for the state to bring those who were responsible for the above violence that preceded the commission of injury or murder by the defendants in the cases referred to above? Considering the

findings in this research, the following two factors could have contributed to the lack of the response, in addition to the resource constraints: first, an assumption that there is no need to consider the safety of foreign residents, in particular 'illegal' migrants; second, the lack of understanding that differences in ethnicity and gender could render threats to individual safety in the ways that are different from the mainstream Japanese population.

The first assumption above, if it actually existed, is questionable, because authority and responsibility should balance each other in politics. This point becomes further pertinent when the fact that the notion of reciprocity has been weak in the Japanese polity is taken into consideration. For the rulers in Tokugawa feudal society, the notion of responsibility primarily meant to be the one to the central government, rather than the one to the population they ruled.[5] Such a situation was possible then, but today nation-building can only be legitimate when it entails a dialectic between the formulation of rights of the mainstream population and those of the minority. Hence the need for the reciprocity of obligation and rights[6] is increasing today as globalisation increases. As for the second point above, it is possible that the Japanese state is not fully aware of the significance of gender when articulating the need for ensuring the

[5] Takeshi Ishida and Ellis S. Krauss, 'Democracy in Japan: Issues and Questions', in Takeshi Ishida and Ellis S. Krauss (eds), *Democracy in Japan* (Pittsburgh: University of Pittsburgh Press, 1989), pp. 3-16, p. 5; Michael Young and Constance Hamilton, 'Historical Introduction to the Japanese Legal System', in Curtis J. Milhaupt, J. Mark Ramseyer, and Michael K. Young (eds), *Japanese Law in Context: Readings in Society, Economy and Politics* (Cambridge, MA: Harvard University Press, 2001), pp. 2-10, p. 3.

[6] Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Second Edition) (Oxford: Oxford University Press, 2002), pp. 359-365.

safety and well being of an individual person, in particular migrant women in Japan. It is known that women experience violence in different ways from men.[7]

Consequently, this study speculates that one possibility for the Japanese state to address the issues of the transterritorialisation of ensuring the safety and well being of the population can be to consider the safety of the foreign population more seriously than it appears to do so at the moment. The notion of the security of individuals, in particular the security of migrant workers, might be uncommon, but not unknown:[8] this study therefore assumes that bodily safety is a basic entitlement that should be available for all the population in a society regardless of her/his status. In other words, attention should be paid to at least the following three points: first, the changing constituency of the state requires reconsideration of entitlements of the population ('post-nation state citizenship').[9] Second, such reconsideration would require the state and civil society to take gender and ethnicity seriously,[10] because foreigners and women have been excluded from the notion of citizenship due to the association between citizenship rights and military service and other activities in the 'public' sphere in civil society in the making of the modern nation state.[11] Third, following correct

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[7] Wendy Chan and George S. Rigakos, 'Risk, Crime and Gender', *British Journal of Criminology*, 42, 2002, pp. 743-761, p. 743.
[8] Alan Dupont, *East Asia Imperilled: Transnational Challenge to Security* (Cambridge: Cambridge University Press, 2001), p. 229; Ian Clark, *Globalization and International Relations Theory*, p. 125.
[9] Andrew Geddes, *Immigration and European Integration: Towards Fortress Europe?* (Manchester: Manchester University Press, 2000), pp. 149-150.
[10] R. B. J. Walker, 'The Subject of Security', in Keith Krause and Michael C. Williams (eds), *Critical Security Studies: Concepts and Cases* (London: UCL Press, 1997), pp. 61-81, p. 69.
[11] Jill Steans, *Gender and International Relations: An Introduction* (Cambridge: Polity, 1998), p. 7.

procedures is different from rectifying injustices that existed prior to the carrying out of those procedures.[12]

To recapitulate the discussion in this section so far, the 'deficit'[13] in the delivery of collective goods within the globalisation process exists in the following two senses: first, the Japanese state has acquired the power to enforce criminal law legitimately to foreigners in its own geographical territory. Such authority should be balanced with its responsibility to the population. In other words, foreign residents should be entitled to the provision of safety (individual security[14]) by the state (in addition to the contributions of civil society actors). This is certainly one way of responding effectively to the change in the constituency under the globalization process. This study has seen that the Japanese Constitution provides grounds that the Japanese state could protect the rights of migrant workers as long as they are present within Japan's territorial jurisdiction. Second and related to the above, the state should take gender and ethnicity more seriously, as these have not been incorporated in the notion of citizenship, including that of the modern Japanese state. It is worth noting that differential treatment by criminal officials could occur unwittingly.[15] If the above-mentioned safety is established, the Japanese state should be able to strike a better balance between its authority and responsibility.

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[12] Barbara Goodwin, *Using Political Ideas (Fourth Edition)* (Chichester: John Wiley & Sons, 1997), p. 391.

[13] Richard Devetak and Richard Higgott, 'Justice Unbound? Globalization, states and the transformation of social bond', *International Affairs*, 75(3), 1999, pp. 483-498, pp. 488-489.

[14] Barry Buzan, *People, States and Fear*, pp. 363-364; Dupont, *East Asia Imperilled*, p. 229; Ian Clark, op. cit., p. 125.

[15] Cavadino and Dignan, British criminologists, argue in their discussion of the operation of the English penal system that biases manifest in the operation, even if subjectively 'unintended.' Michael Cavadino and James Dignan, *The Penal System: An Introduction (Second Edition)* (London: Sage, 1997), Chapter 10, pp. 267-290.

Such problems, however, are not unique to Japan, because in many countries it is often undocumented workers 'rather than the criminals who traffic in them who are [...] considered by governments as the lawbreakers and as threats to national security.'[16] Because that is of significance in many countries today, the above violence against migrant workers (lack of security of individuals) merits serious consideration, in particular with regard to women and children.

3. Significance of the Study

The contributions that this study makes to the understanding of migration, globalisation, and the state are as follows:

(1) Migration

This study has shown that international labour migration is a force of globalisation in the following three respects.

a. International labour migration to contemporary Japan is primarily led by non-state actors, in contrast to post-war labour migration to Western Europe and North America, both of which were state-sponsored projects (and also the war-time state-sponsored labour migration from Korea and China to Japan).

b. Migration reflects an increasing degree of interconnectedness between interdependent political economies. International labour migration is therefore

[16] *World Population Monitoring 1997: International Migration and Development*, p. 139, cited in Dupont, op. cit., p. 159.

an indispensable part of the global political economy; it is thus not a 'deviance' from world politics, as was seen in Chapter 1.[17]

c. As the impact of the language barrier shows, even on a small scale, migration demonstrates a change in territoriality and constituency, and that the subsequent challenges are more visibly and politically charged than other globalisation forces such as trade and capital mobility.

(2) Globalisation

This study has been able to support the existing theory of globalisation, namely unevenness in its impact in terms of time, location and other factors as follows:

a. The impact of globalisation affected different sectors of the Japanese state with a time lag (globalisation of capital in the 1970s affected the then MITI; international labour migration hit Japan's criminal justice administration in the 1990s).

b. The availability of judicial interpretation is unevenly distributed within Japan, even after the improvements made by the late 1990s, depending on the geographical location of foreigners and the first languages they command.

[17] Aristide R. Zolberg, 'International Migration in Political Perspective', in M. Kritz; C. Kelly and S. Tomasi (eds), *Global Trends in Migration: Theory and Research in International Population Movements* (New York: Center for Migration Studies, 1981), pp. 3-27, pp. 6-7

(3) The State

This study has managed to extend the coverage where the Transformationalist thesis of globalisation proved to be plausible in the following terms:

a. Geographical area – by pointing out that globalisation and subsequent state transformation occurred in East Asia.

b. Issue area – by discussing the causes and consequences of international labour migration as a force of globalisation.

4. Possible Future Studies

The chapter concludes with six suggestions for future studies that could possibly draw on the findings of this research, because they touch upon certain key issues that will be important to study in International Relations, International Political Economy, the Japanese state and the East Asian region, and on the globalisation process. The first is to account for, analyse and explain further the details in which decisions to introduce judicial interpretation were made in Japan's criminal justice institutions and the Diet since the 1990s. The second is an empirical study to document, analyse and explain the developments in professional training for the judicial interpreters and the impact of such training upon Japan's administration of criminal justice. This training is primarily to assist improvements in the quality of interpretation, but it could potentially influence the public certification of the interpreters, and also reinforces Japan's current policy towards the language barrier problem. For the above first and second kind of

studies, access to those who compile and implement the policy will be necessary in order to obtain the details of the above deliberation process.

The third suggestion is to account for the manifestation of the language barrier in immigration control and the correction stages, and the responses made to address the problem. Such a future study could cover an analytical lacunae this research identified, while the author was able to obtain the data on the language barrier problem from the courts and defence counsels, that was more difficult with immigration control and the prison. To conduct such a study, research methods similar to the current study should be applicable, but there will be a need to collaborate with people working in the relevant institutions.

The fourth suggestion is an international comparison of the causes and consequences of the language barrier and responses in South Korea, Taiwan and Japan. Such research might be able to discover some similarities in the responses to the language barrier problem in the three countries. Such a comparison between the three countries is possible, because they share largely similar experiences in accepting migrant workers since the 1990s, while there is a certain degree of difference in the criminal justice institutions that deal with the language barrier problem. Moreover, the above comparison will be valuable, because similarities and differences in the state transformation in East Asia as a consequence of the progression of globalisation should become evident. The methods and the sources employed in the current research could be valid for this study and an understandings of the historical background of the similarities and differences in economic development as well as in the state institutions will be

necessary. Collaboration with researchers who command at least English and Korean/Chinese will also be indispensable.

The fifth suggested area of study is to identify, analyse and explain the causes and consequences of the language barrier in Japan in situations other than in the criminal justice process, and the responses various actors. Language barriers in such contexts as medical care, emergencies (fire, earthquake, typhoon, for example), and civil lawsuits matter to foreign residents, because the lack of sufficient communication could threaten the safety and well being of the foreign residents in both the short and long term. To conduct such research, it is likely that attention should be focused on the activities of civil society actors and local governments, rather than the central government. This future study might be able to find out that language barrier problems in the above aspects have been acknowledged by civil society actors, and probably also by some local governments, and that those institutions have addressed the language barrier to a certain extent. If the above was the case, that could reinforce the argument in the current research about the capability of the Japanese state in the face of a challenge from globalisation.

The final suggestion is to investigate into whether and how the Japanese state has tried to improve the welfare of migrant workers, in particular in terms of security from crime and violence. This is necessary because the current study has found that the contemporary Japanese state could do much more to address the transterritorialisation of security of individuals, including that of foreign residents. Attention should be paid to the measurers for preventing physical and psychological violence committed to migrants, and to modifications in the

immigration policy to reduce the room where the unauthorised migration industry could take advantage of undocumented workers.

BIBLIOGRPAPHY

[English]

Almond, Gabriel; G. Bingham Powell, Jr; Kaare Strom; and Russel J. Dalton, *Comparative Politics Today: A World View (Seventh Edition)*. Harlow: Longman, 2000.

Amoore, Louise, Richard Dodgson, Barry K. Gills, Paul Langley, Don Marshall and Iain Watson. 'Overturning "Globalization": Resisting the Teleological, Reclaiming the 'Political'', *New Political Economy*, 2(1), 1997, pp. 179-195.

Anderson, Benedict. *Imagined Communities: Reflections on the Origin and Spread of Nationalism.* London: Verso, 1991.

Anthias, Floya and Nira Yuval-Davis, 'Contextualizing Feminism – gender, ethnic and class divisions', *Feminist Review*, No. 15, 1983, pp. 62-75.

Anthias, Floya and Nira Yuval-Davis, 'Introduction', in Nira Yuval-Davis and Floya Anthias (eds), *Women-Nation-State* (Basingstoke: Macmillan, 1989), pp. 1-15.

Bali, Sita. 'Migration and Refugees', in Brian White, Richard Little and Michael Smith (eds), *Issues in World Politics (Second Edition)* (Basingstoke: Palgrave, 2001), pp. 171-190.

Baylis, Jonn and Steve Smith (eds). *The Globalization of World Politics: An introduction to international relations (Second Edition).* Oxford: Oxford University Press, 2001.

Bowie, Alasdair and Danny Unger. *The Politics of Open Economies: Indonesia, Malaysia, the Philippines, and Thailand.* Cambridge: Cambridge University Press, 1997.

Boyle, Paul; Keith Halfacree and Vaughan Robinson. *Exploring Contemporary Migration.* Harlow: Addison Wesley Longman, 1998.

Bradbury, Jonathan. 'Parliamentary question', in Ian McLean (ed.), *The Concise Oxford Dictionary of Politics* (Oxford: Oxford University Press, 1996), p. 361.

Bretherton, Charlotte. 'Contemporary Sources of Armed Conflict', in Charlotte Bretherton and Geoffrey Ponton (eds), *Global Politics: An Introduction* (Oxford: Blackwell, 1996), pp. 100-125.

Brett, E. A. *The World Economy since the War: the Politics of Uneven*

Development. Basingstoke: Macmillan, 1985.

Brown, Chris. *Understanding International Relations (Second Edition).* Basingstoke: Palgrave, 2001.

Burnell, Peter. 'Human rights', in McLean (ed.), *Concise Oxford Dictionary of Politics*, p. 228.

Burton, John. *World Society.* Cambridge: Cambridge University Press, 1972.

Buzan, Barry. *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era (Second Edition).* Harlow: Longman, 1991.

Castles, Stephen and Mark J. Miller. *The Age of Migration: International Population Movements in the Modern World (Second Edition).* Basingstoke: Macmillan, 1998.

Cavadino, Michael and James Dignan. *The Penal System: An Introduction (Second Edition).* London: Sage, 1997.

Centre for the Study of Globalisation and Regionalisation, University of Warwick. 'Research Agenda.' http://www.warwick.ac.uk/fac/soc/CSGR/agenda.html. (Cited November 2002)

Chan, Wendy and George S. Rigakos, 'Risk, Crime and Gender', *British Journal of Criminology,* 42, 2002, pp. 743-761.

Chantavanich, Supang. 'Issues from Thailand', in Patrick Brownlee and Colleen Mitchell, Asia Pacific Migration Research Network Working Paper Series, *Working Paper No. 1, Migration Issues in the Asia Pacific.* Wollongong, Australia: Centre for Multicultural Studies, Institute for Social Change and Critical Inquiry, University of Wollongong, 1997, pp. 161-174.

Cohen, Robin. 'Introduction', in Robin Cohen (ed.), *Theories of Migration* (Cheltenham: Edward Elgar, 1996), pp. xi-xvii.

Cohen, Robin and Paul Kennedy. *Global Sociology.* Basingstoke: Macmillan, 2000.

Coleman, Clive and Jenny Moynihan. *Understanding crime data: Haunted by the dark figure.* Buckingham: Open University Press, 1996.

Clark, Ian. *Globalization and International Relations Theory.* Oxford: Oxford University Press, 1999.

Clark, Rodney. 'The Company as Family: Historical Background', in Daniel Okimoto and Thomas P. Rohlen (eds), *Inside the Japanese System: Readings on Contemporary Society and Political Economy* (Stanford, CA: Stanford University Press, 1988), pp. 102-105.

Clarkson, C. M. V. *Understanding Criminal Law (Third Edition).* London: Sweet and Maxwell, 2001.

Cox. Robert W. 'Social forces, states, and world orders: beyond international relations theory', in Robert W. Cox with Timothy J. Sinclair, *Approaches to world order* (Cambridge: Cambridge University Press, 1996), pp. 85-123.

——— 'Global Perestroika', in R. Miliband and L. Panitch (eds), *Socialist Register 1992* (London: Merlin Press, 1992), pp. 26-43.

Devetak, Richard and Richard Higgott 'Justice Unbound? Globalization, states and the transformation of the social bond', *International Affairs*, 75(3), 1999, pp. 483-498.

Dikoetter, Frank (ed.) *The Construction of Racial Identities in China and Japan: Historical and Contemporary Perspectives.* London: Hurst & Company, 1997.

Dinan, Kinsey Alden. 'Trafficking in Women From Thailand to Japan', *Harvard Asia Quarterly*, Summer. http://www.fas.harvard.edu/~asiactr/haq/200203/index.htm Cited 3 October 2002.

Douglass, Mike. 'The singularities of international migration of women to Japan: Past, present and future', in Douglass, Mike and Roberts, Glenda S. (eds), *Japan and Global Migration: Foreign workers and the advent of a multicultural society*, (London: Routledge, 2000), pp. 91-119.

Dupont, Alan. *East Asia Imperilled: Transnational Challenge to Security.* Cambridge: Cambridge University Press, 2001.

Dower, John. *Embracing the Defeat: Japan in the Aftermath of World War II.* London: Penguin Books, 1999.

Enloe, Cynthia. *Bananas, Beaches and Bases: Making Feminist Sense of International Politics (Updated Edition).* London: University of California Press, 2000.

Evans, Mark. 'Elitism', in Marsh, David and Gerry Stoker (eds), *Theory and Methods in Political Science* (Basingstoke: Macmillan, 1995), pp. 228-247.

Falkus, Malcolm. 'Thai Industrialization: An Overview', in Medhi Krongkaew (ed.), *Thailand's Industrialization and its Consequences* (Basingstoke: Macmillan, 1995), pp. 13-32.

Friman, H. Richard. 'Gaijinhanzai: Immigrants and Drugs in Contemporary Japan', *Asian Survey*, 36(10), 1996, pp. 964-978.

Geddes, Andrews. *Immigration and European Integration: Towards Fortress Europe?* Manchester: Manchester University Press, 2000.

Gelstrope, Loraine. 'Critical Decisions and Processes in the Criminal Courts', in Eugene McLaughlin and John Muncie (eds), *Controlling Crime* (London: Sage, 1996), pp. 107-156.

Giddens, Anthony. *A Contemporary Critique of Historical Materialism: Vol. 1. Power, property and the state.* London: Macmillan, 1981.

Gill, Stephen and David Law. *The Global Political Economy: Perspectives, Problems, and Policies.* London: Harvester Wheatsheaf, 1988.

Goldstein, Joshua S. *International Relations (Second Edition).* New York: HarperCollins, 1996.

Goldstein, Sidney and Alice Goldstein. 'Migration in Thailand: A Twenty-Five Year Review', *Papers of the East-West Population Institute, Number 100.* Honolulu: East-West Center, 1986.

Goodman, David G. 'Anti-Semitism in Japan: Its History and Current Implications', in Dikoetter (ed.), *The Construction of Racial Identities in China and Japan*, pp. 177-198.

Goodwin, Barbara. *Using Political Ideas (Fourth Edition).* Chichester: John Wiley & Sons, 1997.

Hague, Rod, Martin Harrop and Shaun Breslin. *Comparative government and politics: an introduction, 4th edition.* Basingstoke: Macmillan, 1998.

Halliday, Fred. *The World at 2000: Perils and Promises.* Basingstoke: Palgrave, 2001.

——— 'Nationalism', in Baylis and Smith (eds), *The Globalization of World Politics*, pp. 440-455.

——— 'Global Governance: Prospects and Problems', in David Held and Anthony McGrew (eds), *The Global Transformations Reader: An Introduction of the Globalization Debate* (Cambridge: Polity, 2000), pp. 431-441.

———— *Rethinking International Relations*. Basingstoke: Macmillan. 1994.

Hanami, Tadashi. 'Japanese Policies on the Rights and Benefits Granted to Foreign Workers, Residents, Refugees and Illegals', in Myron Weiner and Tadashi Hanami (eds), *Temporary Workers or Future Citizens?: Japanese and U.S. Migration Policies* (Basingstoke: Macmillan. 1998), pp. 211-237.

Hay, Colin. *Political Analysis*. Basingstoke: Palgrave, 2002

Hay, Colin. 'Structure and Agency', in David Marsh and Gerry Stoker (eds). *Theory and Methods in Political Science* (Basingstoke: Macmillan, 1995). pp. 189-206.

Held, David and Anthony McGrew (eds). *The Global Transformations Reader: An Introduction of the Globalization Debate*. Cambridge: Polity, 2000.

Held, David, Anthony McGrew, David Goldbratt and Jonathan Perraton. *Global Transformations: Politics, Economics and Culture*. Cambridge: Polity, 1999.

Herbert, Wolfgang. *Foreign Workers and Law Enforcement in Japan*. London: Kegan Paul International, 1996.

Hewison, Kevin. 'Thailand: Capitalist Development and the State'. In Garry Rodan, Kevin Hewison and Richard Robison (eds), *The Political Economy of South-East Asia: an introduction* (Melbourne: Oxford University Press, 1997), pp. 93-120.

Kevin Hewison (ed.), *Political Change in Thailand: democracy and participation*. London: Routledge, 1997.

Higgott, Richard and Anthoney Payne. 'Introduction: Towards a New Political Economy of Globalisation', in Richard Higgott and Anthony Payne (eds). *The New Political Economy of Globalisation Vol. I* (Cheltenham: Edward Elgar, 2000), pp. ix-xxiv.

Hirowatari, Seigo. 'Foreign Workers and Immigration Policy', in Junji Banno (ed.), *The Political Economy of Japanese Society volume 2: International and Domestic Issues* (Oxford: Oxford University Press, 1998), pp. 81-106.

Hobden, Steve and Richard Wyn Jones. 'Marxist theories of International Relations', in Baylis and Smith (eds), *The Globalization of World Politics*, pp. 200-223.

Hoogvelt, Ankie. *Globalisation and the Postcolonial World: The New Political Economy of Development*. Basingstoke: Macmillan, 1997.

Hook, Glenn D.; Gilson, Julie; Hughes, Christopher W.; and Dobson, Hugo. *Japan's International Relations: Politics, economics and security*. London: Routledge, 2001.

Hook, Glenn D. and Gavan McCormack. *Japan's Contested Constitution: Documents and analysis*. London: Routledge, 2001.

Hughes, Christopher W. *Japan's Economic Power and Security: Japan and North Korea*. London: Routledge, 1999.

Hugo, Graeme. 'The Demographic Underpinnings of Current and Future International Migration in Asia', *Asian and Pacific Migration Journal*, 7(1), 1998, pp. 1-25.

Human Rights Watch/Asia, Human Rights Watch Women's Rights Division. *Owed Justice: Thai Women Trafficked into Debt Bondage in Japan*. London: Human Rights Watch, 2000.

Icduygu, Ahmet. 'Citizenship at the Crossroads: Immigration and the Nation-State', in Kofman, Eleonore and Gillian Youngs (eds), *Globalization: Theory and Practice* (London: Pinter, 1996), pp. 150-162.

Ishida, Takeshi and Krauss, Ellis S. 'Democracy in Japan: Issues and Questions', in Takeshi Ishida and Ellis S. Krauss (eds), *Democracy in Japan* (Pittsburgh: University of Pittsburgh Press, 1989), pp. 3-16.

Jackson, Robert and Georg Sorensen. *Introduction to International Relations*. Oxford: Oxford University Press, 1999.

Japan Civil Liberties Union. *Criminal Procedure and the Human Rights of Foreigners in Japan: Problems and Suggestions*. Tokyo: Japan Civil Liberties Union, 1991.

Johnson, David. *The Japanese Way of Justice: Prosecuting Crime in Japan*. Oxford: Oxford University Press, 2002.

Kegley Jr., Charles W. and Eugene R. Wittkopf. *World Politics (Eighth Edition)*. Boston: Bedford/St. Martins, 2001.

Kelly, Dominic. *Japan and the Reconstruction of East Asia*. Basingstoke: Palgrave, 2002.

Keohane, Robert O. and Joseph S. Nye Jr. 'Introduction', in Joseph S. Nye Jr. and John D. Donahu (eds), *Governance in a Globalizing World*

(Washington, D.C.: Brookings Institution, 2000), pp. 1-41.

Keohane, Robert O. and Joseph S. Nye. *Power and Interdependence (Second Edition)*. New York: Longman, 1989.

Kofman, Eleonore. 'Feminism, Gender Relations and Geopolitics: Problematic Closures and Opening Strategies', in Eleonore Kofman and Gillian Youngs (eds), *Globalization: Theory and Practice* (London: Pinter, 1996), pp. 209-224.

Komai, Hiroshi. *Migrant Workers in Japan*. London: Kegan Paul International, 1995.

Komin, Suntaree. 'Changes in Social Values in Thai Society and Economy: A Post-Industrialization Scenario', in Krongkaew (ed.), *Thailand's Industrialization and its Consequences*, pp. 251-266.

Krongkaew, Medhi. 'Contributions of Agriculture to Industrialization', in Krongkaew (ed.), *Thailand's Industrialization and its Consequences*, pp. 33-65.

Krongkaew, Medhi (ed.) *Thailand's Industrialization and its Consequences*. Basingstoke: Macmillan, 1995.

Kymlicka, Will. *Contemporary Political Philosophy: An Introduction (Second Edition)*. Oxford: Oxford University Press, 2002.

Mann, Michael. 'Has globalization ended the rise and rise of the nation-state?', *Review of International Political Economy*, 4(3), 1997, pp. 472-496.

Marchand, Marianne H. and Anne Sisson Runyan. 'Introduction: Feminist sightings of global restructuring: conceptualisations and reconceptualizations', in M. H. Marchand and A. S. Runyan (eds), *Gender and Global Restructuring: Sightings, sites and resistances* (London: Routledge, 2000), pp. 1-22.

Marsh, David and Gerry Stoker (eds). *Theory and Methods in Political Science*. Basingstoke: Macmillan, 1995.

Marsh, David. 'The Convergence between Theories of the State', in Marsh and Stoker (eds), *Theory and Methods in Political Science*, pp. 268-287.

Marshall, T. H. 'Citizenship and Social Class', in Marshall, T. H. and Bottomore, Tom, *Citizenship and Social Class* (London: Pluto, 1992), pp. 1-51.

Maruyama, Masao. 'Theory and Psychology of Ultra-nationalism', in Maruyama, Masao (Morris, Ivan ed.), *Thought and Behaviour in Modern Japanese*

Politics (London: Oxford University Press, 1963), pp. 1-24.

Massey, Douglas S., Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino and J. Edward Taylor. 'Theories of Migration: a Review and Appraisal', *Population and Development Review*, 19(3), Sept. 1993, pp. 431-466. (Reprinted in Robin Cohen (ed.), *Theories of Migration* (Cheltenham: Edward Elgar, 1996), pp. 181-216.)

McMichael, Philip. 'Globalization: Myth and Realities', *Rural Sociology*, 61(1), 1996, pp. 25-55. (Reprinted in Richard Higgott and Anthony Payne (eds), *The New Political Economy of Globalisation Vol. I* (Cheltenham: Edward Elgar, 2000), pp. 179-209.)

Mendl, Wolf. *Japan's Asia Policy*. London: Routledge, 1995.

Mittelman, James H. *The Globalization Syndrome: Transformation and Resistance*. Princeton, NJ: Princeton University Press, 2000.

Morgenthau, Hans J., revised by Kenneth W. Thompson. *Politics among Nations: the Struggle for Power and Peace*. New York: McGraw-Hill, 1985.

Morris-Suzuki, Tessa. 'Migrants, Frontiers and Asian Values: Japan's Identity in a Globalizing Asia', in National University of Singapore, *Asian Values and Japan's Options* (Singapore: National University of Singapore, 2001), pp. 25-33.

Muramatsu, Michio and Krauss, Ellis S. 'The conservative policy line and the development of patterned pluralism', in Kozo Yamamura and Yasukichi Yasuba (eds), *The Political Economy of Japan Volume 1: The Domestic Transformation* (Stanford: Stanford University Press, 1987), pp. 516-554.

Muscat, Robert J. *The Fifth Tiger: A Study of Thai Development Policy*. Tokyo: United Nations University Press, 1994.

Neary, Ian. *The State and Politics in Japan*. Cambridge: Polity, 2002.

Nester, William R. *Japan's Growing Power over East Asia and the World Economy: Ends and Means*. London: Macmillan, 1990.

Ohmae, Kenichi. *The Borderless World: Power and Strategy in the Interlinked Economy*. London: Collins, 1990.

Oka, Takashi. *Prying Open the Door: Foreign Workers in Japan*. Washington, D.C.: Carnegie Endowment for International Peace, 1994.

Papademetriou, Demetrios G. and Hamilton, Kimberly A. *Reinventing Japan: Immigration's Role in Shaping Japan's Future*. Washington, D.C.:

Carnegie Endowment for International Peace, 2000.

Pempel, T. J. *Regime Shift: Comparative Dynamics of the Japanese Political Economy (with a new preface)*. Ithaca: Cornell University Press, 2000.

———. 'Transpacific Torii', in Peter J. Katzenstein and Takashi Shiraishi (eds), *Network Power: Japan and Asia* (Ithaca: Cornell University Press, 1997), pp. 47-82.

———. 'Prerequisites for Democracy: Political and Social Institutions', in Ishida and Krauss (eds), *Democracy in Japan*, pp. 17-37.

Pettman, Jan Jindy. 'Gender Issues', in John Baylis and Steve Smith (eds), *The Globalization of World Politics: an introduction to international relations* (Oxford: Oxford University Press, 1997), pp. 483-497.

Phongpaichit, Pasuk. 'The Thai Economy in the Mid-1990s', in Robert Ash and Anne Booth (eds), *The Economies of Asia 1950-1998: Critical Perspectives on the world economy* (London: Routledge, 2000), pp. 184-197.

Phongpaichit, Pasuk and Baker, Chris. 'Power in transition: Thailand in the 1990s', in Kevin Hewison (ed.), *Political Change in Thailand: democracy and participation* (London: Routledge, 1997), pp. 21-41.

Poapongsakorn, Nipon. 'Rural Industrialization: Problems and Prospects', in Krongkaew (ed.), op. cit., pp. 116-140.

Pongsapich, Amara. 'International Migrant Workers in Asia: The Case of Thailand', *Proceedings of the International Conference on Transnational Migration in the Asia Pacific Region: Problems & Prospects, December 1-2, 1994* (Bangkok: Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University, 1995), pp. 47-66.

Pronk, Jan. 'Globalization: A Developmental Approach', in Pieterse, Jan Nederwen (ed.), *Global Future: Shaping Globalization* (London: Zed, 2000), pp. 40-52.

Roberts, Glenda S. 'NGO support for migrant labor in Japan', in Douglass and Roberts (eds), *Japan and Global Migration*, pp. 275-300.

Rodan, Garry, Kevin Hewison and Richard Robison (eds). *The Political Economy of South-East Asia: an introduction*. Melbourne: Oxford University Press, 1997.

Rodrik, Dani. 'Has Globalization Gone Too Far?', in Held and McGrew (eds), *The Global Transformations Reader*, pp. 323-327.

Rosenbluth, Frances and Michael F. Thies. 'Politics in Japan', in Almond et al., *Comparative Politics Today*, pp. 327-370.

Samudavanija, Chai-Anan. 'Old solders never die, they are just bypassed: The military, bureaucracy and globalisation', in Hewison (ed.), *Political Change in Thailand*, pp. 42-57.

Sassen, Saskia. *The Mobility of Labour and Capital: A Study in international investment and labour flow.* Cambridge: Cambridge University Press, 1988.

Schaller, Michael. *The American Occupation of Japan: The Origins of the Cold War in Asia.* Oxford: Oxford University Press, 1985.

Scholte, Jan Aart. *Globalization: a critical introduction.* Basingstoke: Macmillan, 2000.

——————— 'Global Trade and Finance', in Baylis and Smith (eds), *The Globalization of World Politics* (2001 edition), pp. 519-539.

Selden, Mark. 'China, Japan and the Regional Political Economy of East Asia, 1945-1995', in Katzenstein and Shiraishi (eds), *Network Power*, pp. 306-340.

Sellek, Yoko. *Migrant Labour in Japan.* Basingstoke: Palgrave, 2001.

——————— 'Nikkeijin: The phenomenon of return migration', in Michael Weiner (ed.), *Japan's Minorities: The illusion of homogeneity* (London: Routledge, 1997), pp. 178-210.

Shimada, Haruo. *Japan's "Guest Workers": Issues and Public Policies.* Tokyo: University of Tokyo Press, 1994.

Siddle, Richard. "The Ainu and the Discourse of 'Race'", in Dikoetter (ed.), op. cit., pp. 136-157.

Sklar, Deborah. 'Testing Japan's Anti-Korean Law', *The Nation*, June 25, 1990, at 886; reproduced in Curtis J. Milhaupt, J. Mark Ramseyer and Michael K. Young (eds), Japanese Law in Context: Readings in Society, Economy and Politics (Cambridge, MA: Harvard University Press, 2001), pp. 213-216.

Skrobanek, Siriporn. 'Traffic in women, forms and remedies: the case of Thailand', *Proceedings of the International Conference on Transnational Migration in the Asia Pacific Region: Problems and Prospects, December 1-2, 1994*, pp. 37-45.

Smith, Hazel. 'Why Is There No International Democratic Theory?', in Smith, Hazel (ed.), *Democracy and International Relations: Critical Theories and Problematic Practices* (Basingstoke: Macmillan, 2000), pp. 1-30.

Smith, Martin. 'Pluralism', in Marsh and Stoker (eds), op. cit., pp. 209-227.

Smith, Steve and Baylis, John. 'Introduction', in Baylis and Smith (eds), *The Globalization of World Politics* (2001 edition), pp. 1-12.

Steans, Jill. *Gender and International Relations: An Introduction.* Cambridge: Polity, 1998.

Steinhoff, Patricia G. 'Protest and Democracy', in Ishida and Krauss (eds), *Democracy in Japan*, pp. 171-198.

Steven, Rob. *Japan and the New World Order: Global Investments, Trade and Finance.* London: Macmillan, 1996.

Stockwin, J. A. A. *Governing Japan: Divided Politics in a Major Economy (Third Edition).* Oxford: Blackwell, 1999.

Strange, Susan. *States and Markets (Second Edition).* London: Pinter, 1994.

——————— 'Wake Up, Krasner! The World Has Changed', *Review of International Political Economy*, 1(2), 1994, pp. 209-219.

Suhrke, Astri. 'Environmental Change, Migration, and Conflict: A Lethal Feedback Dynamic?', in Crocker, Chester A.; Fen Osler Hampson with Pamela Aall (eds), *Managing Global Chaos: Sources and Responses to International Conflict* (Washington, D.C.: United States Institute of Peace Press, 1996), pp. 113-127.

——————— 'The "High Politics" of Population Movements: Migration, State and Civil Society in Southeast Asia', in Weiner, Myron (ed.), *International Migration and Security* (Oxford: Westview, 1993), pp. 179-200.

Suphachalasai, Suphat. 'Export-Led Industrialization', in Krongkaew (ed.), *Thailand's Industrialization and Its Consequences*, pp. 66-84.

Takenaka, Heizô and Ryôkichi Chida. 'Japan', in Charles E. Morrison and Hadi Soesastro (eds), *Domestic Adjustments to Globalization* (Tokyo: Japan Center for International Exchange, 1998), pp. 76-102.

Taylor, George. 'Marxism', in Marsh and Stoker (eds), op. cit., pp. 248-267.

Tereasawa, Katsuko. 'Labor law, civil law, immigration law and the reality of migrants and their children', in Douglass and Roberts (eds), op. cit., pp. 219-243.

Tsuda, Mamoru. 'Human Rights Problems of Foreigners in Japan's Criminal Justice System', *Migration World Magazine*, 25(1-2), 1997, pp. 22-25.

Underhill, Geoffrey R. D. 'Introduction: Conceptualizing the Changing Global Order', in Richard Stubbs and Geoffrey R. D. Underhill (eds), *Political Economy and the Changing Global Order (Second Edition)* (Oxford: Oxford University Press), pp. 3-24.

United Nations, Economic and Social Council, Commission on Human Rights. *Contemporary Forms of Slavery: Systematic rape, sexual slavery and slavery-like practices during armed conflict by Special Rapporteur Gay J. McDougall* (E/CN.4/Sub.2/1998/13).

United Nations Population Division, *World Population Prospects, The 2000 Revision Highlights*, ESA/P/WP.165, 28 February 2001, http://www.un.org/esa/population/publications/wpp2000/highlights.pdf (cited 13 March 2003).

Vasishth, Andrea. 'A model minority: The Chinese community in Japan', in Michael Weiner (ed.), *Japan's Minorities: The illusion of homogeneity* (London: Routledge, 1997), pp. 108-139.

Walker, R. B. J. 'The Subject of Security', in Keith Krause and Michael C. Williams (eds), *Critical Security Studies: Concepts and Cases* (London: UCL Press, 1997), pp. 61-81.

Waltz, Kenneth N. *Theory of International Politics*. New York: McGraw-Hill, 1979.

——————— *Man, the State and War: a theoretical analysis*. New York: Columbia University Press, 1954.

Watsuji, Tetsuro. 'The Family as an Ethical System', extracted in Okimoto and Rohlen (eds), *Inside the Japanese System: Readings on Contemporary Society and Political Economy*, pp. 3-6.

Waylen, Georgina. 'Gender, feminism and the state: an overview', in V. Randall et al. (eds), *Gender, politics and the state* (London: Routledge, 1998), pp. 1-17.

Weiner, Michael (ed). *Japan's Minorities: The illusion of homogeneity*. London: Routledge, 1997.

Weiner, Michael. 'The Invention of Identity: Race and Nation in Pre-war Japan', in Dikoetter (ed.), op. cit., pp. 96-117.

——————— 'The representation of absence and the absence of representation: Korean victims of the atomic bomb', in Weiner (ed.), *Japan's Minorities*, pp. 79-107.

——————— *Race and Migration in Imperial Japan.* London: Routledge, 1994.

Weiner, Myron and Tadashi Hanami (eds) *Temporary Workers or Future Citizens?: Japanese and U.S. Migration Policies.* Basingstoke: Macmillan, 1998.

Weiner, Myron. 'Introduction: Security, Stability and International Migration', in Myron Weiner (ed.), *International Migration and Security* (Oxford: Westview, 1993), pp. 1-35.

Weiss, Linda. *The Myth of the Powerless State: Governing the Economy in a Global Era.* Cambridge: Polity, 1998.

——————— 'Globalization and the Myth of the Powerless State', *New Left Review*, 225, 1997, pp. 3-27.

White, Brian, Richard Little and Michael Smith. 'Issues in World Politics Reviewed', in White, Little and Smith (eds), *Issues in World Politics (Second Edition)*, pp. 252-269.

Widgreen, Jonas. 'International migration and regional stability', *International Affairs*, 66(4), 1990, pp. 749-766.

World Bank. *World Development Report 1995: Workers in an Integrating World.* Oxford: Oxford University, 1995.

Yoshihara, Kunio. *The Nation and Economic Growth: The Philippines and Thailand.* Kuala Lumpur: Oxford University Press, 1994.

Yoshino, Kosaku. 'The Discourse on Blood and Racial Identity in Contemporary Japan', in Dikoetter (ed.), op. cit., pp. 199-211.

——————— *Cultural nationalism in contemporary Japan: A sociological enquiry.* London: Routledge, 1992.

Young, Louise. 'Rethinking Race for Manchuko: Self and Other in the Colonial Context', in Dikoetter (ed.), pp. 158-176.

Young, Michael and Hamilton, Constance. 'Historical Introduction to the

Japanese Legal System', in Matsushita, Mitsuo (ed.), Japan Business Law Guide, chapter 1 (Sydney: CCH Australia, 1988); reproduced in Milhaput, Ramseyer and Young (eds), *Japanese Law in Context: Readings in Society, Economy and Politics*, pp. 2-10.

Zolberg, Aristide. 'International Migration in Political Perspective', in M. Kritz, C. Kelly and S. Tomasi (eds), *Global Trends in Migration: Theory and Research on International Population Movements* (New York: Center for Migration Studies, 1981), pp. 3-27.

Zysman, John. 'The Myth of a "Global" Economy: Enduring National Foundations and Emerging Regional Realities', *New Political Economy*, 1(2), 1996, pp. 157-184.

[Japanese]

Ajia no onnatachi no kai. 1989. *Ajia to josei kaihô (Asian Women's Liberation)*. Tokyo: Ajia no onnatachi no kai, October, No. 20.

Akiyama, Takashi. 1998. 'Keijisaiban no genba kara saibankan no shiten (Judicial interpretation in criminal trials: reflections of a judge)', in Watanabe Osamu and Nagao Hiromi (eds), *Gaikokujin to keiji tetsuzuki – tekiseina tsûyaku no tameni – (Criminal procedures for foreigners: towards fair interpretation)*, (Tokyo: Seibundô, 1998), pp. 267-284.

Aoki, Osamu. *Nihon no kôankeisatsu (Japan's Security Police)*. Tokyo: Kôdansha, 2000.

Cabinet Councillors' Office on External Affairs, Cabinet Secretariat. Statement concerning the so called Comfort Women issue (4 August 1993). In Ishide, Norita, Kim Puja, and Hayashi Hirofumi (eds), *'Nihongun ianfu' o dô oshieruka (Teaching the 'Japanese Military Comfort Women' at School)* (Tokyo: Nashinokisha, 1997), pp. 148-149.

Chûgokujin kyôsei rôdô jiken fukuoka soshô gengoku bengodan. *Ayamachi o mitome, tsugunai, tomoni ayumu ajia no rekishi o: chûgokujin kyôsei rôdô jiken no shinjitsu (Admit the guilt and compensate toward the history that Asia and Japan may share: the truths about forced conscription of the Chinese workers)*. Fukuoka: Rîgaru bukkusu, 2001. (4-947745-28-2)

Dai 9 ji koyôtaisaku kihon keikaku (Cabinet Resolution on the Ninth Basic Plan on Employment). 13 August 1999. http://www.mhlw.go.jp/topics/2002/07/dl/tp0711-1a1.pdf (Cited 7 March 2003)

Daiichi Tokyo bengoshikai. *Zoku gaikokujin no horitsusodan Q&A jireihen (Legal advise for foreigners Q&A, volume 2: case studies)*. Tokyo:

Gyôsei, 1998.

Fujimoto, Tetsuya. *Keijiseisaku gairon (zentei dai 3 pan) (Criminal policy: an outline (3rd and revised edition)).* Tokyo: Seirin shoin, 2001.

Fukami, Fumi. 1999. *Tsūyaku no hitsuyô wa arimasen: Dôgo taijin josei satsujin jiken saiban no kiroku (There is No Need for Interpretation: the record of murder case in Dôgo of a Thai woman).* Matsuyama: Sôfûsha shuppann. (4-915699-77-3)

Hashiba, Shun. "Kokusai jinken kijun kara mita keijitetsuzuki ni okeru gaikokujin no jinken – JCLU 'teigen' o chûsin ni – (An assessment of human rights of foreigners in criminal procedure by the international human rights standard: in connection with the JCLU proposal)". *Jiyû to seigi*, 1993, 44(1), pp. 60-65.

Hatano, Isamu, Kurashima Kenji, Tanaka Shinya, Shigemi Kazutaka; and Ishizaki Yûichi. *Gaikokujin no hôteki chii: kokusaika jidai to hôseido no arikata (Foreigners' Legal Status: how the legal system should be in the era of internationalisation).* Tokyo: Shinzansha, 2000.

Ida, Makoto. *Kiso kara manabu keijihô (dai 2 han) (Basics of Criminal Law and Procedure, second edition).* Tokyo: Yuhikaku, 2002.

Iguchi, Yasushi. *Gaikokujin rôdôsha shinjidai (Foreign workers in a new age).* Tokyo: Chikuma shobo, 2001.

Immigration Bureau, Ministry of Justice. 'Shutsunyûkoku kanri oyobi nanmin ninteihô no ichibu kaisei (Immigration Control and Refugee Recognition Act Partially Revised)', *Kokusai jinryû*, January 2002, p. 19.

———————————. *Heisei 13 nenban zairyû gaikokujin tôkei (Statistics of registered foreigners in 2001).* Tokyo: Zaimushô insatsukyoku, 2001.

Iokibe, Makoto. *Senryôki: shushô tachi no shin Nippon (The Occupation Years: Prime Ministers of New Japan).* Tokyo: Yomiuri shinbunsha, 1997.

Ishide, Norita, Kim Puja and Hayashi Hirofumi (eds). *'Nihongun ianfu' o dô oshieruka (Teaching the 'Japanese Military Comfort Women' at School).* Tokyo: Nashinokisha, 1997.

Itô, Shigeki. *Shusô retsujitsu: kenjisôchô no kaisô (Observing strict neutrality: a public prosecutor-general's memoir).* Tokyo: Asahi shinbunsha, 1988.

Iyotani, Toshio. *Gurôbarizêshon to imin (Globalisation and Migration).* Tokyo: Yûshindô kôbunsha, 2001.

Josei no ie Saalaa. *Josei no ie Saalaa 10 nen no ayumi: gaikokuseki josei eno bôryoku no jittai (The Ten-year History of Women's Home Saalaa: Actual conditions of violence against the women of foreign origins).* Yokohama: Josei no ie Saalaa, 2002.

Kajita Takamichi, 'Gendai nihon no gaikokujin rôdôsha seisaku saikô – seiô shokoku tono hikaku o tôshite – (Foreign Worker Policy in Contemporary Japan Reconsidered: comparison with the West European countries)', in Kajita Takamichi (ed.), *Kokusaika to aidentiti (Internationalisation and Identity)* (Tokyo: Minerva shobô, 2001), pp. 184-219.

Kamiguchi, Yutaka, Gotô Akira, Yasutomi Kiyoshi and Watanabe Osamu. *Keijisoshôhô (dai 3 pan) (Criminal Procedure, 3rd edition).* Tokyo: Yuhikaku, 2002.

Kan, Chunja, Kim Puja, Kim Hunja, Pak Yunam and Yang Chinja. *Motto shiritai 'ianfu' mondai: sei to minzoku no shiten kara (Learn more about the 'Comfort Women': from the perspectives of sexuality and ethnicity).* Tokyo: Akashi shoten, 1996.

Kasama, Chinami. 'Tainichi gaikokujin josei to "gender bias": nihon teki ukeire no ichisokumen to mondaiten (Women Migrant Workers in Japan and 'Gender Bias': An aspect of Japan's reception of the migrant workers and the problems)', in Miyajima, Takashi and Kajita, Takamichi (eds), *Gaikokujin rôdôsha kara shimin e (From Foreign Workers to Citizens)* (Tokyo: Yūhikaku, 1996), pp. 165-186.

Kitamura, Shigeru and Hayakawa Osamu. 'Keisatsu ni okeru tsûyaku no genjô to kongo no tenbô (The Present Condition and a Prospect in the Future of Interpretation in the Police)', *Keisatsugaku ronshu (The Journal of Police Science)*, 42(6), 1993, pp. 20-37.

Kokusai jinryû (Migration Newsmagazine). Tokyo: Nyûkan kyôkai.

Kyoto YWCA APT (ed.) *Jinshin baibai to ukeire taikoku Nippon: sono jittai to hôteki kadai (Trafficking in Persons and Japan as a Major Recipient Country: Actual conditions and legal problems).* Tokyo: Akashi shoten, 2001.

Kuwahara, Yasuo. *Kokkyo o koeru rôdôsha (Workers Crossing the Border).* Tokyo: Iwanami shoten, 1991.

Matsumoto, Kunihiko (comment and trans.) *GHQ Nihon senryôshi dai 16 kan: gaikokujin no toriatsukai (The History of Japanese Occupation by the GHQ, volume 16: Treatment of Foreigners).* Tokyo: Nihon tosho sentâ, 1996.

Matsumoto, Mitsuhiro. "Rainichi gaikokujin ni kakaru hanzai no dôkô to kongo no kadai (Present situation and the future problems in crimes relating to visiting foreigners)", *Hôritsu no hiroba*, 46(7), 1993, pp. 4-13.

M-netto, No. 27, May 2000; No. 48, April 2002.

Ministry of Economy, Trade and Industry. *White Paper on Trade and Commerce 2001*. http://www.meti.go.jp/hakusho/tsusyo/soron/H13/CHU042.html (cited 5 February 2003)

Ministry of Foreign Affairs. 'Ajia keizai saisei misshon hôkokusho: 21 seiki no ajia to kyôsei suru nihon o mezashite (Report of the Mission for Revitalization of Asian Economy: Living in Harmony with Asia in the Twenty-first Century). November 1999. http://www.mofa.go.jp/mofaj/area/asiakeizai/saisei/hokoku.html (Cited 7 March 2003)

———————. *Diplomatic Bluebook 2001*. http://www.mofa.go.jp/policy/other/bluebook/2001/chap2-2-a.html (cited 5 February 2003)

Ministry of Health, Labour and Welfare. '*Gaikokujin koyô mondai kenkyûkai hôkokusho* (*Report on Foreign Employment Issues*).' July 2002. http://www.mhlw.go.jp/topics/2002/07/tp0711-1.html (Cited 7 March 2003)

Ministry of Justice. Basic Plan for Immigration Control (Second Edition). March 2000. http://www.moj.go.jp/ENGLISH/IB/IB2000/ib.html (Cited 7 March 2003)

———————. Dai 40 shutsyunyûkoku kanri tôkei nenpô heisei 12 nen *(Annual Report of Statistics on Legal Migrants for 2000)*. Tokyo: Zaimushô insatsukyoku, 2001.

———————. *Hanzai hakusho (White Paper on Crime)*. Tokyo: Ôkurashô Insatsukyoku, 1994

Mitsui, Tôru. 'Rainichi gaikokujin no keiji jiken to tsûyaku (1) (Criminal cases of *rainichi gaikokujin* and interpretation, part 1)', *Hôgaku kyôshitsu*, 195, December 1996, pp. 99-104.

Mizuno, Makiko. 'Gaikokujin jiken to tsûyaku mondai: 'dôgo jiken' to 'meruborun jiken' ni mirareru tsûyaku mondai (Problems in Interpretation of Foreign Public Trial: the Dôgo Case and the Melbourne Case)'. Matsuyama shinonome joshi daigaku jinbungakubu kiyô, No. 9, 2001.

Mori, Hideki. 'Kihonteki jinken (Basic Human Rights)', in Watanabe Osamu (ed.), *Gendai nihon shakai ron: sengoshi kara genzai o yomu 30 shô (Contemporary Japanese Society: 30 essays on the post-war history)* (Tokyo: Rôdô junpôsha, 1996), pp. 366-399.

Moriyama, Mayumi. Congratulatory speech for the commemoration ceremony of the fortieth anniversary of the UN Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders. 2 October 2002. http://www.moj.go.jp/SPEECH/INSTRUCTION/instruction0104-008.html (cited 6 February 2003)

Muraoka, Keiichi. 'Aru gaikokujin jiken no kyôkun (Lessons from the criminal case of a foreigner)', *Jiyû to seigi*, 44(1), 1993, pp. 72-79.

Murase, Hitoshi. 'Gaikokujin hikokunin no saibanjô no mondaiten to taisaku (Problems in criminal trials of foreigners and their measures)', *Hôritsu no hiroba*, 46(7), 1993, pp. 29-34.

Nakagawa, Kiyoaki. 'Gaikokujin higisha no keiji tetsuzuki o meguru mondaiten (Issues related to criminal procedures of foreign suspects)', *Hôritsu no hiroba*, 46(7), 1993, pp. 21-28.

Nakamura, Shinichirô. 'Kenshô Ishihara hatsugen: keisatsuchô no rainichi gaikokujin hanzai bunseki hihan (Validity of Mr. Ishiraha's remark examined: a critique of National Police Agency's analysis of the *rainichi gaikokujin* crime)', in Utsumi, Aiko et al. (eds), *'Sangaokujin' hatsugen to zainichi gaikokujin ('The Third Party Nations' and the Foreigners in Japan)* (Tokyo: Akashi shoten, 2001), pp. 94-120.

———————. '"Keisatsu hakusho" no gaikokujin hanzai bunseki hihan (The Analysis of crime committed by foreigners in the White Paper on the Police: a critique)', *Migrants'-netto*, No. 22, October 1999, pp. 5-7; No. 23, November and December 1999, pp. 5-7.

———————. '2001 nenban "Rainichi gaikokujin hanzai no genjô to taisaku" eno hihanteki kenkai (Critical Comments on "Crime Committed by Foreigners: the Present Situation and the Measures")', *Migrants'-netto*, No. 41, August 2001, pp. 10-16.

Nakayama, Takao. 'Yô tsûyaku gaikokujin keiji jiken to saibansho no torikumi (Measures that the courts have taken for criminal cases of foreigners requiring interpretation)', *Jiyû to seigi*, 44(1), 1993, pp. 42-53.

National Police Agency. *Keisatsuhakusho (White Paper on the Police)*. Tokyo: Ôkurashô insatsukyoku, 1989-2000.

———————. 'Keisatsu no shikumi (Organisation of the Police)'. http://www.npa.go.jp/koho1/sikumi.htm (cited 10 February 2003)

———————. 'Kokusai soshiki hanzai taisaku ni okeru kokusaikikan tono renkei (Cooperation with international organisations against transnational organised crime)'. http://www.npa.go.jp/kokusai2/renkei.htm (cited 6 February 2003)

Nihon bengoshi rengôkai. *Kokusai jinken kiyaku to nihon no shihô shimin no kenri (International human rights covenants, Japan's judiciary, and citizens' rights).* Tokyo: Kôchi shobô, 1997.

Ohki, Kazuhiro, Kin Ryûsuke, Kodama Kôichi and Seki Sôsuke. *Gaikokujin jiken keiji bengo manyuaru (Manual for Defending Criminal Case of Foreingers).* Tokyo: Gendai jinbunsha, 1997.

Ômori, Reiko. 'Tekisei tsûyaku no hoshô to kuni no shisei, kokusei no shiten (Japanese state's attitude manifest in national legislature about guaranteeing the appropriate interpretation)', in Watanabe and Nagao (eds), *Gaikokujin to keiji tetsuzuki – tekiseina tsûyaku no tameni – (Criminal procedures for foreigners: towards fair interpretation)*, pp. 297-313.

———————. 'Gaikokujin jiken ni okeru shihô tsûyaku no genjô (The Present Status of Judicial Interpretation for Foreigner Cases).' http://www.reiko-ohmori.com/reiko/home.html Cited 13 January 2003.

———————. 'Moto kensatsukan no tachiba kara mita nihon no shihô tsûyaku no seido to mondaiten (The Japanese System [of Judicial Interpretation] and Its Problems: From the Point of View of a Former Public Prosecutor)', 16 March 1997, http://www.reiko-ohmori.com/reiko/home.html (cited 13 January 2003).

Criminal Affairs Bureau, Secretariat General, Supreme Court (GSSC) (Saikôsaibansho jimusôkyoku keijikyoku). 'X nen ni okeru keiji jiken no gaikyo (General Situation of criminal cases for the year X)'. *Hôsô jihô (Lawyers Association Journal)*, various years.

Sakanaka, Hidenori. 'Gaikokujin no nyûkoku, zairyû, taikyokyôsei o meguru shomondai (Issues concerning entry, residence and deportation of foreigners)', in Sakanaka, Hidenori, *Nihon no gaikokujin seisaku no kôsô (A Scenario for Japan's Foreigner Policy)* (Tokyo: Nihon kajo syuppan, 2001), pp. 135-160.

———————. 'Tairyô shutsunyûkoku jidai ni okeru shutsunyûkoku kanri no aratana tenkai (New Developments in Immigration Control Policy in the Era of Mass Emigration and Immigration)', in Sakanaka *Nihon no gaikokujin seisaku no kôsô*, pp. 161-190.

Shiroishi, Makiko. '30 sai o sugite sengyô shufu kara shihô tsûyaku no michi e (Interview with Hiromi Nagao. From a full time housewife to a judicial interpreter: the choice made after 30 years of age)'. *Sâ iou (Let's talk)*. July 1999. http://lib1.nippon-foundation.or.jp/1999/0286/contents/015.htm Cited 14 January 2003.

Sugihara, Tôru. *Chugokujin kyôsei renkô (Forced Labour Migration of the Chinese)*. Tokyo: Iwanami shoten, 2002.

Suzuki, Noriyuki. 'Tai seifu syakai no taiou (The responses of the government and the society in Thailand)', in Komai Hiroshi (ed.). *Shinrai teijû gaikokujin ga wakaru jiten (An Encyclopedia of Understanding the New Comer and the Settling Foreigners in Japan)* (Tokyo: Akashi shoten, 1997), pp. 240-241.

——————— *Daisan sekai ni okeru mo hitotsu no hatten riron (Alternative Development in the Third World – A Case Study of Thai Villages)*. Tokyo: Kokusai shoin, 1993.

Tai-nichi ijuu josei nettowaaku and Takrai (Thailand-Japan Network for Migrant Women and Takrai), *Enpawâmento o mezashite: ijûjoseimondai kaiketsu no tameno nettowâku zukuri, wâkushoppu hôkokusho* (*Aiming for the Empowerment: Report of the workshop on building problem-solving network for immigrant women's issues*), Chiang Rai, Thailand, 24 and 25 November 2001.

Tanaka, Hiraku, Taniguchi Seisaku, Matsuo Kôya, Miura Masaharu, Yanagawa Shôji and Yamada Toshio. 'Gaikokujin jiken to keiji tetsuzuki (Foreign cases and criminal procedure)', *Jurisuto*, 1043, 15 April 1994, pp. 8-30.

Tanaka, Hiroshi. *Zainichi gaikokujin (Foreigners in Japan)*. Tokyo: Iwanami shoten, 1991.

Tanaka, Yasurô. 'Gaikokujin jiken ni okeru seikakuna hôtei tsûyaku no jissen to tekiseina soshô unei (Practicing Accurate Court Interpretation and the Appropriate Court Administration in Foreign Cases)', in Harada Kunio, Kawakami Takuichi and Nakatani Yûjirô (eds). *Keiji saiban no riron to jitsumu (Theory and Practice of Criminal Trial)* (Tokyo: Seibundô, 1998), pp. 139-191.

Tezuka, Kazuaki. *Gaikokujin rôdôsha (Foreign Workers)*. Tokyo: Nihon keizai shinbumsha, 1989.

Tsuda, Mamoru and Miyawaki Setsu. 'Gaikokujin keiji tetsuzuki ni okeru tsuyaku honyaku ishi sotsû no genjô – firipin jin no jiken kiroku chosa

kara – (The present condition of interpretation, translation and communication in criminal procedures for foreigners: a case study of the Philippine suspects), *Jiyû to seigi*, 44(1), 1993, pp. 27-41.

Urawa chihô saibansho. Misatoshi no gaikokujin apâto hôka jiken hanketsu (urawa chisai sho 63 (wa) 707 gô, 782 gô, hei 2. 10. 2 kei sanbu hanketsu). *Hanrei jiho*, 1376, 1 May 1991, pp. 24-54.

VAWW-Net Japan (ed.) *Josei kokusai senpan hôtei no zenkiroku II (International Women's War Crimes Tribunal: the whole record, vol. II).* Tokyo: Ryokufû shuppan, 2002.

Watanabe, Fumiyuki. *Hômushô (Ministry of Justice).* Tokyo: Intermedia, 2001.

Watanabe, Osamu. 'Gaikokujin jiken to keiji shihô kenkyûsha no shiten (The foreigner cases and criminal procedure: reflections of an academic)', in Watanabe and Nagao (eds), op. cit., pp. 285-296.

Watanabe, Osamu (ed). *Gendai nihon shakai ron: sengoshi kara genzai o yomu 30 shô (Contemporary Japanese Society: 30 essays on the post-war history).* Tokyo: Rôdô junpôsha, 1996.

Yanagawa, Shôji. 'Rainichi gaikokujin no keiji jiken to jinken (Criminal cases of *rainichi gaikokujin* and their human rights)', in Ebashi, Takashi and Tanaka, Hiroshi (eds), *Rainichi gaikokujin jinken hakusho (White Paper of human rights of rainichi gaikokujin)* (Tokyo: Akashi shoten, 1997), pp. 274-298.

Yoshimi, Yoshiaki. *Jûgun ianfu ('Comfort Women').* Tokyo: Iwanami shoten, 1998.

Yoshimi, Yoshiaki and Hayashi, Hirofumi (eds). *Kyôdô kenkyû nihongun ianfu (Japanese military 'Comfort Women': a joint research).* Tokyo: Ôtsuki shoten, 1995.

[Japanese law]

Bengoshihô. *Iwanami konpakuto roppô heisei 11 (1999) nenban (Iwanami Compact Compendium of Laws, 1999 edition)* (Tokyo: Iwanami shoten, 1998), pp. 109-111.

Keijisoshôhô. *Iwanami konpakuto roppô heisei 11 (1999) nenban*, pp. 873-918.

Keisatsuhô. *Iwanami konpakuto roppô heisei 11 (1999) nenban*, pp. 255-259.

Kensatsuchôhô. *Iwanami konpakuto roppô heisei 11 (1999) nenban*, pp. 108-109.

Kokkaihô. *Iwanami konpakuto roppô heisei 11 (1999) nenban*. pp. 47-56.

Nihonkoku kenpô (Constitution of Japan). *Iwanami konpakuto roppô heisei 11 (1999) nenban*, pp. 11-33.

Syutsunyûkoku kanri oyobi nanmin ninteihô (Immigration Control and Refugee Recognition Act). *Iwanami konpakuto roppô heisei 11 (1999) nenban*, pp. 277-284; and http://www.moj.go.jp/ENGLISH/IB/ib-19.html (cited 6 January 2003)

Nakane, Fukio (trans and ed.) The Code of Criminal Procedure of Japan. *EHS Law Bulletin Series*, No. 2600. Tokyo: Eibun-Horei-Sha, 2001.

Nakane, Fukio (trans and ed.) Court Organization Law. *EHS Law Bulletin Series*, No. 2010. Tokyo: Eibun-Horei-Sha, 1995.

[Minutes of Diet Debates]

Secretariat, House of Councillors. Minutes No. 5, Legal Affairs Committee (LAC), House of Councillors (HOC), the 140th Session, 27 March 1997 (H9).

_____ Minutes No. 8, LAC, HOC, the 141st Session, 4 December 1997 (H9).

_____ Minutes No. 3, LAC, HOC, the 143rd Session, 22 September 1998 (H10).

_____ Minutes No. 2, LAC, HOC, the 145th Session, 15 March1999 (H11).

_____ Minutes No. 3, LAC, HOC, the 145th Session, 23 March1999 (H11).

_____ Minutes No. 12, LAC, HOC, the 145th Session, 20 May1999 (H11).

_____ Minutes No. 14, LAC, HOC, the 145th Session, 27 May1999 (H11).

_____ Minutes No. 2, LAC, HOC, the 147th Session, 14 March 2000 (H12).

_____ Minutes No. 3, LAC, HOC, the 147th Session, 15 March 2000 (H12).

_____ Minutes No. 11, Local Governance and Police

Affairs Committee, HOC, the 147th Session, 18 May 2000 (H12).

——————————— Minutes No. 2, Budget Committee, HOC, the 149th Session, 8 August 2000 (H12).

——————————— Minutes No. 1, LAC, HOC, the 149th Session, 9 August 2000 (H12).

——————————— Minutes No. 6, Accounting Committee, HOC, post-session meeting, the 149th Session, 20 September 2000 (H12).

——————————— Minutes No. 10, Budget Committee, HOC, the 151st Session, 19 March 2001 (H13).

——————————— Minutes No. 9, LAC, HOC, the 154th Session, 11 April 2002 (H14).

Secretariat, House of Representatives. Minutes No. 11, Legal Affairs Committee (LAC), House of Representatives, the 109th Session, 16 September 1988 (S62).

APPENDIX: List of Interviewees

Mr. Amemiya Norio, Judge, Kawagoe Branch, Saitama Family and District Court, Saitamashi, Saitamaken.

Ms. Ebihara Yumi, Attorney-at-Law, Ebihara Law Office, Saitamashi, Saitamaken.

Ms. Kawaguchi Kazuko, Attorney-at-Law, Lianten hôritsu jimusho, Chiyodaku, Tokyo.

Mr. Kitani Akira, Public Nortary, Kasumigaseki Notary Office, Chiyodaku, Tokyo (Retired judge, Urawa District Court and Tokyo High Court).

Ms. Matsuura Atsuko, Tai josei no tomo (Friends of Thai Women, Japan), Asia-Japan Women's Resource Center, Tokyo.

Ms. Miki Emiko, Yokohama Hôritsu Jimusho, Yokohamashi, Kanagawaken.

Professor Nakahara Michiko, Center for International Education, Waseda University, Tokyo.

Ms. Nyota Mari, Tai-nichi ijû josei nettowâku (Thailand-Japan Network for Migrant Women), Chiang Mai, Thailand.

Ms. Ôtsu Keiko, Director, The Women's Shelter HELP, Tokyo.

Ms. P, Tai-nichi ijû josei nettowâku (Thailand-Japan Network for Migrant Women), Chiang Mai, Thailand.

Professor Seksin Srivatananukulkit, Faculty of Social Sciences, Chiang Mai University, Chiang Mai, Thailand.

Mr. Sittha Senfeungfung, President, SME Multi Consultant Co., Ltd., Bangkok, Thailand.

Mr. Suzuki Tsuneo, Attorney-at-Law, Ebihara Law Office, Saitamashi, Saitamaken.

Mr. Takano Takashi, Attorney-at-Law, Kikuchi and Partners, Saitamashi, Saitameken.

Mr. Tanaka Yasurô, Judge and Senior Instructor, Shihôkenshûsho (Legal Training and Research Institute, the Supreme Court), Wakoshi, Saitamaken.

Ms. Yukita Juri, Attoney-at-Law, Josei kyôdô hôritsu jimusho, Chûôku, Ôsakashi.

(Titles are those of at the time of interview.)