

Part II. Implications for International and APEC Cooperation
Session VI. Implications for International and APEC Cooperation

The Views of the International Labor Organization

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Cooperation on International migration and labour mobility: ILO perspectives

Session VI. Implications for International and APEC Cooperation
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Demographic Change and International Labour Mobility in the Asia Pacific
Region: Implications for Business and Cooperation

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Structure of the presentation

- Key messages
- Global governance of migration
- Recent global initiatives
- ILO approach and the multilateral framework on labour migration
- Asian initiatives
- Good practices

Key Messages

- Migration is not a problem, but a phenomenon as old as history, and likely to increase in the future. The issue is how to regulate or govern - and not how to stop – migration.
- Most of the world's migrants are those migrating for employment and their families: Thus international migration is a labour market and decent work issue.
- ILO and the international community now see migration as a positive force for development provided it is regulated well.
- The demand for migrant workers cuts across all skills – low to high skills – and closing doors to low skilled migrants has many negative impacts.
- Respect for migrant rights is essential for ensuring and sharing benefits from migration.
- Governance and regulation of migration should not focus only on border control and security concerns.

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Terminology

- ILO dictum: Labour is not a commodity; thus, labour exports-imports or exporting/importing are inappropriate.
- Sending countries and receiving countries- more neutral are: countries of origin or source countries; countries of destination or host countries.
- Labour migration- migrant workers, migrant labour are correct terms. We avoid economic migrants; labour migrants; illegal migrants.
- There are no unskilled workers - every worker including migrants has a skill-. Only low skilled or semi skilled.
- ILO prefers to use irregular migration and migrant workers in irregular status – not illegal, clandestine.
- ILO recommends avoiding militaristic jargon: combatting, fighting irregular /illegal migration. Use – address/deal/manage irregular migration.
- Safe migration: developed in trafficking discourse, and mostly applies to origin country process: does not indicate non-exploitation or decent work in receiving countries.

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Barriers to mobility and circulation

- Migration and mobility missing link in globalization: barriers to cross border mobility are rising: proliferation of biometric tests
- Migration controls
 - Right to leave any country including one's own, and the right to return to the home country are fundamental human rights, but right of entry or admission, stay or work to a third country is still the sovereign right of individual states.
- Most immigration laws do not reflect labour market needs.
- Destination country visa regimes discourage circulation: EU regulations for long term residents
- Security concerns especially- post 9/11
- Limited recognition of qualification across borders
- Constraints on acquired rights of social security and their portability
- Limited information: on legal channels (proposed EU immigration information portal) , communities overseas, returnees, investment opportunities

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Low skilled and high skilled workers

- The demand for migrant workers cuts across all skill categories (EU Policy Plan on legal migration).

“There is a need for States to develop forward-looking policies that take realistic account of their long-term structural demand for both low-skilled and highly skilled workers.(UN SG HLD report)
- Global Commission on international migration: used the term “essential workers” to refer to both.
- Current policy biased towards skilled:
 - Selective admission of skilled: Australia, Canada, USA (H-1B visa)
 - No legal admission schemes for low skilled: Japan, USA, Australia
 - Policy changes in Republic of Korea (2005) and Taiwan (China) 1991
 - Singapore – two track system for low skilled and high skilled since 80s
 - Europe – Blue card, Policy Plan (Allow only for seasonal migrants)
 - GATS Mode 4 – movement of natural persons- mainly for skilled

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Impact of focussing on skilled workers

- Serious brain drain for developing countries:
 - EC Blue Card directive mentions ethical recruitment to minimise brain drain: hardly convincing.
- Channelling a substantial number to irregular economy; dramatic increase in trafficking & smuggling of human beings.
- Preventing development benefits to the poor:
(see RSA Migration Commission Report UK)

UN Secretary-General Report for High Level Dialogue 2006- *Low-skilled migration has the largest potential to reduce the depth and severity of poverty in communities of origin.*

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Emerging consensus on expanding migration avenues for low skilled

- ILO Multilateral Framework on Labour Migration, 2006;
 - Principle 5: Expanding avenues for regular labour migration should be considered, taking into account labour market needs and demographic trends.
- Global Forum on Migration and Development, July 2007. Conclusions claim a shift of the migration and development paradigm by promoting legal migration as an opportunity for development of both origin and destination countries, rather than as a threat.
- World Bank –GEP 2006: The development gains from low-skilled emigration are clear cut, while high-skilled emigration has more complex effects.
- Global Commission on International Migration (GCIM): The world would benefit substantially from a well regulated liberalization of the global labour market.
- Existing models: Seasonal worker programmes; Gulf contract worker model – minimum rights; Korea and Singapore
- Current interest in innovative temporary and circular migration systems: GFMD; GCIM; EU; World Bank

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A global framework/regime for migration: issues to be addressed

- Governance issues:
 - Developing innovative programmes for migration of both low and skilled workers
 - Minimising irregular migration including smuggling and trafficking of persons
 - Regulation of the recruitment industry
 - Involving concerned stakeholders in policies; social partners
- Protecting workers from abuse and exploitation
- Migration and development
 - Meeting needs of employers and business; facilitating mobility and circulation
 - Address “Brain drain” from developing countries
 - Promote migration-development linkages through remittances, return and circular migration and engagement of transnational communities
- Promoting international, regional and bilateral cooperation in labour migration

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Institutional gaps in governance of international migration

Doyle report - No single agency covers all aspects of migration: Bhagwati - “a gaping hole in international institutional architecture”

- International Labour Organization (ILO)
 - clear mandate on labour migration and protection of migrant workers.
- The United Nations High Commissioner for Refugees (UNHCR)
 - deals with forced migrants – refugees and asylum seekers
- UN Office of the High Commissioner for Human Rights (UNOHCHR)
 - looks after human rights of migrants; special rapporteur
- International Organization for Migration (IOM):
 - Inter-governmental agency servicing member governments in all aspects of migration; has no protection mandate.
- World Trade Organization (WTO):
 - responsible for trade-related mobility: GATS Mode 4: movement of natural persons: no protection mandate for such workers.
- UN Department for Economic and Social Affairs (UN DESA):
 - UNH High level Dialogue process; Migration statistics & surveys of national migration policies; annual coordination meetings on migration.
- UN Office on Drugs and Crime (UNODC):
 - responsible only for issues related to trafficking and smuggling of human beings.

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Possible options for an international migration regime

- Create a new agency: “World Migration Organization” – objections from major countries.
- Mandate an existing agency or agencies: GCIM considered this option.
- Establish international standards: ILO and UN migrant worker instruments exist but limited ratification and compliance
- Promote non-binding frameworks
 - ILO multilateral framework on labour migration - 2006
 - Berne Initiative- International agenda for migration management (IAMM)- 2004
- Establish global consultative forums: Global Migration Group; Global Forum on Migration and Development
- Regional integration agreements as a model: European Union- free movement of persons & labour

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Multilateral initiatives on migration

- International Conference on Population and Development, Cairo, 1994
- WTO General Agreement on Trade in Services (GATS) Mode 4: movement of natural persons
- The Berne Initiative (2001-04) - the International Agenda for Migration Management.
- Global Commission on International Migration (GCIM), 2004-05.
- Global Migration Group since 2006
- ILO multilateral framework on labour migration, 2006
- UN High-Level Dialogue on International Migration and Development, September 2006.
- Global Forum on Migration and Development, July 2007 (Brussels); October 2008 (Manila)

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GATS- *General Agreement on Trade in Services* Mode 4

- Mode 4 of GATS for natural persons supplying services relates to conducting negotiations on the rights of natural persons to remain temporarily in a country in order to provide a service.
- Most countries deal with Mode 4 in the same way as migration [temporary]: commitments are very limited and confined mostly to professionals and intra-company transferees.
- Workers are very concerned about working conditions and protection mechanisms of temporary service providers

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Global Commission on International Migration

- An independent commission led by Sweden and Switzerland with UN blessing. Established in Dec. 2004 and report released in October 2005
- Advocates 3 Cs for enhancing global governance: **Coherence, capacity and cooperation**
- Recommendations:
 - Immediate: establishment of a high-level inter-institutional group
 - Short term: Establish an Inter-agency Global Migration Facility: to ensure a more coherent and effective institutional response to international migration challenges.
 - Long term: create a single organization combining functions of existing agencies.
- Only the immediate option in force: Global Migration Group

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Global Migration Group (GMG)

- An inter-agency group, meeting at the level of Heads of agencies
- Members: 13 agencies plus Coordinator of UN Regional Commissions
- Aims
 - to promote the wider application of all relevant international and regional instruments and norms relating to migration,
 - provision of more coherent and stronger leadership to improve the overall effectiveness of the United Nations and the international community's policy and operational response to the opportunities and challenges presented by international migration.
- Meetings conducted at both the Principals level and the Working level: 6-monthly rotating Chair – currently UNFPA
- Limited achievements up to now in coordination and achieving policy coherence among agencies.
 - Current focus on exchange of information but moving towards operational programmes and broader membership

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Members of the Global Migration Group

1. International Labour Organization (ILO)
2. International Organization for Migration (IOM)
3. United Nations Conference on Trade and Development (UNCTAD)
4. United Nations Development Programme (UNDP)
5. United Nations Department of Economic and Social Affairs (UN-DESA)
6. United Nations Educational, Scientific and Cultural Organization (UNESCO)
7. United Nations Population Fund (UNFPA)
8. Office of the United Nations High Commissioner for Human Rights (OHCHR)
9. United Nations High Commissioner for Refugees (UNHCR)
10. United Nations Children's Fund (UNICEF)
11. United Nations Institute for Training and Research (UNITAR)
12. United Nations Office on Drugs and Crime (UNODC)
13. World Bank
14. Coordinator of the 5 UN Regional Commissions (Asia – UNESCAP; Africa – UNECA; Europe – UNECE; Latin America & the Caribbean – UNECLAC; West Africa- UNESCWA)

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UN High-Level Dialogue on International Migration and Development, 2006

- It is the closest to a UN-led international conference or global summit on international migration.
- Held during 14-15 September 2006 at the 61st session of the General Assembly.
- Objective: to discuss the multidimensional aspects of international migration and development to identify appropriate ways and means to maximize its development benefits and minimize its negative impacts with a strong policy focus.
- No negotiated outcome:
 - Background report by Secretary-General on International Migration and Development
 - Chairperson's summary
 - Establishment of the Global Forum on Migration and Development

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Global Forum on Migration and Development

- Outcome of UN High Level Dialogue, Sept. 2006
 - continuing the dialogue on migration and development through an informal, voluntary and state-led global forum
 - a platform for policymakers to share information on ideas, good practices and policies regarding migration and development, and to explore new initiatives for international cooperation and multi-stakeholder partnerships.
- First Forum convened by Belgium in Brussels, 10-11 July 2007
Focus on (<http://www.gfmd-fmmd.org/>)
 - Human capital development and labour mobility
 - Remittances and other diaspora resources:
 - Enhancing policy and institutional coherence, and promoting partnerships.
- Second Forum to be convened by Philippines in Manila, October 2008:
 - Theme "Protecting and Empowering Migrants for Development"

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ILO approach to labour migration

- As a labour market and decent work issue; work with labour ministries
- Migration as a positive factor in development
- Tripartite approach to labour migration involving governments, employers and workers
- Rights based approach; pioneered international instruments; Multilateral Framework on Labour Migration 2006
- Promote multilateral approaches and cooperation

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International normative framework - Migrant specific

- **ILO Conventions**
 - the Migration for Employment Convention (Revised), 1949 (No. 97) – 47 ratifications
 - the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) – 23 ratifications
- **United Nations**
 - International Convention on the Protection of the Rights of All Migrant Workers and Members of their families, 1990 – 37 ratifications. (in force since mid-2003)
- 79 countries have ratified at least one instrument. 20

ILO Multilateral framework on labour migration (MLF)

ILO Multilateral Framework on labour Migration - Non-binding principles and guidelines for a rights-based approach to labour migration - adopted in November 2005 by tripartite experts & endorsed by ILO Governing Body in March 2006.

Objectives

- *More effective labour migration management and its governance*
- *Improved protection for migrant workers*
- *Promoting migration-development linkages.*
- *Reinforcing international cooperation & multilateral processes.*

Features

- The only comprehensive collection of principles and guidelines on migration policy and administration, firmly grounded in international instruments and best practices
- "Rights-based": brings together all the principles and guidelines found in international instruments which apply to labour migration and its good governance.
- Tripartite ownership based on tripartite negotiations and consensus: not state-driven or produced by an agency/Commission like IAMM or GCIM report

Downloadable from:

http://www.ilo.org/public/english/protection/migrant/download/multilat_fw_k_en.pdf

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Objections raised by some states

- *Too prescriptive*: but it is a non-binding framework.
- *Accords too many rights to workers in irregular status*: MLF does not create any new rights – merely restates rights contained in existing instruments.
- *Impinges on state sovereignty*: principle of state sovereignty recognized throughout the MLF.
- *Goes beyond ILO mandate in covering migration & development*: but development is very much a decent work and social justice issue.
- *Lacks definitions of categories of migrant workers – “regular” and “irregular” status, and “temporary” and “permanent” migrant workers*: these are well-covered in the literature.

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Highlights of MLF relevant to Asia

- Guideline 4.5. ensuring that labour migration policies are gender-sensitive and address the problems and particular abuses women often face in the migration process;
- Principle 5: Expanding avenues for regular labour migration should be considered, taking into account labour market needs and demographic trends.
- Principle 6: Social dialogue
- Principle 11: prevent abusive practices, migrant smuggling and trafficking in persons; preventing irregular labour migration.
 - prohibiting the retention of the identity documents of migrant workers;
- Principle 12- Migration process
- Principle 13: licensing and supervising recruitment and placement services for migrant workers
- Many good practices drawn from Asia; Philippines, etc.

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Asia: Regional initiatives

- Bangkok Symposium and Declaration on undocumented /irregular migration 1995
- Trading arrangements which provide for some labour mobility
- Bilateral agreements – MOUs between source and destination countries
 - Republic of Korea, Malaysia, Thailand, increasingly some Gulf countries (UAE, Kuwait, Bahrain)
- Regional consultative Processes
 - Manila process; Bali Process; Asia Pacific Consultations
 - Concerns
 - Security driven with focus on trafficking and irregular migration
 - State led with no social partner or civil society involvement;
 - Limited transparency
- Other RCPs dealing with labour migration issues
 - Colombo Process or Abu Dhabi Dialogue from 2003 for Asian labour sending countries, and including gulf destination countries
 - ILO Gulf Forum 2008
- ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

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Objectives of BAs and MOUs in Asia

Destination countries

- Managing irregular migration and promoting orderly labour movements (Malaysia, Korea Thailand)
- Address labour market needs of employers and industrial sectors
- Political patronage: accord privileged access to labour market for specific nationalities.
- Promoting cultural / political ties and exchanges.

Source countries

- To ensure continued access to labour markets of receiving countries.
- Reduce domestic unemployment pressures
- Ensure protection of migrant workers' rights and welfare.
- Earn foreign exchange through worker remittances.

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Some features of Asian schemes

- Competent authority: Ministry of Labour in most cases: China-Ministry of Commerce
- Tying quotas/admissions to repatriation of workers in irregular status: carrot and stick approach
- Work permits: short duration (2-3 years); qualifying period for reapplying 1-3 years leading to circular migration.
- Migrant worker rights: All specify application of national labour law.
- Provisions for ensuring returns
 - Joint liability and responsibility- source country, intermediaries, employers, workers.
 - Possibility of subsequent assignment for worker
 - Withholding of wages or social security payments into mandatory funds to be released on return to home country (e.g. Thailand)
 - Non-compliant employers may not get rehiring option.
 - Focus on jobs /assignments which are by nature temporary
 - Keeping recruitment fees low and making public employment services assume greater control

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Issues of concern

- Focus on recruitment procedures and regulation of migrant flows and not enough on protection: host country interests dominant.
- Major rights denied: in some freedom of association; confiscation of travel documents by employers; mandatory withholding of wages
- While national labour law applies in most cases, there are credible enforcement or redress mechanisms.
- No standard MOUs implying different conditions for some sending countries (Malaysia).
- Lack of gender sensitivity: few address gender concerns; some MOUs leave out domestic workers from their scope.
- No social partner and civil society involvement in design or monitoring
- Monitoring and enforcement weak and focused on control and less on protection; protection benefits not clear.
- Does not effectively address the issue of malpractices of migration intermediaries.

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ASEAN Declaration on Rights of Migrant Workers - Significance

- Emphasis on protection and promotion of rights – accords well with MLF
- Obligations on sending states, receiving states and ASEAN
- Recognises the contributions of migrant workers to the society and economy of both receiving states and sending states
- Intensify efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers;
- ASEAN: Promote decent, humane, productive, dignified and remunerative employment for migrant workers;
- Proposes developing an ASEAN instrument on the protection and promotion of the rights of migrant workers. ILO framework can be a model.

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APEC and labour mobility

- Limited information at APEC level on this issue
- Some APEC economies have special admission policies for skilled persons (both temporary & permanent);
Student movements and migration
 - Qualification recognition and brain waste
- Intra-company transferees
- Mobility of business people engaged in the conduct of trade and investment in the region.
 - APEC Business Travel Card – a good practice
- Substantial flows of both skilled & low skilled labour within Asia –
 - to East Asia, Singapore, Malaysia and Thailand

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Good practices

- Promoting labour mobility within a broad agenda of development and decent work for all
 - In line with international instruments for protecting migrant rights (ILO Multilateral framework on labour migration);
 - Based on recognition of mutual benefits;
 - In line with labour market needs and expanding avenues for legal migration;
 - Building public consensus on need for migrant workers;
 - Based on circulation and mobility-friendly migration policies;
 - Based on bilateral, regional and international co-operation;
 - According greater role for social partners & civil society;
 - Facilitating migration by choice, not by need (GCIM).
- [Let us build bridges, not fences, in the globalizing labour market.](#)

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