Left: Highly-guarded
Sino-DPRK border
in Jilin Province.
Photo by F. Plümmer
(co-author).

Human borders?

Regulating immigration and human trafficking in East Asia

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Every year, millions of migrants move across borders pursuing better lives, or at the least safety. These migratory mobilities follow patterns largely shaped by unequal capitalist development and social conflict, often accompanied by excessive violence. Legal access to a host country is only available for the few who are well educated or 'desirable' for the local society for other reasons. The decision whether an individual can stay is made by bureaucracies that enact often very rigid immigration regimes. The question what role the nation-state plays within these regimes and how standards travel between these regimes was the starting point of our Einstein project at the FU Berlin: 'Sovereignty and International Law in the PRC. Global Migration, Global Terrorism and International Law: Chinese Perceptions and Responses'.

With participants from various disciplines, such as area studies, history, anthropology, sociology, political science, and law, we discussed in what manner the East Asian region is characterized by intraregional migration patterns, how national immigration policies are reformed under the pressure of demographic change and global migration flows, and in which ways these policies show similarities in discourses and practices of immigration regulation. During 2017 and 2019, we held several workshops scrutinizing how (international) norms travel within the region and the different local contexts, how citizenship is constructed and how identity is negotiated in the diversifying local communities. The project produced an edited volume that brings together fascinating contributions addressing these questions from cases in China, Hong Kong, Japan, Korea, and Taiwan. The book is planned for publication by Routledge in November 2020.

One major revelation to come of our discussions (and contextualizing the findings of our book) revolved around the mechanisms of how governments label immigrants and determine who is legal or illegal, ultimately producing graduated citizenship and social hierarchies. For instance, Taiwan and Hong Kong implemented specific immigration regulation for Chinese mainlanders. Many countries installed talent programmes to attract high-skilled workers, and care workers are increasingly put on the fast lane, even in the immigration late comer Japan. All East Asian countries face similar dilemmas in integrating immigrants into the labour markets and managing demographic developments against often rising nationalist and xenophobic discourses. In fact, governmental responses to illegal immigration dominate election campaigns and political discourses around the world, including in Asia, and have become hot topics for migration scholars. Human trafficking figures prominently here as it shows to what extent governments are willing to consider immigrants as victims of migration industries and migration-related exploitation.

Human trafficking

Human trafficking constitutes a contemporary form of slavery, most notably in the form of exploitation of people through forced marriages or forced labour. In 2000, the UN General Assembly adopted the Convention against Transnational Organized Crime and the two supplementary protocols on the smuggling of migrants and the trafficking in persons (Resolution 55/25). The resolution, along with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Trafficking Protocol), acknowledged women as especially vulnerable to human trafficking and forced labour. In 2015, ASEAN implemented this approach issuing the ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP) and the respective Plan of Action. The latter document is based on the Palermo Trafficking Protocol and similarly addresses women and children as victims of sexual exploitation, labour exploitation and organ trafficking. Although none of the East Asian countries is a member state of ASEAN, the Action Plan strongly builds on international and regional cooperation, especially regarding the fight against organized crime.

China has tackled the issue since the early 2000s; the All-China Women's Federation embarked on cooperation with the International Labour Organization (ILO) in a pilot project in Yunnan fighting human trafficking of women and children. Foreign women being forced into marriages with Chinese husbands remains the biggest challenge for the Chinese government, especially in the border regions with North Korea and Southeast Asia. However, human trafficking is also a domestic problem in China as selling women from poor places in the inland provinces to more affluent localities elsewhere in the country has never been eradicated and bespeaks a long tradition of dealing with poverty, particularly in the rural areas. In South Korea, the legal system struggles to regulate the influx of foreign sex workers. Because prostitution is generally prohibited, these women struggle with 'double illegality': illegal as sex workers and illegal as immigrants. In 2016, the National Human Rights Commission issued guidelines to identify victims of sex trafficking. Labour exploitation, however, remains under-regulated.

The COVID-19 pandemic, resulting in border lockdowns around the world, has put migrants under stress. Illegal (sex) workers have become isolated even more as civil society organizations were increasingly unable to deliver assistance across borders. United Nations Office on Drugs and Crime (UNODC) reports show that human trafficking increased during the pandemic. Although cross-border trafficking has become more difficult due to travel restrictions and quarantine regulations, traffickers have found ways to overcome such obstacles and increase their social media presence to prey on potential victims. At the same time, it has become much harder to detect exploitation when everyone stays at home, communities are separated, labour inspections are suspended, and resources are withdrawn from online help centres that often are the only contact points for victims to report on their situation and get help. Victims of human trafficking are also more exposed and vulnerable to COVID-19 infections as they often lack proper access to health care services and testing. Moreover, domestic violence against women in forced marriages has gone up during quarantine isolation. Sex workers have lost their income due to the lockdowns and are often forced to leave their apartments and workplaces which they are no longer able to afford. Leaving these communities deprived them of the minimum security they offered. Some brothels were stripped bare overnight, leaving the workers in existential limbo and making them ever more vulnerable to exploitation. Governments rarely address these groups directly in their measures to counter the pandemic. In South Korea, however, the government acknowledged already in April 2020 that undocumented immigrants could create a blind spot in anti-pandemic measures and provided testing and treatment.

Monitoring anti-trafficking efforts

In 2000, the U.S. Congress passed the Trafficking Victims Protection Act (TVPA) instigating the U.S. State Department to globally monitor countries' efforts to counter human trafficking. Since then, the latter's annual Trafficking in Persons Report distinguishes between Tier 1 countries (indicating governments' efforts to combat trafficking and its willingness to acknowledge responsibility taking corresponding measures), Tier 2 countries (whose governments do not fully meet the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards), a Tier 2 Watch List that sharpens

the focus on countries whose case numbers worsened compared to the previous year, and Tier 3 countries (whose governments are not meeting TVPA's standards and are not making considerable efforts to do so). This way, the international community can monitor each countries' development in terms of anti-human trafficking policies despite not having direct enforcement mechanisms to make them change their practices. How governments react to this classification varies.

Japan, for instance, was classified as a Tier 2 country when the report was first published. In 2004, the classification worsened, setting Japan on the Tier 2 Watch List as the Office to Monitor and Combat Trafficking in Persons of the U.S. State Department urged the Japanese government to step up its efforts to meet its growing numbers of trafficking cases. Following these allegations, the Japanese government introduced human trafficking crimes into the Criminal Code and formulated an intra-ministerial National Action Plan. In 2017, Japan finally ratified the above-mentioned UN Resolution 55/25 including the supplemented Palermo Trafficking Protocol, which was followed by a Tier 1 upgrade in the following year. Although the 2019 report acknowledges Japan's anti-trafficking efforts such as conducting labor inspections, it still evaluates as insufficient the political efforts to enforce prison sentences for sex traffickers and to protect the victims, as Japan remains a major destination for forced labour and sex trafficking.

Taiwan, unable to ratify any of the mentioned Conventions and Protocols due to its lack of international status, is nevertheless included in the U.S. Report and was classified as a Tier 2 country in the early 2000s. After 2005, Taiwan actively responded to 'external shaming' by the U.S. by stepping up its efforts to counter human trafficking. Until today, however, Taiwanese authorities are criticized for insufficient efforts to combat forced labour on fishing vessels, problematic enforcement procedures when interviewing forced labour victims and failing to implement a comprehensive anti-trafficking law.

Publicly reporting on and criticizing a country's efforts has thus shown to have positive effects on governments' behaviour and make them step-up their anti-trafficking efforts. Besides this indirect mechanism, the Palermo Trafficking Protocol motivates international cooperation: if country reports continuously show bad results, ad hoc working groups could be installed bringing together experts to formulate more concrete policy recommendations. For instance, in 2014, the Bali Process Ad Hoc Group (AHG) was established to combat human trafficking in the most affected countries in the Asia Pacific region. The AHG promotes ministerial cooperation among its member countries (Thailand, the Philippines, and Vietnam, among others) and is supported by the International Organization for Migration (IOM), the UN Refugee Agency (UNHCR) and the UNODC. These working mechanisms show that although the East and Southeast Asian countries follow different timelines in implementing measures to combat human trafficking and although there are still considerable shortcomings in enforcing them, abolishing slavery and illicit trafficking has become an accepted norm in the region.

Regional efforts to managing immigration in East Asia

The most common tool for governments to control immigration is through designing and enforcing differentiated regulatory systems towards immigrant classification. Diverse criteria are set up to determine who is a low or high-skilled immigrant or 'talent', who is a student, a tourist or a refugee. Naturalization remains mostly closed (and is often ethnically informed) by citizenship regimes that deny immigrants access to the political community of their host society. Moreover, all East Asian immigration regimes build on employer-based systems, making 'employability' the major precondition for legal (temporary) immigration.

The concept of refugees is notoriously flexible. Among our cases, only Japan and South Korea comply with international norms on refugees and asylum-seekers. Although due to different reasons, Taiwan and China practice rather ad-hoc refugee policies, whereas Hong

Kong, while at first sight complying with the UNHCR regime to protect asylum-seekers, has arguably the most restrictive refugee regime in the region. Taiwan, although not a member of the UNHCR, accepts political refugees; not as a matter of (constitutional) principle but in an ad hoc, case-by-case fashion. China rarely does so. Although the Chinese government acceded to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, it violates the principle of non-refoulement enshrined in those documents by sending back North Korean defectors who are labelled as economic migrants. The principle, which has become customary law, suggests that states that receive asylum seekers should not expel or return them against their will to a territory where they face threats to their life or freedom. The Chinese government works around this claim by privileging a preceding bilateral agreement with North Korea that requires the government to send back North Korean defectors, and not give them the status of asylum seeker. Similarly, the Chinese government classifies Myanmar refugees as 'border residents', thus expediting their return across the border. Hong Kong, for its part, hardly grants political asylum to any refugee and keeps asylum-seekers in a state of limbo until they are transferred to a third country that is willing to accept them.

The issue of refugees is linked to the human trafficking question on a practical level as it shows how governments are willing to allocate resources towards non-citizens. Often, victims of human trafficking fall into the same category with refugees and by not providing asylum status to them, the victims are denied legality. Consequently, North Koreans cannot seek legal assistance to apply for an official status in China as immigrants or for further travel to other countries but are often forced into marriages with Chinese citizens as the only available option to avoid repatriation. Particularly in China, refugees are securitized (seen as having illegally entered the country), though local governments often find ways to 'legalize' them and their children temporarily, hence providing them with access to basic health care at least. In her upcoming book on governing the Chinese border (to be published by Amsterdam University Press), Franziska Plümmer argues that the reason local governments often apply exit and entry regulations in a more inclusive way, thus easing temporary immigration from across the border, is foremost economy; cross-border migrants are a valuable and indispensable resource to spur local development, hence border regulations are selectively, and temporarily, relaxed. Often, these migrants work in near-by Chinese farms or factories, providing relatively cheap labour. The migrants are not allowed to leave the

Above: Advertisement for a marriage agency in the Sino-Laotian borderland.

border area and travel further inland to look for more profitable job opportunities. Some local governments extend these practices, which are not officially sanctioned by higher administrative levels, to foreign wives, by issuing locally valid registration cards for them. This way, local governments hijack immigration control from the central state and, to some extent 'normalize' cross-border mobility. The central state, for its part, is well aware of these local border regimes but gives local authorities the necessary leeway to comply with upper level development targets. This example also shows how immigration norms and standards domestically travel between prefectures and counties at the Chinese border. Local governments compete in attracting immigrants to satisfy labour demand. While it suffices to supply basic social services for them in the border areas, larger cities elsewhere compete with each other in attracting high-skilled workers and talent immigration to boost their often highly specialized industries.

Immigration policies undoubtedly exacerbate risks of human trafficking in East Asia, and the intersection of seeking refuge and human trafficking should be regulated in a more cooperative and coordinated manner among the different countries and across government departments. Although the international prohibition of slavery stands, the victims' reality of life often remain dire because officials turn a blind eye and legal regulations are often lacking. The 2018 verdict by the Seoul High Court, stating that the South Korean government was responsible for not properly monitoring the living and working conditions on Sinui Island is telling testimony to how victims are able to seek redress through

the legal system, but also how local police and governments can support systems of exploitation. This case on Sinui Island revolved around two disabled persons who were recruited by an unregistered employment agency that later sold them into forced and unpaid labour in a salt farm, where they experienced severe abuse for several years. After several escape attempts, they finally managed to get help from outside and went to court. The role of the local police remained unclear. While the prosecution believed, but could not prove, that the police had helped the farmers keep their victims enslaved, the local authorities certainly did not comply with their responsibility of monitoring labour conditions properly on the island. Following the victims' rescue, a nation-wide investigation of labour conditions in salt farms was conducted in which dozens of more unpaid workers were found. The role of local officials and police was investigated but did not result in arrests.

Our look at different East Asian immigration regimes has highlighted the overlap of labour, social, industry, and immigration policies, which must be coordinated to bring about protection, fairness and justice to immigrants. Whether they are welcome or not, the selective admission of immigrants is a widely practiced strategy to reconcile labour market requirements and demographic change pursued by every government in the region. This approach, however, leans towards the rule by exception, normalizing the admission of specific groups of workers who are needed only in the short-term and therefore grading citizenship within a society in an ethically and politically most problematic way. If governments seek long-term solutions for the inevitable (and needed) influx of immigrants, they should rather adopt transparent immigration procedures and reliable asylum processes in order to avoid private migration agencies which do exploit legal loopholes, so as to effectively prevent organized crime and ensure international human rights standards. However, as long as immigration regulations continue to follow employment-based policies, victims of human trafficking and other irregular immigrants will continue to blend into the same legal category and be exposed to discriminating social stigmatization. Given the fact that many East Asian societies foster latent or explicit ethno-nationalistic and even xenophobic attitudes, legal change to heal this situation will be a protracted process.

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Above: Work at a garment factory in the outskirt of Ho Chi Minh City, Vietnam. This factory has benefited from the Better Work Programme of the International Labour Organization and the International Finance Corporation. ©ILO/Aaron Santos/CC License.